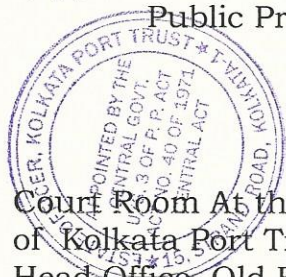


**REGISTERED POST WITH A/D.
HAND DELIVERY
AFFIXATION ON PROPERTY**

THE ESTATE OFFICER, 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
15, STRAND ROAD (4th Floor)
KOLKATA - 700 001

Court Room At the 2nd Floor
of Kolkata Port Trust's
Head Office, Old Buildings
15, Strand Road, Kolkata- 700 001.

REASONED ORDER NO. 25 DT 14.06.2018
PROCEEDINGS NO. 581 OF 2004

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

-Vs-

M/s. Kanhaiyalal Saraf & Sons (O.P.)

F O R M - "B"

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

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that **M/s. Kanhaiyalal Saraf & Sons, of 10, Lord Sinha Road, 13th floor, Kolkata 700016 AND also of Compartment no. 2 at Canning Warehouse** is in unauthorized occupation of the Public Premises specified in the Schedule below:

R E A S O N S

1. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear of licence fees/damages etc. as prayed for on behalf of KoPT.
2. That the O.P. was very much in arrears of licence fees, at the time of revocation of the licence by the Port Authority.
3. That O.P.'s contention that it is a "lessee" under the KoPT, is not at all tenable in the facts and circumstances of the case.
4. That submission of O.P. towards incompetency of Land Manager & Assistant Land Manager of KoPT for issuance of Notice to Quit & initiation of proceedings, respectively, is absolutely redundant in the view of settled law on the subject.
5. That O.P. has failed to justify how it is entitled to claim "rebate" on the licence fees when such licence fees has not been liquidated by it within prescribed time.
6. That O.P. while in possession and enjoyment of the Port Property and while acknowledging the jural relationship as debtor to KoPT cannot take the shield of time barred claim under Limitation Act.
7. That no case has been made out on behalf of O.P. as to how its occupation in the Public Premises could be termed as "authorised occupation" after issuance of notice dated 27.02.1985, demanding possession by the Port Authority.

Please see on reverse

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8. That O.P. has failed to bear any witness or adduce any evidence in support of their contention regarding "authorised occupation" and O.P's occupation has become unauthorized in view of Sec.2 (g) of the P.P. Act.
9. That right from the date of expiry of the period as mentioned in the said notice to quit dated 27.02.1985, O.P. has lost its authority to occupy the Public Premises and O.P. is liable to pay damages for wrongful use and enjoyment of the Port Property upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

A copy of the reasoned order No. 25 dated 14.06.2018 is attached hereto which also forms a part of the reasons.

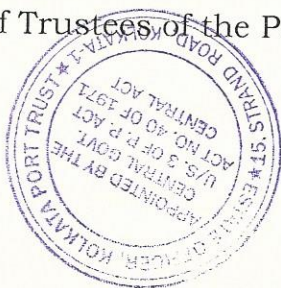
NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said **M/s. Kanhaiyalal Saraf & Sons, of 10, Lord Sinha Road, 13th floor, Kolkata 700016 AND also of Compartment no. 2 at Canning Warehouse** and all persons who may be in occupation of the said premises or any part thereof to vacate the said premises within 15 days of the date of publication of this order. In the event of refusal or failure to comply with this order within the period specified above the said **M/s. Kanhaiyalal Saraf & Sons, of 10, Lord Sinha Road, 13th floor, Kolkata 700016 AND also of Compartment no. 2 at Canning Warehouse** 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

The Compartment no. 2 measuring 209.03 sqm or thereabouts, situated in the ground floor of the Trustees' godown known as Canning Warehouse, on the West side of Strand Road under the North Port Police Station within the presidency town of Calcutta.

Trustees' means the Board of Trustees of the Port of Kolkata.

Dated: 14.06.2018




Signature & Seal of the
Estate Officer.

COPY FORWARDED TO THE ESTATE MANAGER/CHIEF LAW OFFICER, KOLKATA PORT TRUST FOR INFORMATION.



Estate Officer, Kolkata Port Trust

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

Proceedings No. 581, 581/D Of 2004 Order Sheet No. 31

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s. Kanhaiyalal Saraf & Sons (OP) VS Bong & Sons (OP)

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14-06-2018

FINAL ORDER

The instant proceedings No. 581, 581/D of 2004 arises out of the application dated 08.05.2002 filed by Kolkata Port Trust (KoPT), Applicant herein, praying for order of eviction and recovery of dues, damages etc against M/s Kanhaiyalal Saraf & Sons, O.P. herein, under relevant provision of the Public Premises (Eviction of Unauthorised Occupants) Act 1971. The facts of the case is summarised here under.

It is the case of KoPT that godown space measuring about 209.03 sqm at Trustees' Canning Warehouse under Plate No. SW-3 was allotted to the O.P. by the Port Authority on month to month licence basis. It has been claimed that O.P. failed to pay monthly licence fees and taxes as also interest as applicable as per KoPT rules. KoPT has further claimed that O.P. was required to vacate the premises as per the requirement of the Port as per its land use plan. KoPT has submitted that O.P. has no authority under law to occupy the public premises on the expiry of period as mentioned in the notice to quit dated 27.02.1985 as served upon O.P. by the Port Authority.

This forum of law formed its opinion to proceed against O.P. on the basis of submission and materials on record and issued show cause notice u/s 4 of the Act (for adjudication for the prayer for issuance of order of eviction etc.) and show cause notice u/s 7 of the Act (one for adjudication for prayer of recovery of damages, interest etc.) both dated 01.11.2016.

O.P. contested the matter and filed its reply to show cause u/s 7 of the act, on 18.01.2017, alongwith an application for giving inspection of various documents. Such prayer for inspection was allowed and inspection was taken by the Ld Advocate of the O.P. on 07.02.2017. Subsequently on 10.03.2017 O.P. filed its Written Statement (containing the reply to the show cause u/s 4 of the Act). It reveals from



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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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record that one Misc. Case being no. 24/2017 before Ld City Civil Court came to be filed by the O.P. and said case came to be decided on 27.11.2017 with full liberty to this Forum to proceed with the hearing of the instant matter. As such, hearing was again commenced and on 11.12.2017 O.P. filed its Examination-in-Chief. The O.P. also filed its Written Notes of Arguments on 16.02.2018. Finally on 18.04.2018, after hearing the arguments of both sides, final order was reserved by this Forum.

Upon considering the deliberations of the parties and after carefully going through all the documents placed on record, I find that the following issues have come up for my consideration.

- I. Whether the instant proceedings against the O.P. is maintainable or not;
- II. Whether the O.P. committed the breaches as claimed for by KoPT, or not;
- III. Whether the claim of O.P. of being a lease holder and not a licensee, is tenable in the eye of law;
- IV. Whether submission of O.P. that it has paid all "rent" to KoPT, has anything to do in the matter or not;
- V. Whether O.P.'s contention of not having received any Notice to Quit dated 27.02.1985, is established in the facts and circumstances of the case;
- VI. Whether there is any merit in the contention of O.P. that the Assistant Land Manager of KoPT is not empowered/authorized to file the instant proceedings against the O.P., or not;
- VII. Whether claim of O.P. of unilateral satisfaction of this Forum for issuance of Notice/s u/s 4 & 7 of the Act, is valid in the eye of law or not;
- VIII. Whether O.P.'s submission towards application of "rebate" has any bearing in the matter, or not;

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- IX. Whether the claim of the KoPT can be said to be barred by "limitation" as claimed by the O.P.;
- X. Whether KoPT's notice dated 27.02.1985 as issued to O.P., demanding possession from O.P. is valid and lawful or not;
- XI. Whether O.P's occupation could be termed as "unauthorised occupation" in view of Sec.2 (g) of the P.P. Act and O.P. is liable to pay damages to KoPT during the period of its unauthorised occupation, or not.

Regarding Issue 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 Sec. 15 of the Act puts a complete bar on any Court's jurisdiction to entertain any matter relating to eviction of unauthorized occupants from the public premises and recovery of dues and/or damages, etc. KoPT 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 dues etc on the ground of revocation 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.

Issues II, III and IV & VIII are taken up together, as they are related to each other. It is the claim of KoPT that the O.P. had failed to liquidate huge amounts of rental dues, which led to the revocation of the



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licence by the Port Authority. KoPT has also claimed that the godown in question was required by KoPT as per its land use plan. Now, first and foremost, I find that the Port Authority vide its letter dated 06.04.1979 made an offer for grant of month-to-month license to the O.P. and O.P. in turn accepted such offer on the very same date i.e. 06.04.1979 vide its letter signed by the Karta i.e. Kanhaiyalal Saraf. The Certificate of Possession dated 06.04.1979 also mentions about "licence fee" and not of rent amount. In such a situation, I find no merit in the submission of the O.P. that it was a "lessee" under the Port Authority. O.P. has filed a set of documents pertaining to its earlier occupation under the Port Authority (which was surrendered by it at the time of taking possession of instant public premises) and I do not find them to be at all relevant for determining the status of the O.P.'s occupation in the instant public premises.

Be that as it may, the question is how far KoPT is justified in revoking the contractual relationship as was existing between the parties. I must say that KoPT has not produced anything in support of its contention of "land use plan" and as such I am unable to accept said allegation against the O.P. Regarding the other allegation of non-payment of rental dues, I find that KoPT vide its letter dated 22.03.1983 styled as a Final Notice requested the O.P. to immediately liquidate the rental dues alongwith interest at the appropriate rate. Moreover, KoPT has produced its statement of accounts maintained in official course of business, and there is no reason to doubt the authenticity of such an official documents prepared by a statutory authority. In fact, O.P. has also not challenged the veracity of said documents maintained by the Port Authority in its usual course of business. It reveals from said statement of accounts that O.P. did not pay the licence fees from bill date 31.07.1983 onwards. During course of hearing, despite numerous opportunities, O.P. failed to produce any document

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establishing the payment of licence fees from bill date 31.07.1983 onwards, within the stipulated time. As per law, a monthly licence like the one granted to the O.P. is renewed on the basis of the conduct of the parties, i.e. the licence stands automatically renewed upon issuance of licence fee bill by the landlord and satisfaction of the licence fees by the licensee within the prescribed time and by the prescribed mode. Even a slight deviation, for instance default of payment of licence fees for a single month, is sufficient to terminate the relationship. In such a situation, it is difficult to accept that the month-to-month relationship is still continued between the parties. In the facts and circumstances of the instant case, I find that the allegation of KoPT of non-payment of licence fees by the O.P. has definite element of truth and adverse inference must have to be drawn against the O.P. for failure to produce any proof of payment of the licence fees bills for the months of 31.07.1983 onwards. In my view, the submission of the O.P. of having liquidated the licence fees at later dates, if at all, cannot come to the protection of the O.P. inasmuch as O.P. has failed to show any intention on the part of the Port Authority to treat the O.P. as a license holder after revocation of the licence by notice dated 27.02.1985.

Since the question of "rebate" comes into play only in the case of prompt payment, as outlined in KoPT's offer letter dated 06.04.1979, in my view, O.P. is not entitled to any "rebate" in the facts and circumstances of the case as enumerated above. The issues are therefore decided accordingly.

O.P. has set up a defence in Issue V, that it has not received the notice to quit dated 27.02.1985. It is seen from record that the said notice to quit dated 27.02.1985 is addressed to the correct address of the O.P. and is purported to be received by one Nil Ratan Dey, purporting to be an employee of the O.P., on 21.03.1985. Moreover, it is seen from the



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certificate of service of the service personnel at the back of the notice to quit, that the said service personnel has confirmed having handed over the notice to quit to the representative of the O.P. During course of inspection of documents held on 07.02.2017, not only the notice to quit dated 27.02.1985 but also the A/d card was shown to the Ld Advocate of the O.P. who contended that the originals have not been shown. As per law, there is no bar in taking cognizance of any secondary evidence when the original document is, admittedly, a public document. Moreover, this Forum finds no reason to doubt the genuineness of such an evidence produced on behalf of KoPT, more so in the light of Sec. 90 of the Evidence Act which empowers a quasi-judicial body like this Forum to presume that the signature and every other part of the document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and in case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested. In the facts and circumstances, I find no reason to entertain this issue raised by the O.P.

On Issue VI, as per law, a licensee is under legal obligation to hand over possession of the property under license to its licensor in its original condition after expiry of the contractual period of license or after expiry of the period as mentioned in the notice of ejection. In the instant case the Land Manager of the Board of Trustees' of the Port of Calcutta had issued the notice demanding possession dated 27.02.1985. In my view, the Land Manager of Kolkata Port Trust is very much competent to serve ejection notice, acting on behalf of the Board of Trustees' of the Port of Kolkata, particularly when specific approval of the Chairman, KoPT is obtained before serving such notice. The Land Manager, KoPT is merely communicating the decision of the Chairman, KoPT and such ministerial act on the part of the Land Manager cannot be said to be out of

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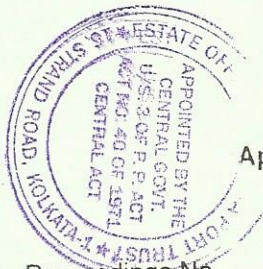
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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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jurisdiction. I am also of the view that the Land Manager, KoPT has acted as an agent of Board of Trustees' of the Port of Kolkata and such act cannot be questioned by O.Ps. on the plea of "incompetency". To take this view, I have borrowed my support from the decision of the Division Bench of Calcutta High Court delivered on 28.01.2013 by Their Lordship Hon'ble Mr. Justice Girish Chandra Gupta and Hon'ble Mr. Justice Tarun Kumar Dutta in A.P.O. No. 108 of 2010 (Kolkata Port Trust -Vs- M/s Universal Autocrafts Pvt. Ltd. & Anr.). It may be re-called that service of notice, determining a tenancy under lease by the Land Manager, KoPT was subject matter of challenge before the Hon'ble High Court, Calcutta and the Division Bench of Calcutta High Court confirmed that Land Manager is very much competent in serving ejectment notice on behalf of Board of Trustees of the Port of Kolkata. The matter regarding competency in serving of ejectment notice on behalf of Board of Trustees of the Port of Kolkata went upto the Apex Court of India and the Hon'ble Apex Court by its judgment and order dated 16.04.2014 (In SLP (Civil) No.18347/2013-Sidhartha Sarawgi -Versus- Board of Trustees for the Port of Kolkata and Others With SLP (Civil) Nos.19458-19459/2013- Universal Autocrafts Private Limited and Another -versus- Board of Trustees for the Port of Kolkata and others) etc. upheld the authority of the Land Manager/Officer of Kolkata Port Trust in serving ejectment notice by confirming the judgment of the Division Bench of Calcutta High Court in APO No. 108 of 2010 (Kolkata Port Trust -Vs- M/s Universal Autocrafts Pvt. Ltd. & Anr.). It has been decided by the Hon'ble Apex Court of India that lease/license can be terminated by the same authority who executed the lease/license deed and issuance of notice is a ministerial act for implementation. The Chairman, KoPT having duly authorized the Land Manager with regard to service of notice, it cannot be said that ejectment notice issued by the Land Manager, KoPT is without jurisdiction.



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On the same score, allegation of incompetency against the Assistant Land Manager (a Class-I Officer) for instituting the instant proceedings against the O.P., does not survive. Hence, the issue is decided against O.P.

On Issue VII, the decision of Hon'ble Calcutta High Court in Otafallons Forwarders Pvt. Ltd. vs. Kolkata Port Trust with reference to judgement of the Hon'ble Apex Court of India in Jiwan Das vs LIC is very important in deciding the authority of the Estate Officer under PP Act. Paragraph 15 of the said Judgement of Calcutta High Court reads as follows:-

"The Statute herein has admittedly given a wide powers to the Public Authority under Public Premises Act, 1971 to determine the tenancy and it has already been held by the Supreme Court of India in case of Jiwan Das (supra) that it was not permissible to cut down the width of the powers by reading into it the reasonable and justifiable grounds for initiating actions for termination of tenancy. Authorities under the PP Act, 1971 are empowered to act in Public interest and entitled to determine the tenancy or leave or license before taking into action under Section 5 of the Act which has been specifically held in Jiwan Das (supra)"

The provisions U/S 4 & 5 of the P.P Act deal with the procedure for eviction of unauthorised occupants and must be read together. It would be seen that prima facie satisfaction of the Estate Officer is a sine qua non for issuance of the Show cause notice. The scope of issuing Show Cause Notice and the legality of serving such Show Cause Notice was subject matter of discussion before the Hon'ble Delhi High Court in Safari Air Ways case. This judgement of Hon'ble Delhi High Court is instrumental to decide the extent of Estate Officer's authority in issuing Show Cause Notice. It was the case before Hon'ble Delhi High Court that the notice



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is required to be quashed on the ground that Estate Officer has not disclosed to them in the notice the material on which he has formed his opinion. According to the judgement, the Estate Officer may form the opinion rightly or wrongly. But what is important is that he must give an opportunity to the persons in occupation of the Public Premises to show cause against the proposed order of eviction. In truth and substance, it is the opinion formed by the Estate Officer which becomes the subject matter of enquiry before him. The observation made by the Hon'ble Delhi High Court are as follows:

"Safari Airways can show to the Estate Officer that the opinion formed by him is incorrect and that they are not liable to be evicted from the Public Premises. "Opinion" is different from "order". No eviction order is passed unless and until a show cause notice is issued to the occupant of public premises and unless he is heard. The question of formation of opinion by the Estate Officer and of the nature of materials before him loses all importance in view of the fact that Show Cause Notice gives full opportunities to the occupant to dispute the opinion, the facts and allegations against him in the enquiry which follows the service of notice. The petitioners are not entitled to ask this court to quash the notice or for that matter the proceedings themselves at their very threshold. The reason is that the notice gives them an opportunity to Show Cause against the proposed order of eviction. Before issuing Show Cause Notice U/S 4, Estate Officer has to form a tentative opinion. Opinion means estimation, not decision. If a man is to form an opinion he must form it himself of such reasons and grounds as seem good to him.

Those reasons may be good or bad. But, he does not arrive at a definite conclusion because he has not heard the affected party so far. There are no counter-allegations before him at the



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stage of formation of opinion. Invested as he is with quasi-judicial power he has to follow the principle of natural justice. He must hear the occupant and decide whether he is there on the premises with or without authority. Then he arrives at the decision. And his decision is appealable U/S 9 of the act to the District Judge. The appeal is a judicial re-hearing".

It is worthy to mention here that after amendment of the P.P. Act by the Amending Act of 2015 (Act No. 2 of 2015) the Estate Officer is empowered to issue Show Cause Notice u/s 4 of the Act upon receipt of information regarding unauthorised occupation any Public Premises.

In view of the decision of the Hon'ble Delhi High Court and elaborate discussion on the scope of the power of the Estate Officers in issuing Show Cause Notice, I do not find any scope to discuss the matter further as all the questions regarding authority of the Estate Officer in issuing Show Cause Notice has been decided authoritatively by the Hon'ble Delhi High Court in the aforesaid judgement. In view of the discussions above, the issue is decided accordingly against O.P.

Issue IX relates to question of applicability of Limitation Act, 1963 in the present proceedings. Admittedly, O.P is in occupation and enjoyment of the Public Premises after expiry of the period mentioned in notice of ejection dated 27.02.1985. From the facts of the case, it is clear that O.P is in default of licence fees as well as payment of charges for occupation of the public premises but merely disputing KoPT's claim with the contention that the same is unreasonable etc. No argument has been advanced on behalf of O.P as to how it can question enhancement of the rate of licence fees applicable for the plot of land in question, when such enhancement is equally applicable to all users of the Port property and such enhancement is on the

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strength of duly published gazette notifications of the Tariff Authority for Major Ports (TAMP). In my opinion, any dispute/question relating to arbitrariness/ unreasonableness with regard to contractual rate of licence fees is beyond the jurisdiction/scope of this forum of law. It is also argued that even Limitation Act does not permit O.P to take the plea of "time barred claim", while in occupation and enjoyment of the property as per Sec. 22 of the Limitation Act in the event of continuing breaches on the part of O.P. after expiry of the period mentioned in the ejection notice. It is submitted with argument that as per law, O.P was under obligation to hand over possession of the property to KoPT in vacant and unencumbered condition and failure on the part of O.P. to discharge such statutory liability is a breach of contract. In fact O.P. cannot claim differential treatment from other occupiers/users of the Port Property for making payment of charges in terms of the rate of licence fees in a similarly placed situation.

Now the question survives whether O.P can take the plea of time barred claim under Limitation Act, while in possession and enjoyment of the property, particularly when O.P. is clearly in default of licence fees/occupational charges. It is my considered view that O.P. cannot escape their liability towards payment of dues on the plea of "limitation" as per Sec. 25 of the Indian Contract Act, while acknowledging the jural relationship as debtor. No attempt has been made on behalf of O.P. as to how O.P.'s occupation could be termed as "authorised" in view of Sec. 2(g) of the P.P. Act, after expiry of the period as mentioned in the KoPT's notice dated 27.02.1985, demanding possession from O.P. The core submissions regarding non-applicability of the Limitation Act in proceedings before this Forum is based on various decisions of the Hon'ble Apex Court of India and Calcutta High Court, wherein it has been decided that Limitation Act has no application before quasi-judicial authorities like this

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Forum of Law which is not a civil court to be governed by the Civil Procedure Code. With the introduction of Sec 15 of the P.P. Act, 1971, there is no scope for the courts to entertain any matter regarding recovery of arrear rental dues and damages etc. arising out of the public premises. In the present scenario, when the statute, in its own wisdom, has imposed a restriction upon the civil court, to adjudicate upon such matter it would be very difficult to accept the contention of O.P. with regard to application of Limitation Act in the proceedings before this Forum of law, which is not a civil court to be governed by the civil procedure code. The judgment of the Hon'ble Apex Court of India reported in New India Assurance Case is very much relevant in deciding the question whether this Forum is a court or not. It was decided by the Supreme Court that Civil Procedure Code and Indian Evidence Act are not applicable for proceedings before the Estate Officer under P.P. Act which provided a complete code. The Limitation Act applies to "suits" to be governed by CPC and Indian Evidence Act. When the basic elements for adjudication of a "suit" are totally absent for proceedings under P.P. Act, 1971, it is futile to advance any argument for its application. The judgments of different High Courts including that of Delhi High Court could be accepted as a guiding principle. 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. wherein, it was clearly held that proceedings initiated by an Estate Officer are not in the nature of suit nor the Estate Officer acts as a Court while deciding proceedings before him.

It is worthy to record that there is no prescribed period of limitation in the Limitation Act itself for recovery of "**damages**".

It would not be out of scope to mention that Limitation Act bars the remedy by way of "suit" but



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not the entitlement. In my view, there is a clear distinction between 'rent/licence fees' and 'damages'. So long both the parties admit their relationship as licensor and licensee, the question of paying damages does not arise. In other words, if the licensee is asked to pay rent by the licensor, the element of authorized occupation could be inferred but in case of demand for damages, there is element of unauthorized use and enjoyment of the property (Shangrila Food Products Ltd. & Anr vs Life Insurance Corporation of India & Another).

It is very much relevant to point out that as per Section 7(1) of the said Act, the word used is 'rent payable' whereas in Section 7(2), it is in respect of 'recovery of damages', having regard to the principle of assessment of damages. Thus the interpretation of the powers under Section 7(1) for recovery of arrears of rent has a wide range of difference between the powers exercised under Section 7(2) of the P.P Act, as there is nothing like the term 'rent payable' (as used under Section 7(1) of the P.P Act) in Section 7(2) of the P.P Act, 1971. Moreover, the legislative intention for recovery of damages for any time and the power conferred upon the Estate Officer is very much embedded in Section 7(2) of the Act which reads as follows:-

"Where any person is, or has at any time been, in unauthorised occupation of any Public Premises, the Estate Officer may, having regard to such principles for assessment of damages as may be prescribed, assess the damages on account of use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order".

In view of the discussion above, I am of the view that this Forum of Law is very much competent under law to adjudicate the claim of KoPT against O.P. and Limitation Act has no application to the proceedings

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before the Estate Officer which is a quasi-judicial authority under P.P. Act and is neither a Civil Court to be governed by the Civil Procedure Code nor a "court" within the scheme of the Indian Limitation Act. In fact, the issue has been set at rest by the judgment delivered by the Hon'ble Supreme Court of India on 23.4.2015 in Civil Appeal No. 4367 of 2004 (M.P. Steel Corporation -vs- Commissioner of Central Excise).

Thus, the plea taken by O.P. regarding applicability of Limitation Act in the proceedings before the Estate Officer under P.P. Act has, to my considered view, got no merit. I have taken a note of Sec. 29 of The Limitation Act, 1963 read with Sec. 25 of the Indian Contract Act, 1872. It is my well considered view that even if for the sake of argument, Limitation Act is taken to apply to the proceedings before the Estate Officer (not admitting), Sec. 25 of the Indian Contract Act will definitely come into play against O.P.'s plea for "time barred" claim under Limitation Act. I am of the view that Sec. 25 of the Contract Act debars O.P. to take the plea of "barred by limitation", in the facts and circumstances of the case. Hence, the issue is decided in favour of KoPT.

Issues No. X and XI are also required to be discussed analogously. Discussion against the foregoing paragraphs will certainly lead to the conclusion that that the notice for revocation of license dated 27.02.1985 as issued by the Port Authority, demanding possession from O.P. is very much valid, lawful and binding upon the parties. The properties of the Port Trust are coming under the purview of "public premises" as defined under the Act. Now the question arises as to how a person become unauthorized occupant into such public premises. As per Section 2 (g) of the Act the "unauthorized occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation and includes the continuance in



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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 license granted to O.P. was undoubtedly revoked by the Port Authority by due service of notice for revocation of licence and institution of proceedings against O.P. by KoPT is a clear manifestation of Port Authority's intention to get back possession of the premises. In such a situation, I have no bar to accept KoPT's contentions regarding revocation of licence by notice dated 27.02.1985, on evaluation of the facts and circumstances of the case. "Damages" are like "mesne profit" that is to say the profit arising out of wrongful use and occupation of the property in question. I have no hesitation in mind to say that after expiry of the period as mentioned in the said notice to Quit dated 27.02.1985, O.P. has lost its authority to occupy the public premises, on the evaluation of factual aspect involved into this matter and O.P. is liable to pay damages for such unauthorized use and occupation. To come into such conclusion, I am fortified by the decision/observation of the Hon'ble Supreme Court in Civil Appeal No.7988 of 2004, decided on 10th December 2004, 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.

Undoubtedly, the tenancy under licence is governed by the Principles of the Indian Easement Act and there is no scope for denial of the same. Though the



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judgment referred above is in respect of under tenancy governed by Transfer of Property Act, the same principle is applicable in case of license also.

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

The Port Authority has a definite legitimate claim to get its revenue involved into this matter as per the KoPT's Schedule of Rent Charges for the relevant period and the contractual rate in question and O.P. cannot claim continuance of its occupation without making payment of requisite charges.

It has been held by the Hon'ble Apex Court of India that a person continuing in possession of the premises after termination, withdrawal or revocation of license continues to occupy it as a trespasser or as a person who has no semblance of any right to continue in occupation of the premises. Such person by no stretch of imagination can be called a licensee. Moreover, a person continuing in occupation of such premises after revocation of the license is still liable

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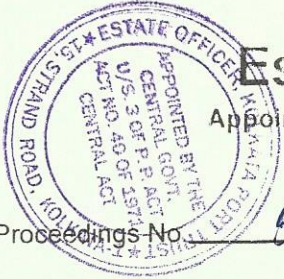
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to pay compensation or damages for their use and occupation and if, at any time, such compensation has been paid or accepted, it cannot undo the effect of the revocation of license.

In my view, the case in hand is very much relevant for the purpose of determination 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 KoPT that the charges claimed on account of damages is on the basis of the KoPT's Schedule of Rent Charges as applicable for all the tenants/occupiers of the premises in a similarly placed situation and such Schedule of Rent Charges is notified rates of charges under provisions of the Major Port Trusts Act 1963. In my view, such claim of charges for damages by KoPT is based on sound reasoning and should be acceptable by this Forum of Law. As per law, when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract to be likely to result from the breach of it. Moreover, as per law O.P. is bound to deliver up vacant and peaceful possession of the public premises to KoPT after expiry of the period as mentioned in the notice to Quit in its original condition. As such, the issues are decided in favour of Kolkata Port Trust. I have no hesitation to observe that O.P.'s act in continuing occupation is unauthorized and O.P. is liable to pay damages for unauthorized use and occupation of the Port property in question upto the date of delivering vacant, unencumbered and peaceful possession to KoPT. With this observation, I must reiterate that the ejectment notice, demanding possession from O.P. as stated above has been validly served upon O.P. in the facts and circumstances of the case and such notice is valid, lawful and binding upon the

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parties. In view of the discussions above, the issues are decided in favour of KoPT.

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

1. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear of licence fees/damages etc. as prayed for on behalf of KoPT.
2. That the O.P. was very much in arrears of licence fees, at the time of revocation of the licence by the Port Authority.
3. That O.P.'s contention that it is a "lessee" under the KoPT, is not at all tenable in the facts and circumstances of the case.
4. That submission of O.P. towards incompetency of Land Manager & Assistant Land Manager of KoPT for issuance of Notice to Quit & initiation of proceedings, respectively, is absolutely redundant in the view of settled law on the subject.
5. That O.P. has failed to justify how it is entitled to claim "rebate" on the licence fees when such licence fees has not been liquidated by it within prescribed time.
6. That O.P. while in possession and enjoyment of the Port Property and while acknowledging the jural relationship as debtor to KoPT cannot take the shield of time barred claim under Limitation Act.
7. That no case has been made out on behalf of O.P. as to how its occupation in the Public Premises could be termed as "authorised occupation" after issuance of notice dated 27.02.1985, demanding possession by the Port Authority.

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8. That O.P. has failed to bear any witness or adduce any evidence in support of their contention regarding "authorised occupation" and O.P.'s occupation has become unauthorized in view of Sec.2 (g) of the P.P. Act.

9. That right from the date of expiry of the period as mentioned in the said notice to quit dated 27.02.1985, O.P. has lost its authority to occupy the Public Premises and O.P. is liable to pay damages for wrongful use and enjoyment of the Port Property 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. in accordance with Law up to the date of recovery of possession of the same. KoPT is directed to submit a comprehensive status report of the Public Premises in question on inspection of the property after expiry of the 15 days as aforesaid so that necessary action could be taken for execution of the order of eviction u/s 5 of the Act as per Rule made under the Act.

I must mention that KoPT's total claim against O.P. on account of dues and charges for compensation for wrongful use and enjoyment of the property for Rs. 1,10,91,932.72/- upto 18.04.2018 including interest of Rs 82,95,280.75/- for delayed payment, has received my due attention and I am satisfied that Port Authority has made out an arguable claim based on sound reasoning for such claim against O.P. KoPT is directed to submit a report regarding its claim on account of damages against O.P.,

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indicating therein the details of the computation of such damages with the rate of charges so claimed for the respective period (details of computation with rates applicable for the relevant period, upto the date of taking over of unencumbered possession) for my consideration in order to assess the damages as per the Act and the Rules made thereunder.

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

GIVEN UNDER MY HAND AND SEAL

(M.K. DAS)
ESTATE OFFICER

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