



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

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

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

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

REASONED ORDER NO. 29 DT 14 AUG 2023
PROCEEDINGS NO: 765 OF 2006

**SYAMA PRASAD MOOKERJEE PORT, KOLKATA
(ERSTWHILE BOARD OF TRUSTEES OF THE PORT OF KOLKATA)**

-Vs-

Smt. Jyostna Rani Paul (since deceased) and Arati Rani Kundu(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 **Smt. Jyostna Rani Paul(since deceased) and Arati Rani Kundu, 60, Rastraguru Avenue, Dumdum, Kolkata -700028** is in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

1. That proceedings against O.P. under P.P. Act is very much maintainable under law.
2. That O.P. cannot take the plea of time barred claim by SMPK taking the shield of Limitation Act.
3. That the instant Proceeding is not barred by the doctrine of Estoppel, waiver and acquiescence.
4. That O.P. has parted with possession of the subject premises to third parties without having any permission from Port authority.
5. That O.P./any other person on behalf of O.P. have failed to make out any case in support of its occupation as "authorised occupation", inspite of sufficient chances being given.
6. That O.P. or any other person/s asserting any right through O.P. has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation", inspite of sufficient chances being provided.
7. That the notice to quit dated 25.04.2005 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.
8. 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.

PLEASE SEE ON REVERSE

8

Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
KOLKATA
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
17/08/23
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



(2)
14 AUG 2023

A copy of the reasoned order No. 29 dated _____ 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 **Smt. Jyostna Rani Paul (since deceased) and Arati Rani Kundu, 60, Rastraguru Avenue, Dumdum, Kolkata -700028** 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 **Smt. Jyostna Rani Paul (since deceased) and Arati Rani Kundu, 60, Rastraguru Avenue, Dumdum, Kolkata -700028** 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. SB-296

The said piece or parcel of land measuring about 114.735 sq.m or thereabouts is situated at Nimtolla on the south side of Cross Road No.14 in the presidency town of Kolkata. It is bounded on the north by the Trustees' Cross road no.14, on the east by the Trustees' land occupied by Madangopal Paul & Ors., on the south by the Trustees' land occupied by Ram Kumar Biswanath & on the west the property belongs to Eastern Railway.

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

Date - 17 AUG 2023

Suman Mukherjee
Signature & Seal of the
Estate Officer.

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

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
FORWARDED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
17/08/23
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



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, Fairlie Place (1st Floor)
KOLKATA - 700 001

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

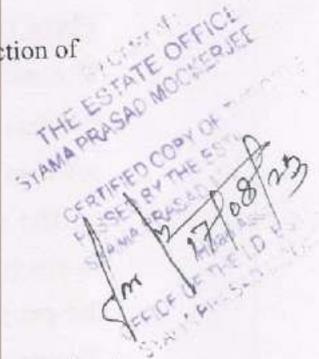
PROCEEDINGS NO.765/D OF 2006
ORDER NO. 29 DATED:

14 AUG 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
**Smt. Jyostna Rani Paul (since deceased)
and Arati Rani Kundu,
60, Rastraguru Avenue,
Dum Dum, Kolkata - 700028.**



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

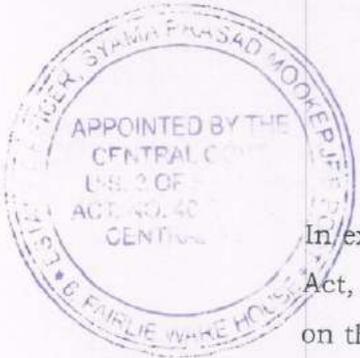
AND WHEREAS, by written notice dated 31.07.2017 you are called upon to show cause on/or before 25.08.2017 why an order requiring you to pay damages of Rs.16,31,954.57 (Rupees Sixteen Lakh thirty one thousand Nine hundred fifty four and paise fifty seven only) for unauthorised use and occupation of the 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.16,31,954.57 (Rupees Sixteen Lakh thirty one thousand Nine hundred fifty four and paise fifty seven only) assessed by me as damages on account of your unauthorised occupation of the premises for the period from 01.06.2005 to 31.05.2017 (both days inclusive) to SMPK by 31.08.2023

[Handwritten signature]

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.

SCHEDULE

Plate No.SB-296

The said piece or parcel of land measuring about 114.735 sq.m or thereabouts is situated at Nimtolla on the south side of Cross Road No.14 in the presidency town of Kolkata. It is bounded on the north by the Trustees' Cross road no.14, on the east by the Trustees' land occupied by Madangopal Paul & Ors., on the south by the Trustees' land occupied by Ram Kumar Biswanath & on the west the property belongs to Eastern Railway.

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

Date 17 AUG 2023

Suman Mukherjee
Signature & Seal of the
Estate Officer.

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

THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
21/7/23
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. 765, 765/D Of 2006 Order Sheet No. 29

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

SMT JYOSTNA RANI PAUL (SINCE DECEASED) AND ARATI RANI KUNDU (O.P)

29
14 AUG 2023

FINAL ORDER

The matter is taken up today for final disposal. Factual matrix involved in this matter is required to be put forward in a nutshell in order to link up the chain of events leading to this Proceedings. It is the case of Syama Prasad Mookerjee Port, Kolkata (Erstwhile Kolkata Port Trust/KoPT) hereinafter referred to as SMPK, the applicant herein, that Port property being land measuring about 114.735 sq.m at Nirantolla, on the South side of Cross Road No.14, Thana- Jorabagan in the presidency town of Kolkata, comprised under occupation No. SB-296, was allotted to **Smt. Jyostna Rani Paul(since deceased) and Arati Rani Kundu**, O.P. herein on monthly lease basis with certain terms and conditions and O.P. preferred to continue their occupation over the subject premises violating the fundamental condition of such tenancy and that too after demand for possession in terms of the notice dated 25.04.2005. It is submitted by SMPK that O.P. made unauthorized constructions in the public premises in question and also inducted unauthorized persons/ strangers into the said property without any approval of the SMPK. It is argued on behalf of SMPK that the O.P. has no authority under law to occupy the public premises after expiry of the period as mentioned in the notice to quit dated 25.04.2005 and the O.P. is liable to pay damages for wrongful use and occupation of the Port property upto the date of handing over of vacant possession of the same.

It appears from record that in order sheet Nos. 17 to 28 the Proceedings has been wrongly recorded as "765, 765/R of 2006" in place of "765, 765/D of 2006". Such error, in my view, might be a typographical error and do not prejudice the rights and liabilities of the parties to the present proceeding. In view of the above, it is therefore, directed that henceforth the proceedings should be read as 765, 765/D of 2006 for all the material purposes of this proceeding.

This Forum issued Show Cause notices under Section 4 & 7 of the Act (for adjudication of the prayer for issuance of Order of Eviction, recovery of damages etc.) all dated 31.07.2017(vide Order No.8 dated 07.06.2017).

It is seen from record that the letter sent through registered post containing the Notice/s as aforesaid was returned by the Postal Department undelivered, with the endorsement "deceased". However, the report of the Process Server depicts that one Sourav Jana has received the same on behalf of O.P on 22.08.2017 and affixation of such notice/s were also made on the subject premises in question as per the mandate of P.P Act.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
17/08/23
Heard Assis. J.A.
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

8

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. 165, 765/D Of 2006 Order Sheet No. 30

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

GOT JYOSTNA RANI PAUL (SINCE DECEASED) AND ARATI RANI KUNDU (O.P)

29

14 AUG 2023

On the returnable date of hearing, one Promod Prasad Shaw appeared before this Forum claiming to be the representative of one of the two joint tenants, namely Arati Rani Kundu and submits that said Arti Rani Kundu has instructed him to communicate the death of Smt. Jyostna Rani Paul before the Forum. Thereafter, the Ld. Advocate of O.P filed a Notarized copy of death Certificate of said Jyostna Rani Paul along with a Notarized copy of Power of Attorney in favour of Gopal Kundu executed by one of the two joint tenants, namely Arati Rani Kundu. Thereafter, the Reply dated 16.10.2017 also came to be filed by the Advocate of O.P. The fact of death of Jyostna Rani Paul on 04.11.2013 is recorded in the said Reply. SMK, vide their Rejoinder dated 12.01.2018, replied to the contentions of the said Arati Rani Kundu. This was followed by a Written Statement by said Arati Rani Kundu on 26.02.2018. In the meantime, a joint inspection of the public premises took place on 14.03.2018. The matter was heard on 09.04.2018 when both the parties were directed to file the Report of Joint Inspection on 02.05.2018. Thereafter on 15.09.2022 the matter was placed before the undersigned. Record revealed that as per the direction of the Forum opportunity was given to O.P. to contest the instant matter and O.P appeared accordingly through her Advocate and filed an application on 22.12.2022, seeking adjournment on the instant matter as their representation dated 20.12.2022 addressed to the Chairman SMPK regarding the issue of classification for fixation of rent, interest and CGST/SGST Charges is still pending. Ld. Advocate of O.P also filed several applications with the same prayer of adjournment thereafter on 05.01.2023, 02.02.2023 and 02.03.2023. Finally, the matter was heard on 20.04.2023 when Advocate of O.P filed an application inter-alia praying for the withdrawal of the instant Proceedings and the Forum thereafter finding no reason to keep the matter alive, proceeded to reserve the final order in presence of both the parties.

Now while passing the final order, I have carefully gone through all the documents on record for the sake of clarity and after considering those documents and the submissions of the parties, I find that following issues have come up for my adjudication:-

- I) Whether the present proceeding against O.P. is maintainable or not;
- II) Whether the Show Cause Notice is maintainable or not;
- III) Whether SMPK has any cause of action against O.P. or not;

[Handwritten signature]

B. Chief of
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
OFFICE OF THE LD. ES
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. 765, 765/3 Of 2006 Order Sheet No. 31

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

Smt JYOSTNA RANI PAUL (SINCE DECEASED) AND ARATI RANI KUNDU (O.P)

29
14 AUG 2023

- IV) Whether O.P. can take the shield of time barred claim under Limitation Act to contradict the claim of SMPK on account of rental dues or not;
- V) Whether the O.P. had committed the breaches as alleged by SMPK, or not,
- VI) Whether the instant proceeding is hit by the principles of waiver, acquiescence and estoppel or not;
- VII) Whether SMPK's notice demanding possession dated 25.04.2005 has got any force of law or not;
- VIII) Whether O.P. is liable to pay damages for wrongful use and occupation of the Port Property or not;

As regards the **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 in to the public premises with the prayer for order of eviction, recovery of rental dues and compensation/damages etc. against O.P. on the ground of termination of authority to occupy the premises as earlier granted to O.P. in respect of the premises in question. So long the property of the Port Authority is coming under the purview of "public premises" as defined under the Act, adjudication process by serving Show Cause Notice/s u/s 4 & 7 of the Act is very much maintainable and there cannot be any question about the maintainability of proceedings before this Forum of Law. In fact, proceedings before this Forum of Law is not statutorily barred unless there is any specific order of stay of such proceedings by any competent court of law.

With regard to **Issue No. II**, I do not find any argument on behalf of O.P., save and except statement against issuance of notice u/s.4 &7 of the Act. It is my considered view based on careful consideration of the materials brought before me that SMPK's case needs to be adjudicated by way of issuing Show Cause Notice/s for initiation of proceedings under the relevant provisions of the Act and Rules made thereunder. Port premises being public premises as defined under the Act, I have definite jurisdiction to entertain the matters relating to the prayer for order of eviction and recovery of arrear rent/damages etc. as per provision of the Act. No right has been taken away from O.P. by way of issuing Show Cause

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

8



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. 765, 765/2 Of 2006 Order Sheet No. 32

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

Smt JASTINA RANI PAUL (SINCE DECEASED) AND RAJPI RANI KUNDU (O.P)

29

14 AUG 2023

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

Notice/s. In fact, to start with the adjudication process as envisaged under the Act, issuance of Show Cause Notice/s is a sine-qua-non. One cannot go beyond the statutory mandate of an enactment (P.P. Act) which provides a complete code for adjudication of any matter before this Forum of Law. Information to proceed against O.P. on the basis of the materials connected with the occupation of O.P. cannot be blamed without establishing irregularity, if any, under the statutory mandate. In such a situation, I do not find any merit to the submissions/statement on behalf of O.P. in this regard and as such, the issue is decided against O.P.

With regard to **issue No. III**, 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 01.06.2005 vide notice to quit dated 25.04.2005 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.

Issue No. IV, i.e on the question of time barred claim of SMPK on the issue of "limitation" and applicability of Limitation Act-1963, I have carefully considered all the submissions/arguments made on behalf of O.P. before the Forum. It is the case of O.P. that SMPK's claim against O.P. is hopelessly barred by applying the Law of Limitation, 1963. However, as per settled law, 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 P.P. Act puts a complete bar in 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. Hence, the issues is decided against O.P.

In **Issue No. V**, Regarding unauthorised construction, no whisper has been made by SMPK in the joint inspection report or in the attached sketch Map. Otherwise also no evidence whatsoever has been produced by the SMPK in this regard. However, regarding issue of parting with possession, I have come across an application dated 03.04.2017 of the SMPK, wherein it has been claimed that during inspection the occupation was found under 'lock and key'. Further, it is

[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. 765, 765/D Of 2006 Order Sheet No. 33

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

Smt Jyotsna Rani Paul (since deceased) Arati Rani Kundu (O.P)

29
14 AUG 2023

claimed that during inspection on 24.05.2017 one hoarding was found in the name and style of M/s Khemka Trading Corporation. During the Joint Inspection of the premises on 14.03.2018 detection of an anonymous Board and existence of persons without having any valid authority reconfirms that subject premises was under the control of some unauthorised occupant/ occupants. In my view, although the Report of Joint Inspection as held on 14.03.2018 is unclear about unauthorised construction however, such report is sufficient to draw a presumption that the breach of parting with possession by the O.P. existed at least till 14.03.2018. Such being the case, I have no hesitation to hold that the O.P. had definitely made parting with possession of the land of SMPK, at least till 14.03.2018.

As regards the **issue No. VI**, 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 cannot sustain in the present fact and circumstances. Thus the issue is decided in favour of SMPK.

Issue no VII and VIII are taken up together, as the issues are related with each other. On evaluation of the factual aspects involved in this matter, the logical conclusion which could be arrived at is that SMPK's notice dated 25.04.2005 as issued to O.P., demanding possession of port property from O.P. is valid and lawful and binding upon the O.P. As per Section 2 (g) of the Act the "unauthorized occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. The lease granted to O.P. was

8

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
17/08/23
Head Assessor
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. 765, 765/D Of 2006 Order Sheet No. 34

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

SMT JYOSTNA RANI PAUL (SINGLE DECEASED) AND ARATI RANI KUNDU (O.P)

29
14 AUG 2023

determined and the Port Authority by due service of notice/s to Quit demanded possession from O.P. SMPK's application for order of eviction is a clear manifestation of Port Authority's intention to get back possession of the premises. In course of hearing, the representative of SMPK submits that O.P. cannot claim its occupation as "authorized" without receiving any rent demand note. The lease was doubtlessly determined by SMPK's notice demanding possession, 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, In such a situation, I have no bar to accept SMPK's contentions regarding enforceability of the notice dated 25.04.2003, on evaluation of the facts and circumstances of the case. With this observation, I must reiterate that the notice to quit, 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. As per law O.P. is bound to deliver up vacant and peaceful possession of the public premises in its original condition to SMPK after expiry of the period as mentioned in the notice/s to quit.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSES BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
12/08/23
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. 765, 765/D Of 2006 Order Sheet No. 35

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

SMT JYOSTHARANI PAUL (SINCE DECEASED) AND ARATI RANI KUNDU (O.P)

29

14 AUG 2023

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 as "authorized occupation" without making payment of requisite charges. I am fortified by the Apex Court judgment reported in JT 2006 (4) Sc 277 (Sarup Singh Gupta -vs- Jagdish Singh &Ors.) wherein it has been clearly observed that in the event of termination of lease the practice followed by Courts is to permit landlord to receive each month by way of compensation for use and occupation of the premises, an amount equal to the monthly rent payable by the tenant. In my view, the case in hand is very much relevant for the purpose of determination of damages upon the guiding principle as laid down by the Hon'ble Apex Court in the above case. In course of hearing, it is submitted on behalf of 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.

O.P. has 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 25.04.2005, demanding possession from O.P. I have no hesitation to observe that O.P's act in continuing occupation after expiry of the quit Notice 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 VII and VIII are thus decided in favour of SMPK.

NOW THEREFORE, I consider it is a fit case for allowing SMPK's prayer for eviction against O.P. u/s 5 of the Act for the following grounds/reasons:-

1. That proceedings against O.P. under P.P. Act is very much maintainable under law.
2. That O.P. cannot take the plea of time barred claim by SMPK taking the shield of Limitation Act.

[Handwritten signature]

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
17/08/23
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. 765, 765D Of 2006 Order Sheet No. 36

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

SMT JYOTSNARANI PAUL (SINGLE DECEASED) AND ARATI RANI KURIDU (O.P)

29
14 AUG 2023

3. That the instant Proceeding is not barred by the doctrine of Estoppel, waiver and acquiescence.
4. That O.P. has parted with possession of the subject premises to third parties without having any permission from Port authority.
5. That O.P./any other person on behalf of O.P. have failed to make out any case in support of its occupation as "authorised occupation", inspite of sufficient chances being given.
6. That O.P. or any other person/s asserting any right through O.P. has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation", inspite of sufficient chances being provided.
7. That the notice to quit dated 25.04.2005 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.
8. 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.

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

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 the canons of Law till the date of unencumbered 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 can be taken for execution of the order of eviction u/s 5 of the Act.

It is my considered view that a sum of Rs.16,31,954.57 (Rupees Sixteen Lakh thirty one thousand Nine hundred fifty four and paisa fifty seven only) for the period from 01.06.2005 to 31.05.2017 (both days inclusive) is due and recoverable from O.P. by the Port authority on account of damages and O.P. must have to pay such dues to SMPK on or before 31.08.23. The said damages shall 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,

8

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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Proceedings No. 765, 765/D Of 2006 Order Sheet No. 37

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

SMT JYOTI NARANI PAUL (SINGLE DECEASED) AND ARATI RANI KUNDU (OP)

29

14 AUG 2023

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 orders 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 31.05.2017 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 31.05.2017, 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

Suman Mukhopadhyay

(S. Mukhopadhyay)
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
PASSES BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
17/08/23
Held Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT