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AFFIXATION ON PROPERTY

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

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

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

PROCEEDINGS NO.295/D OF 1999
ORDER NO 57 DATED: 28.06.2023

Form- G

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

To

**Bengal Bonded Warehouse Association,
Diamond Heritage,
10th Floor, Unit N 1015,
16, Strand Road,
Kolkata-700001.**



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

AND WHEREAS by written notice dated 16.09.2021 you are called upon to show cause on or before 29.09.2021 why an order requiring you to pay damages of Rs.11,59,07,472.33 (Rupees Eleven Crore fifty nine lakh seven thousand four hundred seventy two and paise thirty three only) together with [compound interest] for unauthorised use and occupation of the said premises, should not be made;

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

NOW, THEREFORE, in exercise of the powers conferred on me by Sub-section (2) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971, I hereby order you to pay the sum of Rs.11,59,07,472.33 (Rupees Eleven Crore fifty nine lakh seven thousand four hundred seventy two and paise thirty three only) assessed by me as damages on account of your unauthorised occupation of the premises for the period from 16.06.1993 to 15.01.2021(both days inclusive) to SMPK by 28.07.2023.

PLEASE SEE ON REVERSE



: 2 :

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

In 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.GR-16/1

The piece or parcel of land measuring 8,945.87 Sq.m or thereabouts is situated in Block-"D", Sonai, Thana: West Port, District-24 Parganas(S) & Registration District Alipore. The said land is bounded on the North by the Trustees' open land beyond which is their land marked Block 'E' on the East by the Trustees' open land on the South by the Trustees' open land beyond which is their land marked Block "C" and on the West by the Trustees' open land. Trustees' means the Board of Syama Prasad Mookerjee Port, Kolkata Authority (Erstwhile Board of Trustees' for the Port of Kolkata).

Date 14.07.2023.

Signature & Seal of the
Estate Officer.



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FINAL ORDER

The instant Proceedings No. 295/D of 1999 arose out of the application bearing No. Lnd. 4104/4/5/VI/21/994 dated 07.04.2021 filed by the Syama Prasad Mookerjee Port Kolkata (Formerly Kolkata Port Trust/KoPT), hereinafter referred to as SMPK, the Applicant herein, praying for order for recovery of arrear damages/compensation charges, taxes, along with interest from **M/s. Bengal Bonded Warehouse Association**, O.P. herein. The material fact of the case is summarized here under.

Land msg. 8943.87 Sq.m. situated at Block "D" Sonai, Thana-West Port Police Station, District: 24 Parganas comprised under Occupation No. GR-16/1 was allotted to M/s. Bengal Bonded Warehouse Association (O.P) of Diamond Heritage, 10th Floor, Unit N 1015, 16, Strand Road, Kolkata-700001 on monthly licence basis and O.P. violated the condition for grant of licence by way of not making payment of monthly licence fees/rental dues to SMPK and also by encroachment upon SMPK's land. Thereafter, the licence was determined by SMPK by serving the notice of revocation of licence dated 31.05.1993. The O.P. was asked to hand over clear, vacant and unencumbered possession of the premises on 16.06.1993 in terms of the notice of revocation of licence bearing No. Lnd./4104/4/5 dated 31.05.1993. As the O.P. did not vacate the premises, SMPK initiated a proceeding for eviction, which culminated into an exparte Order of eviction dated 28.05.2005 passed by this Forum of Law.

It is seen that challenging the said order of eviction an appeal being P.P Appeal No.9 of 2008 was filed by O.P before the Ld' District Judge, Alipore and the said appeal was subsequently withdrawn by O.P on the pretext that it has surrendered the possession in favour of SMPK. Thereafter SMPK issued Circulars dated



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16.08.2011 and 17.08.2011 restraining the Chettri Enterprise/Keshab Adhikari Chettri from storing empty containers in the Dock and O.P also requested them to remove all empty containers stored in the subject premises. Thereafter the said Chettri Enterprise/Keshab Adhikari Chettri filed a Title Suit being No.20196 of 2012 before the Ld. 3rd Civil Judge(Jr. Division), Alipore, praying declaration against its ousting in any unlawful way. In connection with the said Title Suit thereafter on 05.09.2013 an order of injunction was passed against O.P with a direction that the possession of said Chettri Enterprise/Keshab Adhikari Chettri should not be interfered with without recourse to law. In the mean time, O.P preferred a Misc Appeal being No.487 of 2013(arising out of T.S No.21096 of 2012) against the order dated 05.09.2013 however, the order dated 05.09.2013 was subsequently affirmed on 29.06.2016 by the 12th Court of Ld. Addl. District & Session Judge(Alipore) and thereafter, O.P filed a C.O being No. 3538 of 2016 against the Chettri Enterprise/Keshab Adhikari Chettry and such revisional application being C.O No. 3538 of 2016 was dismissed on 23.09.2016 with an observation that all issues are to be decided at the trial of the Suit. Further it is seen that two consecutive Writ Petitions being W.P No.29685(W) of 2016 and W.P. No.1550 of 2021 were also moved by O.P interalia praying direction upon SMPK to take possession of their land forthwith in execution of the eviction order dated 28.05.2005. Writ Petition being W.P No. 29685(W) of 2016 was disposed of by his Lordship Hon'ble Mr. Justice Harish Tandon, High Court at Calcutta vide his order dated 05.04.2018, holding that it was open to SMPK to recover possession and there is no fetter on the part of the respondent no.1/SMPK to recover the possession under the provisions of law. The Another Writ Petition being WPA

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No.1550 of 2021 move by O.P. is still pending before the Hon'ble High Court without any interim order,

It reveals that before the decision dated 05.04.2018 as passed by the Hon'ble Calcutta High Court, Calcutta, Mr. S.K Chowdhury was already appointed as alternative Authorised Officer on 23.03.2017 in place of Smt. S. Thakur due to her continued illness since December, 2016 and Mr. Chowdhury, thereafter, made an attempt on 16.05.2017 to recover the possession of the subject premises but due to strong resistance offered by the men and agents of O.P, possession could not be taken over by him and thereafter he lodge two complaints in West Port Police Station vide letter/s nos. Lnd. 4104/4/5/VI/AO-9/17/1282 dated 22.05.2017 and Lnd. 4104/4/5/VI/AO-9/17/1581 dated 09.06.2017 and also made a prayer thereafter before the Estate Officer on 12.06.2017 for Police help and also vide his letter dated 15.06.2018 he made request to the Joint Commissioner of Police(HQ), Kolkata Police, Lalbazar for giving him necessary police assistance for recovery of possession of such land. Finally in cooperation and assistance of the Officer-In-Charge, West Port Police Station, the possession of such premises was recovered on 15.01.2021 by the Authorised Officer, who handed it over to SMPK. Thereafter, SMPK in terms of the present application dated 07.04.2021 has submitted its claim on account of compensation/ damage charges, which reportedly was due and recoverable from the O.P. for its use and enjoyment of the port property in question.

After considering the claim of SMPK, this Forum formed its opinion to proceed against the O.P. and issued Show Cause Notice dated 16.09.2021 (vide Order no. 27 dated 15.09.2021) u/s 7 of the Public Premises (Eviction of Unauthorized Occupation) Act, 1971.



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O.P. contested the matter through its Ld. Advocate and filed application for recalling and/or withdrawal of the Show Cause notice dated 27.09.2021. O.P. also filed Petitions/ applications on 12.11.2021, 08.02.2022, 06.04.2022, 12.08.2022, 15.03.2023, 21.04.2023, 12.05.2023 and also their Written Notes of Argument on 09.06.2023. SMPK on the other hand, filed their comments dated 29.10.2021, 10.03.2022, 30.05.2022, 03.02.2023 and 06.05.2023 in response to the application/s filed by O.P.

After hearing both the parties and considering the documents placed before me, I think the following issues have come up for adjudication:-

- I) Whether this Forum is competent to adjudicate upon the matter or not;
- II) Whether O.P. can disown their liability towards payment of damages on the plea that they have surrendered the premises or not;
- III) Whether O.P. can take the shield of time barred claim under Limitation Act to contradict the claim of SMPK or not;
- IV) Whether SMPK's application/comments dated 30.05.2022 filed before this Forum is signed by a competent person authorised to sign and whether SMPK's application/comments dated 30.05.2022 is maintainable on the grounds that the application has not been affirmed or verified;
- V) Whether the contention of O.P. with regard to "Res-judicata" involving the subject matter of dispute, has got any merit in determining the question of maintainability of this proceedings or not;
- VI) Whether the alleged claim of SMPK against O.P. is barred by law of "Promissory estoppel" or not;

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- VII) Whether O.P.'s contention regarding Cross-Examination of Sri S.K Dhar, the then Estate Manager and other officials of SMPK is at all relevant in the facts and circumstances of the case with reference to the judgments cited by O.P. or not;
- VIII) Whether O.P. is liable to pay damages as claimed by SMPK upto 15.01.2021 that is up to the date of recovering vacant possession of the entire Public Premises in question to SMPK 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 etc. SMPK has come up with an application for order of recovery of compensation charges etc against O.P. on the ground of non-payment of the same in respect of the premises in question. So long the property of the Port Authority is coming under the purview of "public premises" as defined under the Act, adjudication process by serving Show Cause Notice u/s 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. The Issue no. I is therefore decided accordingly in favour of SMPK.

Issues No. II & III are taken up together for convenient discussion. It is the case of O.P. that they had surrendered



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their tenancy by letter dated April 29, 2016 with effect from July 30, 2016 and as such they are not liable to pay payment towards any rental dues and/or any charges for compensation as claimed by SMPK after 1st August, 2016. It is also the case of O.P. that they are not bound to pay the time barred claim of SMPK. As per law, a licensee is bound to deliver back possession of the premises to its licensor in its original condition after expiry of the licence period or after determination of the licence etc. as the case may be. Mere writing of letter communicating any intention to surrender possession or informing the status of the property does not necessarily mean that the property has been actually surrendered to SMPK and SMPK had taken over possession of such property upon such surrender. In course of hearing it is argued by SMPK that as possession of land was handed over to O.P by performing requisite formalities similarly at the time of surrendering possession of the premises by the tenant to SMPK a similar formality also to be performed by O.P by signing in a joint minutes of said handing over and taking over in presence of both. Mere submission of a surrender letter cannot ipso facto absolve O.P from their liability of surrender. I have duly considered such submission of SMPK, in my view the proposition of surrender of possession by way of expressing any intention to SMPK to surrender the property in question without vacant and unencumbered condition is not at all supported by law. "Surrender" must mean legal surrender of possession. No material has been put forward by O.P. to consider any matter in support of O.P's contention regarding "surrender" as per law. The written objection of O.P. also does not disclose any commitment or assurance from the part of SMPK regarding acceptance of possession of the property with the occupation of Keshab Adhikari Chettri (Sitting Occupant). According to O.P., after surrender of the premises, they had no other function. SMPK either through its Estate Officer or otherwise, in dereliction of its



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statutory duty has failed to take over such land within the statutory period of 30 days as mandated under Sec 5 of the Public premises Act. However, I am also not convinced by such submission of O.P., It is seen from the official complaint of SMPK dated 18.08.2005 made before the Police Authority that attempt for recovery of possession was first made by SMPK on 07.07.2005 and thereafter the application for appointment of Authorised Officer dated 29.08.2005 and thereafter the urgency petitions dated 26.09.2005, 28.10.2005, 12.12.2005 respectively filed by the SMPK to expedite the process of eviction and thereafter the application dated 06.02.2017 for appointment of alternative Authorized Officer due to continued illness of erstwhile Authorised Officer in connection with the subject Proceedings sufficiently depicts SMPK's diligent attitude towards the recovery of possession of subject land. It is also seen that subsequent Authorised Officer also made an attempt to recover the possession of SMPK's land however, due to strong resistance from O.P and their men and agents possession was not recovered. Thereafter, vide his letter dated 15.06.2018 he made request to the Joint Commissioner of Police(HQ), Kolkata Police, Lalbazar for giving him necessary police assistance for recovery of possession of such land and ultimately, with the cooperation and assistance of the Officer-In-Charge, West Port Police Station, possession was recovered. Moreover, it appears from the record that Order of Stay as was passed against the O.P. by the Ld' Alipore Court vide its order dated 05.09.2013 in Title Suit bearing T.S No. 21096 of 2012 filed by the Sitting Occupant (Kesab Adhikari Chhetri) subsequently become affirmed in a Misc Appeal No.487 of 2013(arising out of T.S No.21096 of 2012) as preferred by O.P. In my view, due to such finality of the stay order dated 05.09.2013 SMPK had been barred from taking over possession of such land from O.P. I may mention an observation of Hon'ble High Court at Calcutta in W.P

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No.29685(W) of 2016 in this regard where Hon'ble High Court was pleased to observe that "it is axiomatic to record that though the respondent No.1 herein is not a party to the said suit yet he is aware of the said order of injunction and may, therefore, thought no to proceed with recovery of possession as they may be exposed for violation thereof." In my view, the land lord's right to get back possession and tenant's liability to hand over unencumbered possession of the property to landlord on determination of tenancy is inherent in every relationship implied by law. There is an implied contract and/or statutory obligation on the part of the tenant that the tenant shall not go out of possession but also restore the possession to the land lord in its original condition. In this instant case, O.P. has failed to do such thing as well as failed to make out any case in support of their contention regarding vacating/ surrendering of the premises to SMPK and in my considered view, O.P. was under constructive possession of the premises through such Sitting Occupant who was inducted by O.P. sometime in the year 2005. Now the question of application of Limitation Act in connection with "time barred claim" is required to be decided with all its seriousness.

The Limitation Act is applicable for Civil Courts to try suits unless barred by some other Act. Sec.9 of the Civil Procedure Code reads as follows:-

"The courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred."

There are provisions for filing of suit in Civil Court with regard to territorial jurisdiction, pecuniary jurisdiction and jurisdiction with regard to subject matter of dispute. But in case of recovery of possession of public premises and recovery of arrear rental dues and damages etc. in respect of public premises, this Forum of Law is the only



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competent adjudicating authority and civil court has no jurisdiction U/s 15 of the P.P. Act to entertain any matter in respect of the public premises as defined under the P.P. Act.

The Limitation Act has no application in the proceedings before the Estate Officer which is not a Civil Court, governed by the Civil Procedure Code. Sec. 15 of the Act puts a complete bar on entertaining any matter before the Civil Court in respect of Public Premises. As such, I am firm in holding that Limitation Act has no application in the instant case. The Division Bench judgment of Madhya Pradesh High Court reported in AIR 1980 MP 196 (D.B) (L.S. Nair -VS- Hindusthan Steel Ltd. & Ors.) has its applicability in all sense of law. In this connection I am fortified by a judgment of the 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 most celebrated 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.

In order to appreciate the stands taken on behalf of the parties in dispute, it would be expedient to go into the statutory provisions of the Civil Procedure Code, Limitation Act and P.P. Act. It has been argued on behalf of SMPK that the Articles under Limitation Act are applicable to Suit only. To my understanding Civil Suits are tried by the Courts as per the Civil Procedure Code and proceedings before this Forum of Law are guided by the P.P. Act which provides a code for adjudication of matters relating to public premises. However, Civil Procedure Code has only a limited application to the proceedings before the Estate Officer in-as-much-as that an Estate Officer shall for the purpose of holding an enquiry under the P.P. Act, have the powers as are vested

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in a Civil Court under the Code of Civil Procedure while trying a suit in respect of summoning and enforcing attendance of any person and examining him on oath which requires the discovery and production of documents. Section 8 of P.P. Act makes it abundantly clear that an Estate Officer under P.P. Act enjoys a very restricted power of CPC in terms of the Order-XVI, Rules 1 to 21 of the Civil Procedure Code (CPC) and Order- XI, Rule 12 to 21. No doubt the Estate Officer has been given power as vested in a Civil Court under CPC for the limited purpose of holding enquiry under the the P.P. Act. Yet it is not a court to be governed by the Civil Procedure Code. As per CPC, the courts shall have jurisdiction to try all suits of a civil nature, excepting suits for which their cognizance is either expressly or impliedly barred. In view of the discussion above, I am firm in holding that this Forum of Law is very much competent under law to adjudicate the claim of SMPK against O.P. and Limitation Act has its no application to the proceedings before the Estate Officer which is a quasi-judicial authority under P.P. Act and not a Civil Court to be governed by the Civil Procedure Code. Hence the issues are decided in favour of SMPK.

Issue no. IV was raised by the O.P. in its application dated 12.08.2022. It needs to be examined keeping in view of the provisions of the Act. The PP Act, 1971 or the Rules made under it does not deal with any issue/procedure concerning verification of the competence of the signatory of the petition. In the instant case, I am taking judicial notice of the fact that SMPK's petition dated 30.05.2022 is signed by a responsible officer in the capacity of Executive Engineer. As the Petition/Application of SMPK is signed by its Executive Engineer on behalf of Estate Manager(I/C), their mere objection not being substantiated by arguments and/or document does not fetch any favour to O.P. The issue is decided accordingly in favour of SMPK.

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With regard to **Issue No.V**, O.P., vide their Written Notes of Arguments dated 09.06.2023, referring certain citations, has claimed that SMPK's allegation regarding handing over of clear vacant unencumbered possession by O.P has already been decided by the Hon'ble High Court at Calcutta vide its order dated 05.04.2018 and as no appeal has been preferred by SMPK, the same has attained finality. However, I must say that question of "Res-judicata" regarding the claim of SMPK is very much fallacious as the facts and circumstances of the instant proceedings is very much away to consider the matter of Res-judicata under Civil Procedure Code (CPC). As per CPC, Res-judicata applies in cases where no court shall try any suit or issue in which the matter directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been substantially raised, and has been heard and finally decided by such court. None of the ingredients constituted "Res-judicata" in any manner of application in the instant proceedings. Moreover, there is no decision by any competent court of law in respect of the subject matter of dispute before this Forum of Law. As such, I set aside the O.P's plea on the ground of Res-judicata.

Regarding **Issue No.VI**, I must say that according to law the doctrine of "promissory estoppel" is an equitable doctrine evolved by equity to prevent injustice. The doctrine estops the promisor to retract from his promise in case while acting on the promise of the promisor, the promisee alters his/ her position. It is based upon principles of justice, fair play, and good conscience. The doctrine is different from the rule of estoppel spelled out in Section 115 of the Indian Evidence Act, 1872 as said Section talks about the representation made as to the existing facts whereas the promissory estoppel deals with



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the future promises. The doctrine is neither in the realm of contract nor in the realm estoppel. In their application dated 09.06.2023, O.P invoking this doctrine alleged that One Time Settlement(OTS) between the parties constituted an assurance and/or promise on the part of SMPK to take over possession and O.P being allured by such assurance paid the sum of Rs.2.67 Crore and acted to its detriment. Now, impugned inaction on the part of SMPK in not taking possession is barred by that principles of promissory estoppel and SMPK cannot claim any damages after August1, 2016. O.P. has cited several judgments to support its contention. However, I am not convinced by such submission of O.P. The Letter/application dated 26/31.08.2016 as issued by the then Estate Manager, SMPK clearly depicts that Rs.2.67 Crore was accepted by SMPK as part payment of compensation charges. Further no material is available in the records which will prove any assurance and/or promise on the part of SMPK to allure O.P to pay such amount. O.P also failed to produce any documentary evidence relating to One Time Settlement(OTS) in the instant case. Therefore, the question of 'Promissory Estoppel' as raised on behalf of O.P. does not arise at all in view of the facts and circumstances of the case.

With regard to **Issue No.VII**, O.P's case centered round the question of adducing evidence and cross examination of certain Officials of SMPK. O.P vide their Application/ Petition dated 08.02.2022 has claimed that as per the principles of natural justice SMPK should furnish the names of erring and delinquent officials including Authorised Officers and O.P should be given opportunity to Cross Examine them. It is also stated by O.P that Opportunity should also be given to Cross Examine the then Estate Manager of SMPK. O.P. has cited several judgments of the Hon'ble High Courts and the Apex Court of India to support its contention. It is argued on behalf of SMPK that this Forum of Law is a quasi-judicial Authority

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meant for summary procedure for speedy trial with a view to evicting unauthorized occupants from the Public Premises etc. and this Forum of Law is governed by a Special Act of Parliament (P.P. Act) which provides a complete a Code. It is also argued on behalf of SMPK that the Ld. Estate Officer is a Quasi-Judicial Authority (Adjudicating Authority) under the P.P. Act and not a Civil Court to be governed by the Civil Procedure Code for adjudication of the matter before him.

On going through the specific provisions of the Act and the Rules made under the Act, I am firm in holding that Forum of Law is not a Civil Court to be governed strictly by the Civil Procedure Code. It is a Quasi-Juridical Forum of Law (Authority) for adjudication of the matters relating to Eviction of Unauthorized Occupants etc. from the public premises. For the purpose of enquiry Estate Officer is entrusted with certain powers of CPC. This does not necessarily mean that the Civil Court power as provided u/s.8 of the Act will always be required by the Estate Officer for adjudication of the matter before him. A careful consideration of the provisions of the Act leaves no room for doubt that for enquiry the E.O. is bound to observe the procedure as laid down in the P.P. Act and Rules framed under the Act which clearly speaks for recording of the summary of the evidence as per Rule 5 which reads as under :

“Holding of Inquiries – (1) Where any person on whom a notice or order under this Act has been served desires to be heard through his representative, he should authorize such representative in writing.

2. The estate officer shall record the summary of the evidence tendered before him. The summary of such evidence and any relevant document filed before him shall form part of the records of the proceedings.”

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I therefore do not find any substance to the arguments of O.P. regarding absolute necessity of following the procedure as laid down in CPC for the purpose of Cross-Examination etc. as the adjudication of cases under P.P Act is of summary procedure in nature. In suits to be governed by the CPC there is a mandatory provision u/s.141 of CPC which reads as under:

“The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of Civil Jurisdiction.”

In view of the discussion as above, this Forum of Law for the sake of speedy disposal of the cases under the letter and spirit of P.P Act only considers the summary of facts and evidence. Therefore, the contention/plea of O.P. regarding cross examination has no leg to stand upon on the basis of evaluation of the factual aspect involved in this matter. I must hold that all the papers/documents as produced in course of hearing must form a part of the record of this proceedings and I must have to consider all such documents/papers for effective adjudication of the matter before me. Hence, the issue is decided against O.P.

Regarding **issue no. VIII**, I must say that the monthly licence with respect to the public premises in question was entered into by the Port Authority with the O.P. and such licence was determined vide a notice of revocation of licence dated 31.05.1993. Accordingly, the O.P. was requested to arrange for vacation of the subject premises on 16.06.1993 free from all encumbrances. O.P. continued in possession of the public premises even after revocation of the licence and no reason or evidence has been brought forth by the O.P. as to how its occupation could be termed as “authorised occupation”. The final order of eviction was passed against O.P on 28.05.2005 and finally in executing the order of eviction the possession of the subject

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premises was taken over by the Authorised Officer on 15.01.2021. Although O.P has claimed that it has surrendered its tenancy by letter dated April 29, 2016 with effect from July 30, 2016, therefore, not liable to pay any rent or any charges on or after August 1st, 2016, However, Mere writing of letter communicating any intention to surrender possession or informing the status of the property does not necessarily mean that the property has been actually surrendered to SMPK and SMPK had taken over possession of such property upon such surrender. Therefore, it can be presumed that O.P. was very much present in occupation of the subject public premises even after due determination of licence vide revocation of licence dated 31.05.1993 therefore, I have no hesitation in deciding that O.P. has no enforceable right after determination of such licence. The possession of the public premises by the O.P. from 16.06.1993 till the date of recovery of possession, therefore, is nothing but "unauthorized occupation" within the meaning of sec 2 (g) of the P.P. Act, 1971, which reads as under:

*"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.**"*

Although the O.P has claimed that they had surrendered tenancy by letter dated April 29, 2016 with effect from July 30, 2016 but in reality the property had been recovered by SMPK on 15.01.2021 after a long spell of litigation and at the fag end with the help of police assistance.



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The licence granted to O.P. was undoubtedly revoked by the Port Authority by due service of notice for revocation of licence and institution of proceedings against O.P. by SMPK is a clear manifestation of Port Authority's intention to get back possession of the premises. In fact there is no material to prove O.P's intention to pay the dues/charges to SMPK and all my intention to narrow down the dispute between the parties has failed. In such a situation, I have no bar to accept SMPK's contentions regarding revocation of licence by notice dated 31.05.1993, 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 revocation of licence dated 31.05.1993, 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 judgement reads as follows.

Para:11-" under the general law, and in cases where the tenancy is governed only by the provisions of the Transfer of Property Act 1882, once the tenancy comes to an end by determination of lease u/s.111 of the Transfer of Property Act, the right of the tenant to continue in possession of the premises comes to an end and for any period thereafter, for which he continues to occupy the premises, he becomes liable to pay damages for use and occupation at the rate at which the landlord would have let out the premises on being vacated by the tenant.

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.....
....."

Undoubtedly, the tenancy under licence is governed by the principles/provisions of the Indian Easement Act and there is no scope for denial of the same. Though the status of a "licencee" is entirely different from the status of a "lessee", the principle established by the Hon'ble Apex Court of India in deciding any question about "damages" in case of a "lease" may be accepted as guiding principle for determining any question about damages in case of a "licence".

In course of hearing, the representative of SMPK states and submits that Port Authority never consented in continuing O.P's occupation into the public premises and never expressed any intention to accept O.P as tenant. It is contended that SMPK's intention to get back possession is evident from the conduct of the Port Authority and O.P. cannot claim its occupation as "authorized" without receiving any rent demand note. The licence was doubtlessly revoked by the landlord by notice, whose validity for the purpose of deciding the question of law cannot be questioned by O.P. Therefore, there cannot be any doubt that the O.P. was in unauthorized occupation of the premises, once the licence was revoked. In my opinion, institution of this proceeding against O.P. is sufficient to express the intention of SMPK to obtain an order of compensation/damages and declaration that SMPK is not in a position to recognize O.P. as tenant under monthly licence.

The Port Authority has a definite legitimate claim to get its revenue involved into this matter as per the existing terms and conditions for allotment for the relevant period and O.P. cannot claim continuance of its occupation without making payment of requisite charges for occupation. To take this view, I am fortified by the Apex Court judgment



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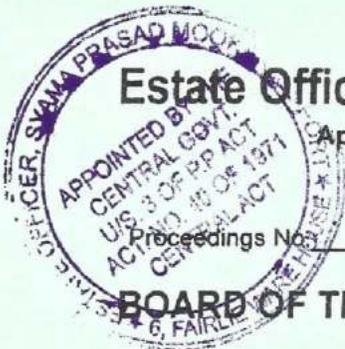
report in JT 2006 (4) Sc 277 (Sarup Singh Gupta -vs- Jagdish Singh & Ors.) wherein it has been clearly observed that in the event of termination of lease, the practice followed by Courts is to permit landlord to receive each month by way of compensation for use and occupation of the premises, an amount equal to the monthly rent payable by the tenant.

It appears that during the course of hearing, SMPK has claimed compensation charges @ 3times against O.P. from 16.06.1993 to 15.01.2021 but denying the said compensation charges, O.P. in their application dated 12.08.2022 contended that they had paid in full and final settlement an amount of Rs.2,67,74,867/- in respect of all arrear dues with respect to the subject public premises in question. As such there is no question of any further or other dues outstanding from O.P. The compensation or damages foisted by the SMPK @ 3 times of the Schedule rent is illegal, wrongful and malafide. However, I am not convinced by such submissions of O.P., I must say that as per law, when any occupant enjoys possession without having any valid authority, the party whose interest is hampered by such unauthorised occupation is entitled to receive, from the party who is occupying unauthorisedly, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from any breach, or which parties knew, when they made the contract to be likely to result from the breach of it. As regards the three times rate of compensation in respect of unauthorised occupation, the order dated 03.09.2012 passed by Hon'ble Justice Dipankar Datta in WP no. 748 of 2012 (M/s Chowdhury Industries Corporation Pvt. Ltd. versus Union of India & others) is very relevant. The said Order reads as follows:

“.....
It is undisputed that there has been no renewal of the lease prior to its expiry or even thereafter. There is also no fresh

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grant of lease. The petitioner has been occupying the property of the Port Trust unauthorisedly and, therefore, the Port Trust is well within its right to claim rent at three times the normal rent in terms of the decision of the TAMP, which has not been challenged in this writ petition.

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

.....”

In my view, such claim of charges for damages at the rate of 3 times of the SoR by SMPK is based on sound reasoning and should be acceptable by this Forum of Law. As per law, when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract to be likely to result from the breach of it. Moreover, as per law O.P. is bound to deliver up vacant and peaceful possession of the public premises to SMPK after expiry of the period as mentioned in the notice of revocation of licence in its original condition. As such, the issue is decided in favour of SMPK. 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 SMPK. With this observation, I must reiterate that the revocation notice, demanding possession from O.P. as stated above have been validly served upon the O.P. in the facts and circumstances of the case and such notice is valid, lawful and binding upon the parties. In view of the discussions above, the issue is decided in favour of SMPK.



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NOW THEREFORE, I think it is a fit case for issuance order for recovery of damages/Compensation charges u/s 7 of the Act as prayed for on behalf of SMPK. I sign the order as per rule made under the Act, giving time upto 28.07.23 for payment of damages of Rs. 11,59,07,472.33(Rupees Eleven Crore fifty nine lakh seven thousand four hundred seventy two and paise thirty three only) to SMPK by O.P. for the period 16.06.1993 to 15.01.2021. Such dues attract compound interest @ 7.50 % per annum, which is the current rate of interest as per the Interest Act, 1978 (as gathered by me from the official website of the State Bank of India) from the date of 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 SMPK's books of accounts.

I make it clear that in the event of failure on the part of O.P. to pay the amounts to SMPK as aforesaid, Port Authority is entitled to proceed further in accordance with Law. All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL

(Kausik Kumar Manna)
ESTATE OFFICER

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