



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

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

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

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

REASONED ORDER NO. 37 DT 30.06.2023
PROCEEDINGS NO.1304 OF 2012

SYAMA PRASAD MOOKERJEE PORT, KOLKATA
(ERSTWHILE BOARD OF TRUSTEES OF THE PORT OF KOLKATA)
-Vs-
Estate Dukhiram Tiwari, Proprietor Sri Munilal Tewari (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

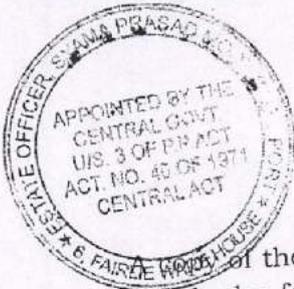
WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that **Estate Dukhiram Tiwari, Proprietor Sri Munilal Tewari, 211, Upper Chitpur Road, Kolkata-700003** is in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

1. That the proceedings against O.P. is very much maintainable within the four corners of the P.P. Act.
2. The O.P or any other person/occupant has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation".
3. That the instant Proceeding is not barred by the doctrine of Estoppel, waiver and acquiescence.
4. That the claim of SMPK is not barred by the provision of Limitation Act.
5. That the ejection notice dated 21.08.1979 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties;
6. That O.P's occupation has become unauthorised in view of Sec.2(g) of the P.P. Act.
7. That O.P. is liable to pay damages for wrongful use and enjoyment of the Port Property in question upto the date of handing over of clear, vacant and unencumbered possession to SMPK.

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
24-07-23
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

PLEASE SEE ON REVERSE



(2)

of the reasoned order No. 37 dated 30.05.2023 is attached hereto which also forms a part of the reasons.

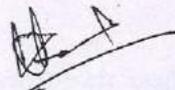
NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said **Estate Dukhiram Tiwari, Proprietor Sri Munilal Tewari, 211, Upper Chitpur Road, Kolkata-700003** and all persons 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 **Estate Dukhiram Tiwari, Proprietor Sri Munilal Tewari, 211, Upper Chitpur Road, Kolkata-700003** 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.

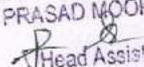
SCHEDULE

Plate Nos. SB-338/2 & SB-338/3

The said piece or parcel of land msg. about 78.038 Sq.m at Strand Bank Road, (Plate No. SB-338/2) and additional land Msg. 41.435 Sq.m on the West side of Strand Bank Road (Plate No. SB-338/3) or thereabouts at Cossipore, Thana: North Port Police Station, in the Presidency town of Kolkata.

Dated: 27.07.2023.


Signature & Seal of
Estate Officer.

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

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

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

O/C



**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.1304/D OF 2012
ORDER NO. 37 DATED: 30.06.2023.

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

**Estate Dukhiram Tiwari,
Proprietor Sri Munilal Tewari,
211, Upper Chitpur Road,
Kolkata-700003.**

5670

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 Assis. 29.07.23
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

AND WHEREAS by written notice dated 07.10.2022 you are called upon to show cause on or before 21.10.2022 why an order requiring you to pay damages of Rs.5,21,085.36 (Rupees Five Lakh twenty one thousand eighty five and paise thirty six Only) for Plate No. SB-338/2 and Rs.2,76,209.11(Rupees Two Lakh seventy six thousand two hundred nine and paise eleven only) for Plate No.SB-338/3, 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 evidence produced before this Forum;

NOW, THEREFORE, in exercise of the powers conferred on me by Sub-section (2) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971, I hereby order you to pay the sum of Rs.5,21,085.36 (Rupees Five Lakh twenty one thousand eighty five and paise thirty six Only) for Plate No. SB-338/2 and Rs.2,76,209.11(Rupees Two Lakh seventy six thousand two hundred nine and paise eleven only) for Plate No.SB-338/3 assessed by me as damages on account of your unauthorised occupation of the premises both for the period from 28.02.1981 to 30.06.2017 (both days inclusive) to SMPK by 11.08.2023.

PLEASE SEE ON REVERSE



: 2 :

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

In 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 Nos. SB-338/2 & SB-338/3

The said piece or parcel of land msg. about 78.038 Sq.m at Strand Bank Road, (Plate No. SB-338/2) and additional land Msg. 41.435 Sq.m on the West side of Strand Bank Road (Plate No. SB-338/3) or thereabouts at Cossipore, Thana: North Port Police Station, in the Presidency town of Kolkata.

Date 27.07.2023.


Signature & Seal of the
Estate Officer.

By Order of :
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
27.07.23
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1304, 1304/D of 2012 Order Sheet No. 31

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

ESTATE DUKHIRAM TIWARI

FINAL ORDER

The matter is taken up today for final disposal. Land measuring about 78.038 Sq.m(under Plate No.SB-338/2) at Strand Bank Road and additional land measuring about 41.435 sq.mtrs(under Plate No. SB-338/3) on the West side of Strand Bank Road, Cossipore was leased to **Estate Dukhiram Tewari**, Proprietor Sri Munilal Tewari, O.P. herein on short term month to month lease basis and the lessee violated the condition for grant of tenancy under monthly term lease by way of not paying the arrear dues/occupational charges/compensation/mesne profit to SMPK. It is the case of Syama Prasad Mookerjee Port, Kolkata(Formerly Kolkata Port Trust/KoPT), hereinafter referred to as SMPK, the applicant herein, that although O.P has received alternative plot of land(msg. about 471.575sq.m) as per the recommendation of Parliamentary Committee but still continuing their occupation over the subject premises without adhering to the specific understanding as made between O.P and SMPK.

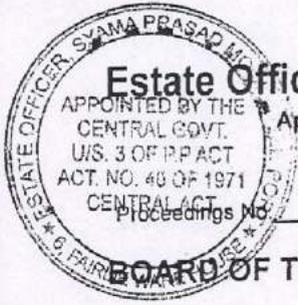
It is also the case of SMPK that in view of the aforesaid breaches committed by the O.P., SMPK issued separate notices to quit dated 21.08.1979 asking the O.P. to hand over clear, vacant, peaceful and unencumbered possession of the property to SMPK on the expiry of the month of October, 1979. But O.P has failed and neglected to vacate/ hand over the possession of such premises to SMPK after service of the said Notice to Quit. It also appears from the record that as O.P failed to hand over possession of such premises after receiving the said Quit Notice, a further request was made to O.P on behalf of SMPK vide their Final Notice dated 15.05.2007 for vacation of the premises within seven days from the date of receipt of such notice. SMPK has made out a case that O.P. has no right to occupy the premises upon service of the quit notice dated 21.08.1979 and O.P is liable to pay damages for their unauthorised occupation.

Considering the submission advanced by SMPK and the documents on record, Notice/s to Show Cause under section 4 and 7 of the Public Premises (Eviction of Unauthorized Occupation) Act, 1971 all dated 07.10.2022 (vide Order No.23 dated 30.09.2022) were issued by this Forum to O.P. The Notice/s were issued in terms of the provisions of the Rules made under the said Act calling upon the O.P. to appear before this Forum in person or through authorized representative capable of answering all material questions in connection with the matter along with the evidence which the opposite party intends to produce in support of their case.

37

30.06.2022

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 Assis'tnt
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. 1304, 1304/D of 2012 Order Sheet No. 32

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

ESTATE DUKHIRAM TIWARI

37
30.06.2023

It reveals from the record that said notices/Orders were sent through Speed Post/hand delivery to the recorded addresses of O.P at 211, Upper Chitpur Road, Kolkata-700003 and it also appears that Orders/Notices sent through Speed Post returned undelivered to the Forum on 12.10.2022 with a mark "Insufficient address". However, the report of the Process Server dated 11.10.2022 depicts that affixation of such notice/s and/or order/s were duly made on the subject premises on 11.10.2022 as per the mandate of the P.P Act.

O.P appeared before this Forum on 07.12.2022 claiming himself as a legal heir of Dukhiram Tewari and contested the case and filed several applications/ objections. It reveals from record that O.P. has filed his reply/Written Objection to the Show Cause Notice on 20.01.2023 and their comments on 17.03.2023. SMPK on the other hand, filed their rejoinder dated 17.02.2023 in response to the reply to Show cause filed by O.P.

The main contentions of answering O.P. can be summarized as follows:-

- 1) The Suit is not maintainable either in law or in facts.
- 2) The Suit is misconceived, motivated, harassing and speculative and as such, the same is liable to be dismissed in limini.
- 3) The petitioner landlord has neither cause of action nor any right to sue.
- 4) The Suit is hit by the doctrine of waiver, estoppels and acquiescence.
- 5) The instant proceeding is not maintainable as Ld, Forum of law has no jurisdiction to serve notice u/s.7 of the Act for realization of damages from the opposite party because of the Opposite Party's occupation has not been declared unauthorised by order u/s. 5 of the Act.
- 6) The Notice dated 30.09.2022 u/s. 7(3) of the Act claiming the damages is barred by limitation.
- 7) The Petitioner did not produce any evidence to establish the unauthorised occupant beyond reasonable doubt.
- 8) The petitioner assessed and claimed the outstanding amount arbitrarily and without any basis.

Referring to the contentions, Estate Dukhiram Tewari/O.P. has prayed for dismissal of the instant proceeding in limini.

SMPK, the petitioner, denying the claim of O.P. argued that SMPK has issued Quit Notices on 21.08.1979 on the ground of non-payment of legitimate dues of SMPK and also for retention of the subject plots and instituted Proceeding against O.P. claiming compensation charges within legitimate period

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

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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

1304, 1304/D of 2012 Order Sheet No. 33

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
ESTATE DUKHIRAM TIWARI

therefore, Limitation Act has no application on the proceedings before the quasi-judicial authority like this Forum and the proceedings is very much maintainable. It is also argued on behalf of SMPK that subject premises falls within the purview of the term 'public premises' as defined u/s 2(e) of the P.P(E) Act, 1971 and as such by virtue of the provisions of the said Act, Ld, Estate Officer has every right to issue Show Cause notices under Section 4 and 7 of the said Act directing the O.P to file his reply. In the instant case O.P has miserably failed to file their reply against the Show Cause Notices issued by this Forum. Moreover, as the tenancy of O.P has already been determined O.P's status is unauthorized in view of the Sec 2(g) of the P.P(E) Act, 1971.

Now, while passing the Final Order, after carefully considering the documents on record and the submissions of the parties, the following issues have come up for my adjudication/decision:

- I. Whether this Forum of Law has jurisdiction to entertain/adjudicate the matter with regard to SMPK's prayer for order of eviction & recovery of dues against O.P., etc. in the facts and circumstances of the case or not;
- II. Whether SMPK has any cause of action against O.P. or not;
- III. Whether the instant proceedings is hit by the principles of waiver, estoppel and acquiescence or not;
- IV. Whether the claim of SMPK against O.P. is barred by limitation or not;
- V. Whether the Notice to Quit as issued by SMPK to O.P dated 21.08.1979 is valid and lawful or not;
- VI. Whether O.P's occupation has become unauthorised in terms of Sec.2(g) of the P.P. Act and whether O.P. is liable to pay damages as claimed by SMPK for wrongful occupation and enjoyment of the Port Property in question or not;

With regard to **issue No.I**, I must say that the properties owned and controlled by the Port Authority has been declared as "public premises" by the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and Section-15 of the Act puts a complete bar on Court's jurisdiction to entertain any matter relating to eviction of unauthorized occupants from the public premises and recovery of rental dues and/or damages, etc. SMPK has come up with an application for declaration of O.P's status as unauthorized occupant into the public

37

30.06.2023

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SYAMA PRASAD MOOKERJEE PORT
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
27.07.23

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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

1304, 1304/D of 2012 Order Sheet No. 34

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
ESTATE DUKHIRAM TIWARI

37
30.06.2023

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

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premises with the prayer for order of eviction, recovery of dues and damages against O.P. on the plea of termination of the lease in question on and from 01.11.1979 as earlier granted to O.P. in respect of the premises in question. So long the property of the Port Authority is coming under the purview of "public premises" as defined under the Act, adjudication process by serving Show Cause Notice/s u/s 4 & 7 of the Act is very much maintainable and there cannot be any question about the maintainability of proceedings before this Forum. In fact, proceedings before this Forum is not statutorily barred unless there is any specific order of stay of such proceedings by any competent court of law. To take this view, I am fortified by the judgment of the Hon'ble High Court, Calcutta delivered by Hon'ble Mr. Justice Jyotirmay Bhattacharya on 11.03.2010 in Civil Revisional Jurisdiction (Appellate Side) being C.O. No. 3690 of 2009(M/s Reform Flour Mills Pvt. Ltd. -Vs- Board of Trustees' of the Port of Calcutta) wherein it has been observed specifically that the Estate Officer shall have jurisdiction to proceed with the matter on merit even there is an interim order of status quo of any nature in respect of possession of any public premises in favour of anybody by the Writ Court.

Relevant portion of the said order is reproduced below:

"In essence the jurisdiction of the Estate Officer in initiating the said proceedings and/or continuance thereof is under challenge. **In fact, the jurisdiction of the Estate Officer either to initiate such proceedings or to continue the same is not statutorily barred.** As such, the proceedings cannot be held to be vitiated due to inherent lack of jurisdiction of the Estate Officer.

The bar of jurisdiction, in fact, was questioned because of the interim order of injunction passed in the aforesaid proceedings".

Hon'ble Division Bench of Calcutta High Court had the occasion to decide the jurisdiction of the Estate Officer under P.P. Act in Civil Appellate Jurisdiction being MAT No.2847 of 2007 (The Board of Trustees of the Port of Kolkata and Anr -vs- Vijay Kumar Arya &Ors.) reported in Calcutta Weekly Note 2009 CWN (Vol.113)-P188 The relevant portion of the judgment (Para-24) reads as follows:-

"The legal issue that has arisen is as to the extent of Estate Officer's authority under the said Act of 1971. While it is an attractive argument that it is only upon an occupier at any public premises being found as an unauthorized occupant would he be subject to the Estate Officer's jurisdiction for the

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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. 1304, 1304/D or 2012 Order Sheet No. 35

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

ESTATE DUKHIRAM TIWARI

37

30.06.2023

purpose of eviction, the intent and purport of the said Act and the weight of legal authority that already bears on the subject would require such argument to be repelled. Though the state in any capacity cannot be arbitrary and its decisions have always to be tested against Article 14 of the Constitution, it is generally subjected to substantive law in the same manner as a private party would be in a similar circumstances. That is to say, just because the state is a Landlord or the state is a creditor, it is not burdened with any onerous covenants unless the Constitution or a particular statute so ordains"

In view of the authoritative decisions as cited above, I have no hesitation in my mind to decide that this Forum is very much competent to adjudicate upon the matter in the facts and circumstances of the case.

With regard to **issue No. II**, there is no dispute about occupation of O.P. into the Port Property on short term monthly lease basis. It appears from record that O.P's tenancy was determined with effect from 01.11.1979 vide notice to quit dated 21.08.1979 and after determination of said lease O.P is still continuing their occupation over the subject premises and a huge amount of dues/damages/compensation charges are still payable by O.P. for both the occupations.

In this circumstances, SMPK as Land Lord/Lessor of the premises has definite cause of action against O.P./Lessee to demand possession of the premises and for recovery of dues/charges for continuous use and enjoyment of the Port Property in question. Hence, the issue is decided in favour of SMPK.

As regards the **issue No. III**, I must say that according to law the question of estoppel arise when one person has, by his declaration, act or omission, **intentionally** caused or **permitted** another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceedings between himself and such person or his representative, to deny the truth of that thing. In other words to constitute an estoppel there must be an intention or permission to believe certain thing. There is no material in O.P's objection by which it can be proved that there was any intention or permission on the part of SMPK about O.P's occupation in the said public premises in question or SMPK has knowingly *acquiesced* the infringement of their right. Further 'Waiver' of a right gets its essence from estoppel and thus, there will be no waiver where there is no estoppel in place. In this instant matter as there is no plea of estoppel sustains, other statutory plea like waiver or acquiescence also

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

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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

1304, 1304/D of 2012 Order Sheet No. 36

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

ESTATE DUKHIRAM TIWARI

37
30.06.2023

By Order of:
THE ESTATE OFFICER
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27.07.23

cannot sustain in the present fact and circumstances. Thus the issue is decided in favour of SMPK.

As regards the **Issue No.IV** i.e 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 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 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



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

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VS
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27.07.23
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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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 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 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 who is a quasi-judicial authority under P.P. Act and not a Civil Court to be governed by the Civil Procedure Code. Hence the issue is decided in favour of SMPK.

Issues no. V and VI are taken up together, as the issues are related with each other. I must say 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 to Quit. O.P has failed to satisfy this Forum about any consent on the part of SMPK in occupying the public premises. Rather it is a case of SMPK that by separate notice dated 21.08.1979, O.P. was directed to hand over possession of the respective premises to SMPK. A letter/notice issued in official course of business has definitely got an evidentiary value unless there is material, sufficient to contradict the case of SMPK on the basis of such letter. Further, I am consciously of the view that SMPK never recognized O.P., as a lawful user/tenant in respect of the property in question after expiry of the period mentioned in the Notice to Quit dated 21.08.1979. As per Section 2 (g) of the P. P. Act the "unauthorized occupation", in relation to any Public Premises, means the occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any

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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. 1304, 1304/D of 2012 Order Sheet No. 38

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
ESTATE DUKHIRAM TIWARI

37
30.06.2023

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
27.07.23
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. Further, as per the Transfer of Property Act, a lease of immovable property determines either by efflux of time limited thereby or by implied surrender, or on expiration of notice to determine the lease or to quit or of intention to quit, the property leased, duly given by one party to another. It is 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 dated 21.08.1979, without any valid grant or allotment from SMPK's side. This issue is also decided in favour of SMPK. In the instant case, the landlord i.e. SMPK claims to have issued Notices to O.P. dated 21.08.1979 respectively asking for vacation of both the premises mentioned above on 31.10.1979 as O.P. was duty bound to hand over possession to SMPK and it had failed to do so, SMPK's claim by filing Application dated 16.10.2007 is very much justifiable. O.P. failed to substantiate as to how its occupation could be termed as "authorised" in view of Sec. 2(g) of the P.P Act, after expiry of the period as mentioned in the SMPK's notice dated 21.08.1979, demanding possession from O.P. I have no hesitation to observe that O.P's act in continuing occupation after expiry and determination of the lease 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. The Issues IV and V are thus decided in favour of SMPK.

Now, the 'Damages'/ 'Compensation Charges' 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 of lease, 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/ Compensation Charges for such unauthorized use and occupation.

To come into such conclusion, I am fortified by the decision/observation of the Hon'ble Supreme Court in Civil Appeal No.7988 of 2004, decided on 10th December 2004, reported (2005)1 SCC 705, para-11 of the said judgment reads as follows.

Para:11-" under the general law, and in cases where the tenancy is governed only by the provisions of the Transfer of Property Act 1882, once the tenancy comes to an end by determination of lease u/s.111 of the Transfer of Property Act, the right of the tenant to continue in possession of the premises



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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1304, 1304/D of 2012 Order Sheet No. 39

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
ESTATE DUKHIRAM TIWARI

37

30.06.2023

comes to an end and for any period thereafter, for which he continues to occupy the premises, he becomes 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.
.....
.....

The Port Authority has a definite legitimate claim to get its revenue involved into this matter as per the SMPK'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 for occupation. 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.) 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 compensation in each month 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 SMPK that the charges claimed on account of damages is on the basis of the SMPK'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 SMPK is based on sound reasoning and should be acceptable by this Forum of Law. I have no hesitation to observe that O.P's act in continuing occupation is unauthorized and the 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.

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

1. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear dues/damages etc. as prayed for on behalf of SMPK and the Notice/s issued by this Forum are in conformity with the provisions of the Public

By Order
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
Head Assis'tant
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

1304, 1304/D of 2012 Order Sheet No. 40

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

ESTATE DUKHIRAM TIWARI

37

30.06.2023

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
P. 27.07.23
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Premises (Eviction of Unauthorised Occupants) Act 1971.

2. The O.P or any other person/occupant has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation".
3. That the instant Proceeding is not barred by the doctrine of Estoppel, waiver and acquiescence.
4. That O.P. cannot take the plea of time barred claim by SMPK taking the shield of Limitation Act.
5. That the ejection notice dated 21.08.1979 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties;
6. That O.P's occupation has become unauthorised in view of Sec.2(g) of the P.P. Act.
7. That O.P. is liable to pay damages for wrongful use and enjoyment of the Port Property in question upto the date of handing over of clear, vacant and unencumbered possession to SMPK.

ACCORDINGLY, I sign the formal order of eviction u/s 5 of the Act as per Rule made there under, giving 15 days time to O.P. and any person/s whoever may be in occupation to vacate the premises. I make it clear that all person/s whoever may be in occupation are liable to be evicted by this order and the Port Authority is entitled to claim damages for unauthorized use and enjoyment of the property against O.P. in accordance with Law up to the date of recovery of possession of the same. SMPK is directed to submit a comprehensive status report of the Public Premises in question on inspection of the property after expiry of the 15 days as aforesaid so that necessary action could be taken for execution of the order of eviction u/s. 5 of the Act as per Rule made under the Act.

It is my considered view that a sum of Rs. 5,21,085.36(Rupees Five Lakh twenty one thousand eighty five and paise thirty six only) for Plate No.SB-338/2 and Rs.2,76,209.11(Rupees Two Lakh seventy six thousand two hundred nine and paise eleven only) for Plate No.SB-338/3 both for the period 28.02.1981 to 30.06.2017 (both day inclusive) are due and recoverable from O.P. by the Port authority on account of damages/compensation for unauthorized occupation and O.P. must have to pay such dues to SMPK on or before !!!.08.23. It is clarified that such dues will 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



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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Proceedings No. 1304, 1304/D of 2012 Order Sheet No. 41

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

ESTATE DUKHIRAM TIWARI

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30.06.2023

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 sign the formal order u/s 7 of the Act.

I make it clear that SMPK is entitled to claim further damages against O.P. for unauthorized use and occupation of the public premises right upto the date of recovery of clear, vacant and unencumbered possession of the same in accordance with Law, and as such the liability of O.P. to pay damages extends beyond 30.06.2017 as well, till such time the possession of the premises continues to be under the unauthorised occupation with the O.P. SMPK is directed to submit a statement comprising details of its calculation of damages after 30.06.2017, indicating there-in, the details of the rate of such charges, and the period of the damages (i.e. till the date of taking over of possession) together with the basis on which such charges are claimed against O.P., for my consideration for the purpose of assessment of such damages as per Rule made under the Act.

I make it clear that in the event of failure on the part of O.P. to comply with this Order, Port Authority is entitled to proceed further for execution of this order in accordance with law. All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL

(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 ***

By Order of
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
MADE BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
30.07.23
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT