



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. 32 DT
PROCEEDINGS NO. 764 OF 2006

14 AUG 2023

**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**

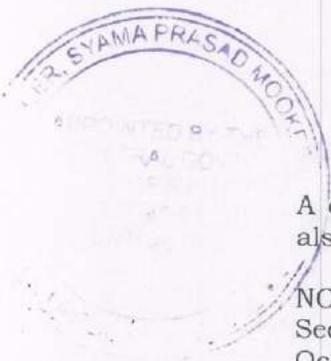
WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that **Smt. Jyostna Rani Paul(since deceased) and Arati Rani Kundu 60, Rastraguru Avenue, Dum Dum, Kolkata-700028** is in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

1. That proceedings against O.P. under P.P. Act is very much maintainable under law.
2. That O.P. has failed to liquidate the rental dues of the Port Authority, for a considerable period, in violation of the contract between the parties.
3. That O.P. cannot take the plea of time barred claim by SMPK taking the shield of Limitation Act.
4. That the instant Proceeding is not barred by the doctrine of Estoppel, waiver and acquiescence.
5. That O.P. has parted with possession of the subject premises to third parties without having any permission from Port authority.
6. 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.
7. 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.
8. 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.
9. 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

By Order of :
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
12/8/23
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



(2)

14 AUG 2023

A copy of the reasoned order No. 32 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.

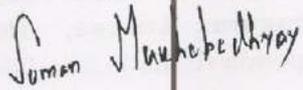
SCHEDULE

Plate No.SB-200/A

The said piece or parcel of land measuring 30.379 sq.m or thereabouts is situated at Nimtolla on the West side to Strand Road in the presidency town of Kolkata. It is bounded on the north & west by the Trustees' land leased to Jhanendra Chandra Shah, on the east by Strand Road & on the south by the Trustees' land leased to Jagadish Prasad Pannalal & Company Ltd.

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

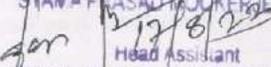
Date - 17 AUG 2023


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
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT


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

Court Room At the 1st Floor
6, Fairlie Place Warehouse

Form "E"

PROCEEDINGS NO.764/R OF 2006
ORDER NO.32 DATED: **14 AUG 2023**

Form of order under Sub-section (1) 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,
Dumdum, Kolkata -700028.**

By Order of:
**THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT**

CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
12/8/23
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

AND WHEREAS, by written notice dated 31.07.2017 you were called upon to show cause on/or before 25.08.2017 why an order requiring you to pay a sum of Rs.1,09,695/- (Rupees One lakh nine thousand six hundred ninety five.) being the rent payable together with compound interest in respect 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 by sub-section (1) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971, I hereby require you to pay the sum of Rs.1,09,695/- (Rupees One lakh nine thousand six hundred ninety five.) for the period 01.03.1988 to 31.05.2005 (both days inclusive) to SMPK by 31.08.2023

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.

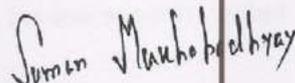
In case the said sum is not paid within the said period or in the said manner, it will be recovered as arrears of land revenue through the Collector.

SCHEDULE

Plate No.SB-200/A

The said piece or parcel of land measuring 30.379 sq.m or thereabouts is situated at Nimtolla on the West side to Strand Road in the presidency town of Kolkata. It is bounded on the north & west by the Trustees' land leased to Jhanendra Chandra Shah, on the east by Strand Road & on the south by the Trustees' land leased to Jagadish Prasad Pannalal & Company Ltd Trustees' means the Board of Syama Prasad Mookerjee Port, Kolkata Authority (Erstwhile Board of Trustees' for the Port of Kolkata).

Dated: 17 AUG 2023


Signature and 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
KOLKATA
17/08/23
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.764/D OF 2006
ORDER NO. 32 DATED: **14 AUG 2023**

Form- G

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

By Order of:
**THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT**

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

CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
[Signature]
Head Assistant
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 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.4,74,097.97 (Rupees Four Lakhs Seventy four thousand Ninety seven and paise ninety 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.4,74,097.97 (Rupees Four Lakhs Seventy four thousand Ninety seven and paise ninety 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

[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-200/A

The said piece or parcel of land measuring 30.379 sq.m or thereabouts is situated at Nimtolla on the West side to Strand Road in the presidency town of Kolkata. It is bounded on the north & west by the Trustees' land leased to Jhanendra Chandra Shah, on the east by Strand Road & on the south by the Trustees' land leased to Jagadish Prasad Pannalal & Company Ltd.

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
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
17/8/23
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. 764,764/R,764/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)

32
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 30.379 sq.m at Nimtolla, on the west side of Strand Road, Kolkata, comprised under occupation No. SB-200/A, 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. violated the fundamental condition of grant of such tenancy by way of not making payment of rental dues, taxes and interest for a prolonged period. It is also 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.

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 rental dues, 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". Even the Process Server could not serve the Notice/s upon the O.P. as O.P. was not found in the premises. However, on the returnable date of hearing, one Gopal Kundu appeared before this Forum, claiming to be the Power of

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
MADE BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
M
Head Assistant
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. 764, 764/D, 764/R of 2006 Order Sheet No. 30

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

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

32

14 AUG 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

H/S
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Attorney holder of one of the two joint tenants, namely Arati Rani Kundu. A Reply dated 16.10.2017 also came to be filed by said Arati Rani Kundu/Gopal Kundu. 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/Gopal Kundu. This was followed by a Written Statement by said Gopal Kundu on 26.02.2018. Again, a Reply dated 09.04.2018 was filed by the said Gopal Kundu expressing therein, inter-alia, his desire to pay the arrears of rent etc. In the meantime, a joint inspection of the public premises took place on 14.03.2018. The matter was heard on 08.06.2018 when the Ld. Advocate of said Shri Gopal Kundu was instructed to file, as a last chance, the documents regarding the approval of SMPK for erecting the structures in the premises. On the next date, i.e. 09.07.2018 again the said Ld. Advocate failed to come up with any such document/approval and thereafter the matter was placed before the undersigned. Records revealed that as per the direction of the Forum opportunity was given to O.P. to liquidate the dues (as per eagerness expressed by O.P from time to time) and Gopal Kundu through his Ld. Advocate made some sporadic payments from time to time albeit irregularly and inconsistently. 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 without complying the order of payment passed by this Forum, this Forum, 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:

- 1) Whether the present proceeding against O.P. is maintainable or not;

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. 764, 764/R, 764/D Of 2006 Order Sheet No. 31

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

Smt Jyostna Rani Paul (since deceased) and Arapi Rani Kundu (O.P)

32

14 AUG 2023

1 AUG 2023

- II) Whether the Show Cause Notice is maintainable or not;
- III) Whether O.P. has defaulted in making payment of rental dues to SMPK or not;
- 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;

By Order of:
 THE ESTATE OFFICER
 SYAMA PRASAD MOOKERJEE PORT

CERTIFIED COPY OF THE ORDER
 PASSED BY THE ESTATE OFFICER
 SYAMA PRASAD MOOKERJEE PORT

Heard on 12/8/23
 OFFICE OF THE ESTATE OFFICER
 SYAMA PRASAD MOOKERJEE PORT

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

S

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. 764, 764/R, 764/D of 2006 Order Sheet No. 32

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

Smt JYOSTNA RANI PAUL (SINCE DECEASED) AND ARATI RANI KUNDU (CoD)

32

14 AUG 2023

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 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.

Regarding the issue of default of payment of rent and taxes on the part of the O.P in **Issue No.III**, it is seen that SMPK, vide its letters dated 12.01.1998, 09.06.1998 (final notice) etc repeatedly requested the O.P. to clear its dues. During the course of hearing, SMPK also filed its statement of accounts maintained in official course of business, wherefrom it is evident that the O.P. is defaulter since long. Although initially such default of payment was denied on the part of the O.P. but subsequently the said Gopal Kundu (claiming to be Power of Attorney holder of one of the joint tenants) expressed his intention to clear the arrear rental dues, thereby practically

8

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



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. 764, 764/R, 764/P Of 2006 Order Sheet No. 33

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

Smt SYOSTNI RANI PAUL (SINGLE DECEASED) AND ARATI RANI LONDON (O.P)

32
14 AUG 2023

admitting the existence of such dues. Moreover, the Records also reveals that as per the direction of the Forum opportunity was given to O.P. to liquidate the dues (as per eagerness expressed by O.P. from time to time) and O.P. had made some sporadic payments from time to time. In my view, had the O.P. not been guilty of non-payment of rent and taxes, it would definitely not have come forward to liquidate even a part of their dues. The very conduct of O.P. establishes that contention of SMPK is not without any basis. Moreover, during the course of hearing, although SMPK has come up with a detailed Statement of Accounts however, to contradict the claim of SMPK no other submissions or documents have been placed before this Forum by O.P. Thus in the aforementioned circumstances, being satisfied as above, I have no hesitation to uphold the claim of the Port Authority. I take note of the fact that all payments made by O.P. during course of the proceedings are provisionally accepted by SMPK as damages/compensation for continuous use and occupation of the public premises in question as part payment thereof and hence, I have no reason to disbelieve the claim of SMPK, regarding arrears of rent prevailing at the time of issuance of the notice to quit dated 25.04.2005.

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.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF
MADE BY THE
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
17/08/23

80

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. 766,764/R,764/8 Of 2006 Order Sheet No. 34

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

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

32

14 AUG 2023

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 premises was found under the occupation of 'Gopal Kundu' and no trace was found of the surviving lessee i.e. Arati Rani Kundu. During the Joint Inspection of the premises on 14.03.2018 detection of an anonymous Board and existence of said Gopal Kundu reconfirms that Shri Gopal Kundu is none other than an unauthorized occupier of the premises. 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

8

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF
ASSESSED BY THE
SYAMA PRASAD
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. 764, 764/R, 765P Of 2006 Order Sheet No. 35

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

SMT JYOTSNARANI PAUL (SINCE DECEASED) ARATI RANI KONDE (O.P.)

32

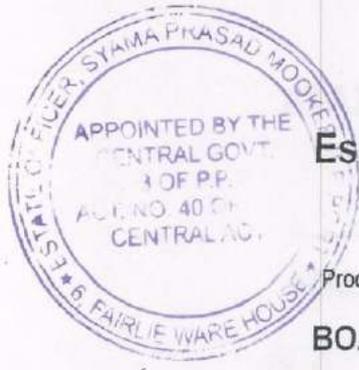
14 AUG 2023

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 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 25.04.2005, 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

Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE EST.
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. 764, 764/R. 764/D of 2006 Order Sheet No. 36

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

Smt Jyotsnarani Paul (Single Deceased) AND ARATI RANI KUNDU

32

14 AUG 2023

condition to SMPK after expiry of the period as mentioned in the notice/s to quit.

“Damages” are like “mesne profit” which according to Section 2 (12) of the Code of the Civil Procedure, 1908 means “those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession” 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 determination of lease by way of Quit Notice, O.P. has lost its authority to occupy the public premises and O.P. is liable to pay damages for such unauthorized use and occupation. To come into such conclusion, I am fortified by the decision/observation of the Hon’ble Supreme Court in Civil Appeal No.7988 of 2004, decided on 10th December 2004, reported (2005)1 SCC 705, para-11 of the said judgment reads as follows.

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.”

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

ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
KOLKATA
CERTIFIED COPY OF THE ORDER
FRASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
12/8/23
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. 764, 764/K, 764/D of 2006 Order Sheet No. 37

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

SMT. JYOTSNA RANI PAUL (SINLE DECEASED) AND ARATI RANI KUNDU

32

14 AUG 2023

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 VIII and IX 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.

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 of the Office
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. 764, 764/R, 764/D of 2006 Order Sheet No. 38

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

SMT JYOSNA RANI PAUL (SINCE DECEASED AND ARATI RANI KUMAR (OP)

32

14 AUG 2023

2. That O.P. has failed to liquidate the rental dues of the Port Authority, for a considerable period, in violation of the contract between the parties.
3. That O.P. cannot take the plea of time barred claim by SMPK taking the shield of Limitation Act.
4. That the instant Proceeding is not barred by the doctrine of Estoppel, waiver and acquiescence.
5. That O.P. has parted with possession of the subject premises to third parties without having any permission from Port authority.
6. 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.
7. 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.
8. 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.
9. That O.P. is liable to pay damages for wrongful use and occupation of the Public Premises upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

ACCORDINGLY, 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.,



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



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. 764, 764/R, 764/D of 2006 Order Sheet No. 39

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

SMT. JYOTNA RANI PAUL (SINCE DECEASE) AND ARATI RAKI KUNDU (O.P.)

32

10 AUG 2023

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. 1,09,695/- (Rupees one Lakh nine thousand six hundred ninety five only) for the period 01.03.1988 to 31.05.2005 (both days inclusive) is due and recoverable from O.P. by the Port authority on account of rental dues and O.P. must have to pay the rental dues to SMPK on or before 31.08.2023. 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 incurrence 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.

Likewise, I find that SMPK has made out an arguable claim against O.P., founded with sound reasoning, regarding the damages/compensation to be paid for unauthorised occupation. As such, I must say that Rs. 4,74,097.97/- (Rupees Four Lakh seventy four thousand ninety seven and paise ninety seven only) as claimed by the Port Authority as damages in relation to the Plate in question, is correctly payable by O.P. for the period 01.06.2005 to 31.05.2017 (both days inclusive) and it is hereby ordered that O.P. shall also make payment of the aforesaid sum to SMPK by 31.08.2023. The said damages 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 incurrence 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 orders u/s 7 of the 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
Head Assistant
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. 764,764/R.764/D Of 2006 Order Sheet No. 40

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

SMT JYOSTINI RANI PAUL (SINCE DECEASED) AND ARATI RANI KUNDO (O.P)

32

14 AUG 2023

I make it clear that SMPK is entitled to claim 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

S. 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 THIS ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
17/8/23
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT