



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

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

(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)
Public Premises (Eviction of Unauthorized Occupant) Act 1971

OFFICE OF THE ESTATE OFFICER
6, Fairley Place (1st Floor)
KOLKATA - 700 001

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

REASONED ORDER NO. 43 DT 17.10.2022.
PROCEEDINGS NO. 1256 of 2011

**BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
M/s INDIAN MONOLITHIC REFRACTORIES**

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 Indian Monolithic Refractories, 16-B, Shakespeare Sarani, (4th Floor), Kolkata- 700 071** is in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

1. That O.P./TIC has no authority to occupy the Public Premises in question upon expiry of the period mentioned in the notice to quit dated 04.04.2006.
2. That O.P./ TIC was under legal obligation to hand over vacant, peaceful and unencumbered possession to SMPK after expiry of the period mentioned in the notice to quit dated 04.04.2006.
3. That O.P. has palpably failed to discharge its liability to hand over possession of the public premises, as a Lessee, in terms of the Transfer of Property Act, 1882.
4. That the O.P. or in case TIC, has defaulted in making payment of rental dues/ occupational charges to SMPK.
5. That SMPK's claim on account of Rent is based on the Schedule of Rent Charges (SoR), as published in the Calcutta Gazette, having statutory force in law in determining the quantum of dues/charges as payable by O.P. /TIC to SMPK.
6. That the instant proceedings does not suffer from 'mis-joinder' and/ or 'non-joinder' of parties.
7. TIC cannot claim better treatment/right than the right/s available to O.P. at the time the lease was subsisting or even thereafter.
8. That no case has been established through evidence/ records that amalgamation of plots has actually taken place in the facts and circumstance of the case.
9. The instant proceeding under Public Premises Act, 1971 cannot be said to be barred by the laws of "Limitation" as claimed by TIC.
10. That O.P./ TIC has failed to bear any witness or adduce any evidence in support of its contention regarding "authorized occupation".

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
18.10.2022
OFFICE OF THE ESTATE OFFICER
6, FAIRLEY PLACE, KOLKATA - 700 001

11. That notice to quit dated 04.04.2006 as issued to O.P. by the Port Authority is valid, lawful and binding upon the parties.
12. That occupation of O.P. or in case TIC has become unauthorized in view of Sec 2 (g) of the Public Premises Act and O.P. is liable to pay damages for unauthorized use and enjoyment of the Port property to SMPK upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

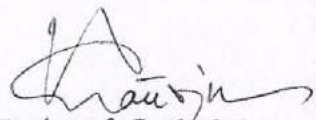
A copy of the reasoned order No. 43 dated 17.10.2022 is attached hereto which also forms a part of the reasons.

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 Indian Monolithic Refractories, 16-B, Shakespeare Sarani, (4th Floor), Kolkata- 700 071 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 Indian Monolithic Refractories, 16-B, Shakespeare Sarani, (4th Floor), Kolkata- 700 071 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 said piece or parcel of land msg. 369.75 sq.m. or thereabouts is situate at Chetla Station Yard, Police Station- New Alipore, Now Chetla P.S. Kolkata, District- 24 Parganas. The said piece or parcel of land is bounded on the North by the Trustees' strip of open land reserved as margin of safety alongside the Trustees' siding, on the East by the Trustees' land leased to you, on the South by the Trustees' Road and on the West by the Trustees' land leased to Ambica Singh. Trustees' means the Board of Trustees' for the Port of Kolkata.


Dated: 18.10.2022

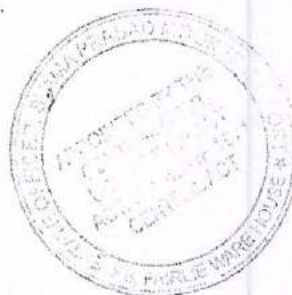

Signature & Seal of the
Estate Officer.

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


18.10.2022
ASSISTANT
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

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6, Fairley Place (1st Floor)

KOLKATA - 700 001

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of Kolkata Port Trust's
Fairley Warehouse
6, Fairley Place, Kolkata- 700 001.

REASONED ORDER NO. 43 DT 17.10.2022
PROCEEDINGS NO 1256/D of 2011

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
M/s Indian Monolithic Refractories,
16-B, Shakespeare Sarani,
(4th Floor),
Kolkata- 700 071

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
18.10.2022
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

And whereas by written notice dated 20.02.2018 (vide Order No 24 dated 16.02.2018) you were called upon to show- cause on/or before 21.03.2018 why an order requiring you to pay a sum of Rs 9,42,260.25 (Rupees Nine Lakhs Forty Two Thousand Two Hundred Sixty and Paise Twenty Five only) being damages payable together with compound interest for unauthorised use and occupation of the said premises, should not be made.

AND WHEREAS I have considered your objection 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 9,42,260.25 (Rupees Nine Lakhs Forty Two Thousand Two Hundred Sixty and Paise Twenty Five only) for the period from 01.11.2007 to 15.03.2017 assessed by me as damages on account of your unauthorised occupation of the premises to Kolkata Port Trust, by
02.11.2022

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 @ 6.45 % 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) on the above sum with effect from the date of incurrance of liability, till its final payment in accordance with Notification Published in Official Gazette/s.

Please see on reverse

:2:

A copy of the reasoned order no. 43 dated 17.10.2022. is attached hereto.

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

The said piece or parcel of land msg. 369.75 sq.m. or thereabouts is situate at Chetla Station Yard, Police Station- New Alipore, Now Chetla P.S. Kolkata, Distriot- 24 Parganas. The said piece or parcel of land is bounded on the North by the Trustees' strip of open land reserved as margin of safety alongside the Trustees' siding, on the East by the Trustees' land leased to you, on the South by the Trustees' Road and on the West by the Trustees' land leased to Ambica Singh. Trustees' means the Board of Trustees' for the Port of Kolkata.

Dated: 18.10.2022.

Signature and seal of the
Estate Officer.

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

By Order of:
THE ESTATE OFFICER
GAYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
GAYAMA PRASAD MOOKERJEE PORT
18.10.2022
OFFICE OF THE ESTATE OFFICER
GAYAMA 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

APPOINTED BY THE
CENTRAL GOVT.
UNDER SECTION 3 OF THE
PUBLIC PREMISES ACT, 1971

Proceedings No. 1256, 1256/D Of 2011 Order Sheet No. 38

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
Indian Monolithic Refractories

FINAL ORDER

The relevant facts leading to this proceeding are required to be put forward in order to link up the chain of events. The instant proceedings No. 1256 and 1256/D of 2011 arise out of the application bearing No. Lnd 3184/24/II/07/0486 dated 19.02.2007 filed by Syama Prasad Mookerjee Port, Kolkata [erstwhile Kolkata Port Trust/ KoPT, hereinafter referred to as 'SMPK'], the applicant herein, under the provisions of the **Public Premises (Eviction of Unauthorised Occupants) Act, 1971** (hereinafter referred to as 'the Act') praying for an order of eviction, recovery of rental dues as well as compensation / damage charges along with accrued interest against **Indian Monolithic Refractories** (hereinafter referred to as O.P.).

The fact of the case in a nutshell is that the land measuring 369.75 square meters or thereabouts situated at Chetla Station Yard, P.S.: Chetla, was allotted by SMPK to O.P. on short term Lease basis in 1975. It is the case of SMPK that the O.P. violated the condition of tenancy under lease by way of defaulting payment of monthly rents and unauthorisedly parted with the possession of the premises by inducting unauthorized subtenants without prior approval of SMPK. It is further the case of SMPK that it made a request to O.P. to quit, vacate and deliver up peaceful, vacant and unencumbered possession of the subject premises on 05.05.2006 in terms of the notice to quit dated 04.04.2006. As the O.P. did not vacate the premises after the notice to quit was issued, the instant proceeding was initiated before the Forum for eviction of the alleged unauthorized occupant, seeking order for realization of dues from O.P. etc. It is further the case of SMPK that O.P.'s occupation has become unauthorised on and from 05.05.2006 and O.P. is liable to pay damages/ compensation for wrongful use and enjoyment of the Port Property in question, upto the date of handing over of clear, vacant and unencumbered possession of the Port Property in question. It is strongly argued during the course of hearing, that O.P.'s continued unauthorized enjoyment of the premises without paying the requisite charges for the occupation, militates against

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
18.10.2022
OFFICE OF THE E.D. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

43
17.10.2022

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. 1256, 1256/0 of 2011 Order Sheet No. 39

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

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17.10.2022.

the well laid provisions of the Public Policy as enshrined in the P. P. Act and as such is highly objectionable.

The application dated 19.02.2007 was admitted for consideration by this Forum with the direction upon SMPK to clarify such issue/s, as well as to file certain other documents/ information, viz. document establishing contractual relationship with O.P., present status of the premises, exchange of letters with regard to non-payment of rental dues, comprehensive statement of accounts in respect of SMPK's claim etc. in order to form an effective opinion to proceed against the O.P., under the relevant provisions of the Act. Thereafter, the matter had persistently been protracted by the contending parties through seeking of repeated adjournments, with no new material development or fructification, until filing of the application dated 15.03.2017, when it was learnt from SMPK that the O.P., by the relevant point in time, had already liquidated the principal dues on account of Rent charges, barring the interest component payable for delayed payments to SMPK. It was reported that the Compensation / Damage charges was still due from O.P. for their alleged "unauthorised" use and enjoyment of the port property in question after issuance of the notice to quit dated 04.04.2006. It was also reported that the O.P. made certain payments, which have since been adjusted against the principal amount of Compensation / Damage charges. Hence, SMPK was advised to indicate the Compensation / Damage charges against O.P. since 05.05.2006, for the respective plots in question, clearly bringing out the payments, if any, made by O.P. in the meantime. The reason for arriving at the required calculation of Compensation / Damage since 05.05.2006, remains the submission of SMPK dated 19.02.2007, in terms of which the O.P. had been stated to be an "unauthorised occupant" since 05.05.2006, in terms of the notice to quit dated 04.04.2006.

Thereafter, this Forum of Law formed its opinion to proceed against the O.P., under the relevant provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and issued Show Cause Notices u/s 4 of the Act (for adjudication of the prayer of eviction)

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
18.10.2022
OFFICE OF THE E.D. 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. 1256, 1256/D of 2011 Order Sheet No. 40

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
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and u/s 7 of the Act (for adjudication of the prayer for compensation/ damage charges alongwith the accrued interest thereon) as per the Rules made under the Act, both dated 20.02.2018 (vide Order No. 24 dated 16.02.2018).

The said Notices were served upon O.P. through 'Speed Post' at the recorded address of O.P. It was noted that postal service at '16B, Shakespeare Sarani (4th Floor), Kolkata - 700 071' was returned undelivered by the Postal Department with the remarks as "addressee moved". However, the hand service of the said Notices had been made effectively, as the same was received by one Shri Debabrata Choudhuri, under his acknowledgement on 07.03.2018. The report of the 'Process Server' dated 07.03.2018 indicates that the said Show Cause Notices were affixed on the premises in question on 07.03.2018 for notice to all concerned, as per the mandate 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

[Signature] 18.10.2022
ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

It appears that in response to the Show Cause Notices, one Shri Deepak Kr. Banerjee, introducing himself as the proprietor of one M/s Tetex Industrial Corporation (hereinafter referred to as 'TIC') appeared before this Forum on 21.03.2018, through his Ld. Advocate, who filed the Vakalatnama. The said Shri Deepak Kr. Banerjee introduced himself as the "Sitting Occupant" of the premises in question and prayed for time for filing Reply to the Show Cause Notices. It was then informed by the said Shri Banerjee that there were as many as 5 (five) nos. of other sitting occupants functioning at the premises and the representation of the said 5 (five) other occupants were yet to be received by this Forum. Considering the submission, the O.P. as well as the sitting occupant/ TIC were directed to file the Reply to the Show Cause. The Department was directed to affix a copy of Order of this Proceeding on the conspicuous part of the premises, for a notice to all other sitting occupants, so that they might get an opportunity to represent their case. On the next date of hearing, viz. 06.04.2018, the said TIC appeared through their Ld. Advocate and filed the

[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

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Reply to Show Cause, as well as an application seeking treatment of TIC as the opposite party/ O.P. in this Proceeding.

The main contentions of the said reply can be summarized as follows:-

- (a) TIC is in occupation of a portion of land measuring about 1000 sq.ft., inside the subject premises, as a lawful tenant. The other portion of the premises is under the occupation of the original tenant of SMPK i.e. the O.P. The said portion is under the occupation and control of TIC and is being used for business purposes since 1979, after the O.P. was inducted by SMPK as a lessee in respect of the subject Public Premises by executing a lease on 30.01.1975.
- (b) TIC and O.P. were known to each other and the former had business relationship with the latter. For smooth running of the business for mutual benefit, the O.P. had agreed to provide the said portion to TIC, under certain terms and conditions, with the consent of SMPK.
- (c) An agreement was executed on 26.03.1979, between the O.P. and TIC, with the consent of SMPK, for use and enjoyment of the portion of the subject premises.
- (d) Thereafter, O.P. on several occasions, requested SMPK to issue written permission for using the portion of property by TIC and SMPK, in turn, vide their communication dated 30.12.1986, granted permission to O.P. for subletting the structure of the premises.
- (e) All throughout, the TIC had been making payment of Rents to O.P., who, however, inspite of several requests made, never issued any receipt/s to TIC. However, a copy of Rent receipt has been annexed with the application.

By Order of
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

18.10.2022
Hd. 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.

1256, 1256/D of 2011

Order Sheet No.

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

Indian Monolithic Refractories

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17.10.2022

(f) SMPK never demanded any rent from TIC as the same was paid by TIC, through O.P.

(g) The instant proceeding is bad for mis-joinder and non-joinder of parties.

(h) No notice of eviction was served by SMPK upon TIC, in spite of knowledge of tenancy right of TIC over the subject premises.

SMPK, in reply to the said written objections filed by O.P. dated 06.04.2018, submitted their comments in terms of the application dated 20.04.2018 and the key points of contention/refutation may be summarized as follows :-

(a) The sub-tenancy rights were given to the entities viz. Shri Ramswamy (99.406 sqm), M/s Telex Co. (89.930 sqm) and M/s Powertone International (236.530 sqm) vide letter dated 30.12.1986. However, no such sub-tenancy right was ever given to said M/s Tetex Industrial Corporation/ TIC;

(b) The sitting occupants like TIC do not have any locus standi and therefore, is not in a position to challenge the proceeding on the ground of 'mis-joinder' or 'non-joinder' of parties. The sitting occupant, TIC, viz., one Tetex Industrial Corporation, is a rank outsider and does not enjoy any rightful claim over SMPK premises;

(c) The appearance of sitting occupant/ TIC before this Forum, ipso facto, indicates that there is an unauthorised parting with the possession of the premises;

TIC was given liberty to deal with the statements made by SMPK through their application/ re-joinder dated 20.04.2018 and therefore, TIC preferred the application dated 11.05.2018, praying, inter alia, for production of 3 (three) documents, viz. the letter of SMPK dated 30.12.1986 allegedly granting permission to Indian Monolithic Refractories/ O.P. to sub-let the premises,

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SYAMA PRASAD MOOKERJEE PORT
18.10.2022
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. 1256, 1256/D Of 2011 Order Sheet No. 43

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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copy of the application allegedly made by Indian Monolithic Refractories/ O.P. for obtaining permission for induction of sub-lessee/ sub-tenant in the premises and the documents on the basis of which sub-tenancy right was granted in favour of M/s Telex Co. In other words, TIC through the said application dated 11.05.2018, made a requisition for documents/ evidences, if any, on the basis of which 'sub-tenancy' right was supposedly created over the subject occupation. On the grounds of the principles of natural justice, SMPK was directed to hand over TIC, the documents sought by them, if available, as per the records. During the course of hearing, SMPK vide their application dated 25.06.2018, filed a copy of the letter dated 30.12.1986 issued by SMPK, communicating their 'no objection' to O.P.'s sub-letting the respective portions of structures on the lease hold land to 'Shri Ramswamy', 'M/s Telex Co'. and 'M/s Powertone International'. TIC was given the liberty to deal with the statements furnished by SMPK through their rejoinder. Thereafter, SMPK preferred another application dated 25.07.2018, enclosing a communication dated 22.09.1983 of O.P. intimating SMPK that O.P. is ready and willing to pay "extra amount of rent" for the occupation of M/s Tetex Industrial corporation and M/s. Power International as long as they remained in the occupation. It is stated by SMPK that in the absence of the original tenant, i.e. M/s Indian Monolithic Refractories/O.P., the sitting occupant/TIC has no right of holding-over, particularly in view of the fact that the original lessee/O.P. has been treated to be unauthorized since 05.05.2006. The sitting occupant/TIC was given liberty to deal with the letter of SMPK dated 25.07.2018. Thereafter, the sitting occupant/TIC filed an application dated 13.08.2018 praying, inter-alia, for a direction upon TIC to file the reply to show cause by adding the applicant/TIC as an "interested party" to the instant proceeding. Upon perusal of the said application dated 13.08.2018, it appears that the sitting occupant/TIC has mainly reiterated their stand as taken in their previous submission, especially in reply to show cause dated 06.04.2018. It is argued

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18.10.2022
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: 1256, 1254/D Of 2011 Order Sheet No. 44

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
Indian Monolithic Refractories

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17.10.2022

that the sitting occupant/TIC has every right to protect their business and livelihood and as such is entitled to be added in the present proceeding as a "necessary party". It was further stated that TIC is entitled to get hold of copies of all the documents as filed/relied upon by SMPK, in the instant proceeding, in due observance of the principle of natural justice. However, a few additional grounds have been taken by sitting occupant/TIC vide their dated application dated 13.08.2018. The key points of their argument may be summarized as follows:

- i) From a plain reading of the permission letter of SMPK dated 30.12.1986, it is clear that an amalgamation of plate No. D-537 and D-538 took place as the O.P. was allowed to sublet more or less 61% of the total area of land to three different companies and by such an act of amalgamation, the nature and character of the said two plots had changed and it can be treated as a single plot of land. It is argued that the due to such amalgamation the original lease agreement executed with O.P. had lost its force.
- ii) SMPK by their conduct allowed O.P. and the said companies to occupy the entire demised land/structure msg. 693.52 Sq.m on acceptance of lease rent as well as the sub-letting fees.
- iii) The schedule of the notice to quit dated 04.04.2006 of SMPK failed to disclose a specific plate Number against whom the request to hand over clear, vacant and unencumbered possession was made and it was not understood as to how SMPK issued the said notice on a portion of land Msg.369.75 Sq.m separately after the said amalgamation took place.
- iv) The said notice to quit dated 04.04.2006 failed to disclose the name of unauthorized users and the respective areas under their occupation and as such the notice to quit is vague and has no merit in the eyes of 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

18.10.2022

Head Assistant

OFFICE OF THE E.D. 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. 1256, 1256/D Of 2011 Order Sheet No. 45

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

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- v) No documents establishing the service of notice to quit dated 04.04.2006 were produced by SMPK. The notice to quit is still unserved upon TIC and other interested parties in compliance of the statutory provision.
- vi) The claim of SMPK as referred to in schedule "B" of the original application dated 19.02.2007 is time barred and accordingly is not maintainable in the eye of law.
- vii) The applications of SMPK dated 27.09.2005, 01.08.2012 and 15.03.2017 have not been annexed with the order to show cause dated 20.02.2012 passed in terms of order No. 24 dated 16.02.2018.
- viii) This Forum has erroneously proceeded with the matter and passed 23 Nos. of orders since 2011 without issuance of the notice to show cause dated 16.02.2018.
- ix) The phrase "Compound Interest" was inserted in Sec.7 by way of amendment w.e.f. 13.03.2015 and as such the notice issued u/s 7 is erroneous and bad in law.

SMPK has filed their written comments dated 12.09.2018 against the said application filed by TIC dated 13.08.2018. It is stated by SMPK that plot no. D-537 is not related to the instant proceeding and order of eviction has already been passed by this Forum regarding the occupation. SMPK objected to the issue of amalgamation as alleged by TIC by submitting that separate bills were issued for those two plots (with plates D-538 and D-539) and the plots were never treated as a single one at any point of time. It is also stated that the schedule of the notice to quit dated 04.04.2006 clearly indicates the premises in respect of which the eviction proceeding is drawn and both the plot no. D-538 and D-539 have been mentioned in the said notice to quit, which must be read as a whole. It is also stated that the notices u/s 4&7 were issued by this forum on 16.02.2018 after the amendment of the act came into force in the year 2015 and as such, the notices do not suffer from any irregularity.

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18.10.2022
Deputy 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

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It was contended that the notice to quit was affixed on the said premises for dissemination to all concerned and the fact of appearance of TIC and the consequent filing of reply to the show cause clearly establishes that sufficient opportunities have been provided to TIC to represent their case. It was argued that TIC has no agreement with SMPK and on no occasion, the said TIC had submitted any document establishing its title as a sub-tenant. During the course of hearing on 28.01.2019, it was submitted by TIC that they had sought a clarification from SMPK through their application dated 13.08.2018 with regard to the discrepancy in the area given to TIC. Thereafter, SMPK filed an application dated 27.02.2019, wherein it has been stated that two plates viz D-537 (323.77 Sq.m) and D-538 (369.75 Sq.m) totaling an area msg. about 693.52 Sq.m was allotted to O.P. as a tenant. Subsequently, when O.P. prayed for sub-letting of a portion of a land to different entities, then upon approval of competent authority of SMPK, sub-tenancy right over the subject premises was created in favour of Shri Ramswamy (99.406 sqm), M/s Telex Co. (89.930 sqm) and M/s Powertone International (236.530 sqm) for structures, upon the strength of the letter dated 30.12.1986 and a specific plate number was assigned for such let out premises viz. SF-100/85 for the purpose of raising sub-letting fees. It is strongly argued by SMPK that TIC is a mere sub-tenant and their reply to the Show Cause Notice should strictly be limited to the area allotted to TIC only and the submissions of TIC relating to the entire plot of land as had been given to O.P. under lease is irrelevant, misleading and set out in order to distract from the moot issue and prolong the proceeding.

TIC filed their comments against the documents filed by SMPK in terms of the order dated 28.01.2019 and brought to the fore certain issues which have not been taken by them on earlier occasions. It is stated that SMPK, in terms of their letter dated 27.09.2005, issued a final notice to the O.P. that in case the breaches as alleged were not removed, appropriate legal action could be taken against them. In the said letter, the occupation

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No. D-537, D-538, D-539 and SF-100/85 were taken into consideration. The letter dated 27.09.2005 does not disclose anything that SMPK had issued any notice in respect of plate No. D-538, separately. The terms and conditions of the lease agreement with O.P. do not permit SMPK authorities to issue a common notice for two different plots by amalgamating the same. By the notice dated 04.04.2006, SMPK raised purported allegation of subletting without specifying the occupation No. /Plate No. for such subletting. As such, from the conduct or pleading of SMPK, it is clear that the matter has all along been wrongly proceeded by SMPK, by amalgamating the said plates and treating the same to be a single one. It is also stated that SMPK has been charging excess subletting fees from O.P. by flouting the land Policy Guidelines and that the lease agreement with O.P. does not authorize SMPK to charge subletting fees jointly with the rent for the said plates. It is also stated that O.P. has squared off the principal amount of rent and taxes with regard to the demised land, subsequent to the filing of original application of SMPK dated 19.02.2007 and SMPK has accepted the same. The statement of SMPK does not reflect the payments made by O.P. which had subsequently been adjusted against the principal dues on account of compensation.

TIC filed their written notes of submission on 13.03.2019, mainly reiterating the points/issues taken by them through their earlier pleadings in the context of which a judgment delivered by the Hon'ble Supreme Court of India regarding the time barred claim in Kalu Ram's case, reported in AIR 1976 SC 1637, was cited. It was argued that SMPK, in terms of their pleading dated 27.02.2019, has practically admitted that two plots viz. D-537 & D-538 were allotted to O.P., as a single tenant and it was not possible for SMPK to allow subletting of the Structure area Msg. 425.866 Sq.m under any of those plates, without amalgamating them and SMPK has no right to do the same as an order of eviction has already been passed by this Forum with regard to plate No.D-537, which is not the subject matter of the instant

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proceeding. SMPK has admitted that permission for subletting of structures was allowed only for plate No. D-538 and D-539 in terms of the letter of SMPK dated 30.12.1986.

Now, while passing this Order I must say that I have satisfactorily heard the submissions/arguments advanced by the parties and carefully considered the papers/ documents/ evidence produced before this Forum. I find the following issues have come up for adjudication before this Forum of Law:

1. Whether the proceedings is maintainable against O.P. or not;
2. Whether O.P. has defaulted in making payment of rental dues to SMPK or not;
3. Whether SMPK's claim on account of Rent, calculated on the basis of Schedule of Rent Charges (SoR), as published in the Calcutta Gazette, has any force of law in determining the quantum of dues/charges as payable by O.P. to SMPK or not;
4. Whether the allegation of TIC that SMPK has been Charging excess subletting fees flouting the Land Policy Guidelines is tenable or not;
5. Whether SMPK by its conduct allowed O.P./sitting occupants/authorized sub-tenants to use and enjoy the Port Premises in question upon acceptance of the charges of rent/compensation or not;
6. Whether the O.P. or TIC has the authority to occupy the Public Premises in question upon termination of the lease and requisition made by SMPK in terms of notice to quit dated 04.04.2006 or not;
7. Whether the notice of ejectment dated 04.04.2006, passed against the lessee/ Indian Monolithic Refractories at the instance of a lessor/ SMPK is also binding upon the sub-tenants of Indian Monolithic Refractories (here in this case TIC) or not;
8. Whether it has been the obligation of O.P. or TIC under law to hand over vacant, peaceful and unencumbered possession to

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- SMPK after expiry of the period mentioned in the notice to quit dated 04.04.2006 or not.
9. Whether the instant proceedings suffers from 'mis-joinder' and/ or 'non-joinder' of parties or not;
 10. Whether an amalgamation of Plot No. D-537 and D-538 has actually taken place in the facts and circumstance of the case or not;
 11. Whether O.P. has unauthorisedly parted with the possession of the premises or not;
 12. Whether TIC is entitled to claim better treatment/right than the right/s available to O.P. as lessee or not;
 13. Whether the claim of the SMPK can be said to be barred by the laws of "Limitation" as claimed by TIC;
 14. Whether the notice to quit dated 04.04.2006 is valid and lawful or not;
 15. Whether O.P. is liable to pay damages for wrongful occupation to SMPK or not;
 16. Whether the notice u/s 7 issued by this forum on 20.02.2018 (vide Order no 24 dated 16.02.2018) does suffer from any irregularity/impropriety after the amendment of the Act, came into force in the year 2015 or not;

With regard to **Issue No. 1**, I must say that the properties owned and controlled by the Port Authority/ SMPK have 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 an unauthorized occupant into the public premises with the prayer for order of eviction, recovery of rental as well as compensation dues against the O.P., on the plea of surcease of the authority to occupy the premises as earlier granted to O.P. in respect of the premises in question. So long as the property of the Port Authority/ SMPK falls under the purview of "public

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premises" as defined under the Act, the adjudication process, by due service of Show Cause Notice/s u/s 4 & 7 of the Act, is very much maintainable and therefore any question raised about the maintainability of proceedings before this Forum of Law is extraneous and fit to be rejected.

To take this view, I am fortified by an unreported judgment of the Hon'ble High Court, Calcutta delivered by Hon'ble Justice Jyotirmay Bhattacharya J. on 11.03.2010 in Civil Revisional Jurisdiction (Appellate Side) being C.O. No. 3690 of 2009 (M/s Reform Flour Mills Pvt. Ltd. -Vs- Board of Trustees' of the Port of Calcutta), wherein it has been observed specifically that the Estate Officer shall have jurisdiction to proceed with the matter on merit, even there is an interim order of *status quo* of any nature in respect of possession of any public premises in favour of anybody by the Writ Court.

Relevant portion of the said order is reproduced below:

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

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

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

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"The legal issue that has arisen is as to the extent of Estate Officer's authority under the said Act of 1971. While it is an attractive argument that it is only upon an occupier at any public premises being found as an unauthorized occupant would be subject to the Estate Officer's jurisdiction for the purpose of eviction, the intent and purport of the said Act and the weight of legal authority that already bears on the subject would require such argument to be repelled. Though the state in any capacity cannot be arbitrary and its decisions have always to be tested against Article 14 of the Constitution, it is generally subjected to substantive law in the same manner as a private party would be in a similar circumstances. That is to say, just because the state is a Landlord or the state is a creditor, it is not burdened with any onerous covenants unless the Constitution or a particular statute so ordains"

The judgment and order passed by the Hon'ble Division Bench of Calcutta High Court, particularly to the paragraphs 28 and 29 regarding the duty cast upon the Estate Officer under P.P. Act, in dealing with the scope for adjudication process is very instrumental in deciding the point at issue. The relevant portion of the judgment is reproduced below :-

Para -28 "After the Ashoka Marketing case the question that is posed here should scarcely have arisen. Any further doubt is now settled by the Nusli Neville Wadia judgment. Though an Estate Officer under the said Act is not required to be versed in law, he has sufficient powers to decide the question as to whether a noticee u/s 4 of the said Act is an unauthorised occupant and it is adjudication of such score against the noticee that will permit him to proceed to evict the occupant adjudged to be unauthorised. Just as in the case of any Land Lord governed by the Transfer of Property Act such land lord would have to justify his decision to determine the lease or terminate the authority of the occupier to remain in possession in a Civil suit instituted either by the Land Lord for eviction or by the Lessee or occupier to challenge the notice, so is it with a statutory authority land lord under the said

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Act of 1971. The said Act merely removes the authority of the Civil Court to adjudicate such issue and places it before an Estate Officer under the said Act to decide the matter in summary proceedings. The estate officer has to look into all materials before him and, in fit cases, receive oral evidence before he can arrive at a conclusion as to whether the noticee u/s 4 of the said Act is in unauthorised occupation of the Public Premises. If he holds that the noticee is, indeed, an unauthorised occupant he proceeds to remove the noticee and his belongings from the Public Premises; if he finds that the noticee is entitled to continue in possession, the matter is over. It is only the entire scope of adjudication on such issues that it removed from a Civil Court and is placed before the estate officer; the substantive law under the Transfer of the Property Act may still be cited before the estate officer and taken into account by him for the purpose of his adjudication. The usual process under the Civil Procedure Code is merely substituted by a summary procedure before the estate officer. The only difference is that the lessee or occupier of any Public Premises may not bring a matter before the estate officer of his own accord, such lessee or occupier only defend his position as respondent if the estate officer is moved by the statutory authority landlord"

Para-29 "

..... As in a Civil suit that a landlord would be required to institute if the lessee or occupier did not pay heed to a notice to quit, so would a statutory authority landlord be liable to justify, before the estate officer, its decision to determine the lease or revoke the occupier's authority to remain possession of the Public Premises. It is not an Anamallai Club situation where a notice to quit is issued the previous moment and bulldozers immediately follow".

In view of the authoritative decisions as cited above, I have no hesitation in my mind to decide the issue accordingly.

With regard to **issues No 2, 3, 4 and 5**, it is the case of SMPK that the possession of the subject premises was granted to O.P./

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Indian Monolithic Refractories by SMPK on a short term lease basis. In support of such contentions, SMPK has filed a copy of the lease agreement dated 30.01.1975, executed with O.P./ Indian Monolithic Refractories, under the cover of SMPK's original application dated 19.02.2007. The position, has been confirmed by TIC vide its reply dated 06.04.2018, wherein it has specifically been mentioned in paragraph no. 6, that O.P./ Indian Monolithic Refractories was inducted as a lessee by SMPK way back in 1975. The statement has further been re-confirmed by TIC vide their subsequent applications dated 06.04.2018, 11.05.2018 etc. In view of corroboration of SMPK's statement by TIC that O.P./ Indian Monolithic Refractories was a lessee of SMPK and in view of filing of a copy of the executed lease deed, I find that there is no bar in accepting that O.P./ Indian Monolithic Refractories had been a lessee of SMPK.

Now, as per law, monthly lease like the one granted to O.P./ Indian Monolithic Refractories, continues only on the basis of timely payment of monthly Rent bills and non-payment of the same, even for a fraction of a period, is enough to vitiate the contract.

It is the case of SMPK that O.P. has defaulted in payment of rental dues of SMPK, as charged in terms of the provisions laid down in Major Port Trust Act, 1963 and now, inter-alia, in terms of 'The Major Port Authorities Act, 2021'. In support of such submissions, SMPK has produced the detailed computerized statement of accounts dated 15.03.2017 and 15.06.2016, in respect of plate no D 538 and D 539, respectively, under the cover of its application dated 15.03.2017. I have carefully considered both the said statement of accounts and come across with the fact that no payments, whatsoever, were made on account of both the plates for a very long period of time after 2010. It is apparent that the last payment was made on account of individual plates, sometime in February, 2010 which had been adjusted against the dues of SMPK for the month of October/ November, 2007. During the course of hearing, I am given to

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understand that adjustment of the payments made by a party is being done SMPK, following the "FIFO" method of accounts. Even if we assume (without necessarily admitting the same in absence of clear documentations) that TIC had been paying rent to O.P./ Indian Monolithic Refractories, who in turn, did not deposit the same to SMPK, it is apparent from the said statement of accounts that huge payment has become due on account of O.P. for a prolonged period of time. In my view, statements, maintained by the statutory authority like SMPK in the usual course of business have definite evidentiary value, unless challenged by/through any other fortified documents/evidences etc, ready to bear the test of legal scrutiny. Records produced by the SMPK in the form of Statement of Accounts maintained in official course of business, reveal that last payments with regard to both plate nos. D 538 and D 539 were made years ago, violating the basic condition of Lease. Now, the case as has been brought out by TIC sounds very ironical, in as much as their very submissions that though it had made several payments to O.P./ Indian Monolithic Refractories, the same had not been, in turn, deposited with SMPK. Further, in terms of paragraph 10 (l) at page no 5 of TIC's application dated 06.04.2018, it was never "a defaulter in payment of rent upto 2009". It is also the case of TIC that SMPK never made any rent demand from TIC, as it had been paying rent through to O.P./ Indian Monolithic Refractories. It may be mentioned in this context, that it is a settled position of Law that a lessee like O.P. or a sub-tenant like TIC, irrespective of the fact of their exercise of authority on the premises, with regard to their status of being either "authorised" or "unauthorised" with regard to the enjoyment of the said premises, by dint of existence of a jural relationship by and between the contracting parties or determination of such relationship through natural efflux of time, or termination thereof, is under legal obligation to pay SMPK the rents/ charges for their respective periods of occupations, whether demanded by SMPK or not, as long as the possession of SMPK's premises is being enjoyed by each of them. I find that the copies of said statement of accounts of SMPK have been handed

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over to the appearing party/ TIC on 30.01.2019. As per 'Clause X' of the agreement of lease dated 30.01.1975, SMPK has the authority to resume the demised land in default of payment of rent etc. by the O.P. There is no justification forthcoming from either the O.P., who remained absent in the present proceedings or the sitting occupant /TIC, as to how it is entitled to enjoy the public premises without paying the due Rent/ Charges to the statutory authority, viz, SMPK here, for decades altogether. In my view, O.P. or in case, the sitting occupant /TIC, have lost all right to occupy the premises in view of their failure to liquidate the estate dues in totality.

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/ TIC cannot claim continuance of its occupation without making payment of the requisite charges as mentioned in the Schedule of Rent Charges. It requires mention here that SMPK is the successor in interest of the erstwhile Commissioners for the Port of Kolkata which is a 'Local Authority', as defined under the General Clauses Act, 1897 (Section 3) and West Bengal General Clauses Act, 1899 (Section 3(23)). On the application of the Major Port Trusts Act, 1963 (since repealed in terms of the Major Port Authorities Act, 2021), all properties, assets and funds etc. vested in the Central Government or, as the case may be, in any other Authority (Commissioners for the Port of Calcutta constituted under the Bengal Act) for the purpose of Port was immediately vested in the Board (SMPK Board under Section 29 of the MPT Act). The Port Trust Authority, from time to time by issuance of notification in the Official Gazette, fixed the scale of rates on which lands and structures belonging to Port Authority are to be let out. In terms of the power granted u/s 52 of the Major Port Trusts Act, 1963, the Central Government was to approve such rates before it was made applicable. In 1997, Sec. 52 was repealed and an alternative mechanism was evolved by which power to fix rent was assigned to the Tariff Authority of the Major Ports. Sec. 49 of M.P.T Act was also amended by the Port Laws (Amendment)

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SYAMA PRASAD MOOKERJEE PORT



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Act 1997 with effect from 09.01.1997. The validity of these provisions of the MPT Act was upheld by the Hon'ble Supreme Court in the case of Luga Bay Shipping Corporation -Vs- Board of Trustees of the Port of Cochin and Ors. Reported in AIR 1997 SC 544 = 1997(1) SCC 631. In the course of hearing, I find that the charges claimed by SMPK are on the basis of the said Schedule of Rent Charges as applicable for all the tenants/occupiers of the premises, in similarly placed situations and such Schedule of Rent Charges is the notified rates of charges, under provisions of the Major Port Trusts Act 1963.

Hence, I am convinced that O.P. violated the condition of tenancy under Lease by way of default in making payment of rental bills. Mere claim that the actions of SMPK are arbitrary/ excessive or not as per the Schedule of Rent Charges is not sufficient to defend the interest of TIC/ O.P. and the cause of action initiated by SMPK, regarding non-payment of rental dues, is very much sustainable. In my view, such claim of charges for Rent by SMPK is based on sound reasoning and should be acceptable by this Forum of Law.

Thus, the issues are decided accordingly.

A conjoint dealing with these issues **issues No. 6, 7 and 8** is found convenient. It is understood that the possession of the subject premises was granted by SMPK to O.P. on short term lease basis. It appears from the records that SMPK has submitted a copy of the lease agreement dated 30.01.1975, executed with O.P./ Indian Monolithic Refractories, under the cover of SMPK's original application dated 19.02.2007. The nature of allotment/ grant of the Public Premises on lease basis was never under challenge in the present proceedings. No case has been made out on behalf of the O.P. or TIC as to how they can escape from the conditions for grant of lease and that too, after accepting possession of the premises on such terms and conditions, and paying monthly rent for some period of time to SMPK.

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Field Assistant
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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

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Now, as per 'Clause VI' of the lease agreement dated 30.01.1975,

"Any notice required to be given to the lessee hereunder may be served on the lessee by sending the same through the post, addressed to them at the address above mentioned and shall be deemed to have been duly served on them on the day next subsequent to the day on which it was posted".

A lessee like O.P. or sub lessee like TIC is bound to comply with all the terms and conditions for grant of lease and failure on the part of the lessee/ sub lessee to comply with the fundamental conditions for grant of such lease, that is to say, non-surrender of the premises after expiry of the period mentioned in the notice to quit, can definitely entitle the lessor/ landlord to exercise their concomitant right to resort to the appropriate recourse of law. It appears from records that the lease had been terminated by SMPK authorities in terms of the notice to quit dated 04.04.2006, requesting O.P. to quit, vacate and deliver up the peaceful possession of the premises to SMPK on 05.05.2006. The receipt of the notice is under challenge in the proceeding by sitting occupant /TIC. According to TIC, no separate notice had been served by SMPK to TIC, inspite of the knowledge that TIC is the sub-tenant of the original lessee Indian Monolithic Refractories/ O.P.

Now, the question left for consideration is how far TIC can claim their occupation as an "authorized" one. It would not be out of scope to mention that when the rights of O.P. (Indian Monolithic Refractories, the original lessee) to use and enjoy the public premises in question has come to a surcease in terms of the notice to quit dated 04.04.2006, anybody asserting any right through O.P./ Indian Monolithic Refractories also stands automatically extinguished. The notice of ejectment dated 04.04.2006 passed against a lessee at the instance of a lessor is binding not only upon the lessee, but also upon his sub-tenants as the sub-tenants, like TIC, have no right, separate/stand-alone

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and independent of the right of their lessor. Mere occupation into the Port property for a considerably long period, as stated by TIC, does not confer any right upon it to hold on to the properties for enjoyment of the same as authorized occupant. Here, Section 2 (g) of the P.P. Act shall come into play in deciding the occupation as unauthorized. It was made clear by SMPK that any person/s whoever may be in occupation is directed to vacate the premises in terms of the notice to quit dated 04.04.2006. As per the Transfer of Property Act, a lessee like O.P. is bound to deliver up vacant and peaceful possession to the landlord (SMPK) in its original condition after expiry of the period of lease.

Thus, in my understanding, the "authority" of O.P. came to an end with the expiry of the period mentioned in notice to quit dated 04.04.2006 and the Port Authority was free to take actions against O.P. by resorting to appropriate recourses of law, to get back the possession of the premises. During the course of hearing, a forceful argument / submission has been made from the end of the Port Authority to get back the possession of the premises after such expiry of the period mentioned in notice to quit dated 04.04.2006. It is pleaded that Port Authority is lawfully entitled to protect their legal right as the landlord, so that nobody can continue to unauthorisedly occupy the said premises under the plea of 'consented occupation'. I find no element of consent on the part of the SMPK Authority in the form of expression of its assent for continuance in such occupation by O.P., after expiry of the period mentioned in the said notice to quit.

In view of the above, I am firm in holding that O.P. or sub tenant TIC has no authority to continue to occupy with the Public Premises in question, upon expiry of the period mentioned in notice to quit dated 04.04.2006 ; and, in the ordinary sequence of events, as mandated in terms of the grant of the lease by SMPK, the O.P./ TIC was under legal obligation to hand over vacant, peaceful and unencumbered possession of the premises to SMPK, after expiry of the period mentioned in the notice to

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quit dated 04.04.2006 and a demand for possession from SMPK's end, conveyed through the instrument of the original application before this Forum, is sufficient to initiate action against O.P. for recovery of possession.

Hence, the issues are decided accordingly.

With regard to **Issue No 9**, reference may be drawn to a specific clause in the Lease Deed duly executed by and between SMPK and the O.P. I may reiterate here that 'Clause VI' of the said agreement deals with the issue of 'Service of Notice' to the Lessee i.e. the O.P. in the instant case. It appears that the notice to quit dated 04.04.2006 was issued to the O.P. at the recorded address of O.P., as is mentioned in the Deed of Lease as '16, Shakespeare Sarani, Kolkata- 700 071'. Hence, the requirement under the contractual agreement between the parties as mentioned in the deed of Lease was complied with by SMPK. Now, it can be logically construed, in the facts and circumstances of the case, that TIC, being the sub-tenant of O.P./ Indian Monolithic Refractories, duly asserted their rights through the O.P./ Indian Monolithic Refractories. Now, the question arises as to whether anybody asserting any right through O.P. can deny/ repudiate their liability/responsibility with regard to non-performance or non-observance of any terms and conditions of lease as granted to O.P. by the Port Authority, by taking a shield of an entirely technical issue such as non-joinder of parties. In my view, when the rights and liabilities of O.P. have been determined by SMPK upon the service of notice of ejectment, demanding possession of the premises, anybody asserting any right through O.P. is also served with the notice of ejectment. I am firm in holding that if it is made clear that any person/s whoever may be in occupation is directed to vacate the premises in terms of the notice of ejectment, all person/s whoever may be in occupation are also advised to vacate the premises similarly.

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Hence, it is my considered view that TIC has no right for praying dismissal of the proceeding for non-joinder or mis-joinder of parties.

Hence, the issue is decided against TIC.

With regard to **Issue No 10**, an interesting submission has been made by TIC that in terms of the permission letter of SMPK dated 30.12.1986, it is clear that an amalgamation of plate No. D-537 and D-538 took place as the O.P. was allowed to sublet more or less 61% of the total area of land to three different companies and by such act of amalgamation, the nature and character of the said two plots had changed and that it can be treated as a single plot of land. It is argued by TIC that the due to such amalgamation, the original lease agreement executed with O.P. had lost its force. It was argued by TIC that the schedule of the notice to quit dated 04.04.2006 of SMPK failed to disclose a specific plate number against whom the request to hand over clear, vacant and unencumbered possession was made and it was not understood as to how SMPK issued the said notice on a portion of land Msg.369.75 Sq.m separately after the said amalgamation took place.

I have considered the submissions of TIC with all its import and content. I must admit that though at the initial stages of hearing, I was impressed with the above submissions of TIC regarding the purported amalgamation of plates, at the later stage of hearing, when I have thoroughly perused the records of the case, I find that the submission of TIC is nothing but a misconstrued one. In this regard, the contents of the said permission letter dated 30.12.1986 issued by SMPK to O.P. plays a pivotal role. Upon a careful reading of the said letter dated 30.12.1986, it appears that the sub-tenancy rights had been granted to the entities, viz. Shri Ramswamy (99.406 sqm), M/s Telex Co. (89.930 sqm) and M/s Powertone International (236.530 sqm) by SMPK on the "STRUCTURES" measuring about 99.406 sqm (to Shri Ramswamy), 89.930 sqm (to M/s Telex Co). and 236.530 sqm (to M/s Powertone International). In other

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words, SMPK vide their application dated 30.12.1986 communicated their 'no objection' to the O.P.'s sub-letting the *respective portions of structures* on the lease hold land to 'Shri Ramswamy', 'M/s Telex Co'. and 'M/s Powertone International'. The O.P. was given permission to sublet different portions of *structures* to different entities in terms of the letter of permission dated 30.12.1986. TIC, in their reply dated 06.04.2018, in fact stated that they are operating business from the land measuring "1000 sq.ft. *alongwith the asbestos structures*" at plot no D-538. Thus, the issues set up by TIC that an amalgamation of the plates actually took place, does not stand the rigour of factual scrutiny in the instant matter. It is a totally misconceived approach of TIC that it failed to comprehend the actual contents of the permission letter of SMPK dated 30.12.1986.

Hence, the issue is decided against TIC.

The **Issue No 11 and 12** requires serious discussion. SMPK has specifically alleged that O.P. parted with possession in favour of the third parties, namely TIC. In his applications before this Forum, the TIC has contended that it is not an unauthorised occupant inasmuch as it came into possession on the strength of a letter of permission of SMPK dated 30.12.1986. Now, an issue comes as to the ascertainment of the status of TIC, in the public premises in question. As discussed above, there is no doubt or confusion that the O.P. was a lessee of SMPK, in the public premises in question. The original tenant /O.P. is absent and the proceeding was attended by sitting occupant/ TIC, who enjoys no right in the absence of the original lessee. As per law, a person cannot convey a better right/title than he himself has. It can be inferred from the discussions as stated above that the O.P. has lost its authority to occupy the Public Premises in question and as such any transferee of O.P., like the occupant TIC, has no interest over the land in question, as is understood in law and hence any question of TIC's authority, is not at all acceptable in law. Any proposition regarding transfer of any structure standing on the land also does not inspire confidence, inasmuch as such a

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structure has no separate legal identity independent of the land on which it stands.

Against the above backdrop, I have no hesitation to conclude that the "Agreement" in question of TIC with Indian Monolithic Refractories/ O.P. confers no independent right, title and interest to TIC. The arguments advanced by TIC cannot sustain itself because a sub-tenant like TIC cannot claim better treatment/right than the right available by O.P. as lessee. In other words, TIC can at best assert its right, whatever its nature may be, through the subsisting right of O.P., as lessee and in the event of the right of lessee/O.P. being no more in existence/already determined, TIC, as sub-tenant, has no right at all in respect of the property in question. In the facts and circumstances of the case, TIC has no right to hold on to the property in the event of determination of lease hold interest of O.P.

Thus the issues are decided accordingly.

With regard to **Issue No 13**, i.e. on the question of time barred claim of SMPK on "limitation" and applicability of Limitation Act, I have carefully considered all the submissions/ arguments made on behalf of O.P. and duly applied my mind.

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

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Procedure while trying a suit in respect of summoning and enforcing attendance of any person and examining him on oath which requires the discovery and production of documents. Section 8 of P.P. Act makes it abundantly clear that an Estate Officer under P.P. Act enjoys a very restricted power of CPC. As per CPC, the courts shall have jurisdiction to try all suits of a civil nature, excepting suits for which their cognizance is either expressly or impliedly barred. As per Sec.3 and 2(j) of the Limitation Act 1963, the period of limitation as prescribed in the Limitation Act (as per Schedule of the Limitation Act) applies for "suit" etc. instituted after the prescribed period which shall be dismissed although limitation has not been set up as defense. For adjudication of a "suit" a court must have to be governed by Civil Procedure Code and Indian Evidence Act. But P.P. Act provides a complete code. Civil Procedure Code and Indian Evidence Act are not applicable here (New India Assurance Case -2008 (3) SCC 279 = AIR 2008 SC 876). In the P.P. Act, there is no prescribed period of limitation for filing applications with the prayer for eviction and adjudication of any claim on account of rental dues/damages etc arising out of any public premises though there is specific period of limitation for filing appeal against the order of the Estate Officer, the adjudicating authority under the P.P. Act as per section 9 of the said Act. It is worthy to record that there is no prescribed period of limitation in the Limitation Act itself for recovery of "damages".

To come into conclusion, I have borrowed my support from a decision by a three Judge's Bench of the Hon'ble Apex Court of India reported in (1995) Suppl 3 SCC 81(**Canara Bank -vs- Nuclear Power Corporation**) wherein it has been observed as follows :

"A tribunal is not necessarily a court in the strict sense of exercising judicial power merely because (1 it gives a final decision (2 it hears witnesses on oath (3 two or more contending parties appear before it between whom it has to decide (4 it gives decisions which affect the rights of subjects (5) there is an appeal

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to a court; and (6) it is a body to which a matter is referred by another body."

The Estate Officer while conducting the adjudicating process under P.P. Act is vested with limited powers of the Civil Court under section 8 of the P.P. Act like powers vested in the Special Court under section 9 of Special Court (Trial of Offences Relating to the Transaction in Securities) Act, 1992 and the Supreme Court in **Canara Bank's case** observed that **there is no time limit** within which the Special Court has to be approached for relief/s.

In **Nityananda M. Joshi & Ors -vs- Life Insurance of India & Ors** (AIR 1970 SC 209) the Hon'ble Supreme Court held that "*the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963.*"

It would not be out of scope to mention that Limitation Act bars the remedy by way of "suit" but not the entitlement. As the proceedings before this Estate Officer, a quasi-judicial Authority under the P.P. Act is not a court, I do not find any irregularity or illegality on the part of the Port Authority in claiming the "damages" as prayed for.

In view of the discussion above, I am firm in holding that this Forum of Law is very much competent under law to adjudicate the claim of SMPK against O.P. and Limitation Act has no application to the proceedings before the Estate Officer which is a quasi-judicial authority under P.P. Act and neither a Civil Court to be governed by the Civil Procedure Code nor a "court" within the scheme of the Indian Limitation Act.

Thus the issue is decided accordingly.

With regard to the **Issues No. 14 and 15** the discussions made against the foregoing issues are bound to dominate the subsequent disquisition. I have gone deeply into the submissions/ arguments made on behalf of the parties during

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the course of hearing. The properties of the SMPK are coming under the purview of "public premises" as defined under the Act. Now the question arises as to how a person becomes an 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 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.

As discussed above, as per the Transfer of Property Act, 1882, a lease is deemed to be revoked upon the expiration of the period mentioned in the notice to quit. The Port Authority, by service of a notice to quit dated 04.04.2006, had demanded possession of the premises from O.P. As such, I have no bar to accept SMPK's contentions regarding resumption of the Lease hold premises as discussed/decided against the aforesaid paragraphs, on an objective evaluation of the facts and circumstances of the case.

Now, the "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 mentioned in the notice to quit dated 04.04.2006, O.P. has lost its authority to occupy the public premises; and on evaluation of factual aspects involved in this matter, as already discussed in the aforesaid, it is a clear pointer to O.P.'s liability to pay damages/mesne profits as compensation to SMPK, for its continued unauthorized use and occupation of the said piece of land.

The Port Authority has formed a definitive and 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. or, in

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the case of TIC, is not in a position to claim continuance of its occupation, without making payment of the requisite charges as mentioned in the Schedule of Rent Charges.

To take this view, I am fortified by the Apex Court judgment report in **JT 2006 (4) Sc 277 (Sarup Singh Gupta -vs- Jagdish Singh & Ors.)** wherein, it has been clearly observed that in the event of termination of lease, the practice followed by Courts is to permit the 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, as an indemnity or reparation for the loss, suffered on account of the breach committed by the lessee after termination/revocation of the due period of lease.

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, an amount of 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 likely to result from the breach of it. Moreover, as per the law, O.P. is bound to deliver up vacant and peaceful possession of the public premises to SMPK after expiry of the period mentioned in the notice to quit dated 04.04.2006. I have no hesitation to observe that O.P.'s act in continuing occupation is unauthorized and the O.P. is liable to pay damages for unauthorized use and occupation of the Port property in question upto the date of delivering vacant, unencumbered and peaceful possession to SMPK. With this observation, I must reiterate that the notice to quit dated 04.04.2006, demanding possession from O.P. is valid, lawful and binding upon the parties.

With regard to **Issue No. 16** it is my considered view that payment of interest is a natural fall out and one must have to pay interest in case of default in making payment of the principal

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amount due to be paid. In 2015, the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 2015 has received the assent of the President, wherein several provisions of the Act have been amended. The said Amendment Act of 2015 was published by the Ministry of Law and Justice in Gazette Notification dated 14th March 2015. Section 7 of the Public Premises Act, 1971 gives power to the undersigned to order the payment of rent, damages in respect of premises defined as "public premises" in the said Act. The amended Section 7 of the Public Premises Act, 1971 is reproduced below:-

"Section 7 - Power to require payment of rent or damages in respect of public premises

(2A) While making an order under sub-section (1) or sub-section (2), the estate officer may direct that the arrears of rent or, as the case may be, damages shall be payable together with compound interest at such rate as may be prescribed, not being a rate exceeding the current rate of interest within the meaning of the Interest Act, 1978."

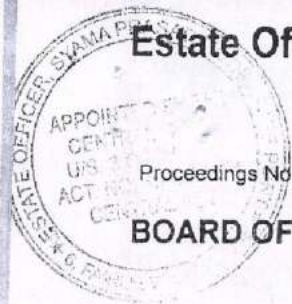
It may be noted that the words "compound interest" in the sub-section (2A) above were substituted by the said Notification for the original words "simple interest". Thus, it is obligatory on the part of this Forum, being constituted and exercising its powers under the provisions of Public Premises Act, 1971, to direct that the damages/ compensation/ mesne profit be payable with compound interest, instead of simple interest. It may be another case that SMPK follows the Schedule of Rent Charges (SoR) notified by the said Tariff Authority for Major Ports (TAMP). However, Compound Interest should be made applicable on outstanding dues as and when any adjudication is made by the Forum of the undersigned. Further, under Section 7 (2-A) of the Amended Act of 2015, this Forum is bound to direct that the arrears of rent and/or damages be payable with compound interest, the rate of which shall not exceed the current rate of

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interest within the meaning of 'the Interest Act, 1978 (Act No 14 of 1978)'. Such being the Law, this Forum is required to order levy of compound interest at a rate not exceeding the current rate of interest within the meaning of 'Interest Act'. As per Section 2(b) of the Interest Act, 1978 "current rate of interest" means the highest of the maximum rates at which interest may be paid on different classes of deposit (other than those maintained in savings account or those maintained by charitable or religious institutions) by different classes of scheduled Banks in accordance with the directions given or issued to Banking companies generally by the Reserve Bank of India under Banking Regulation Act, 1949.

Now, so far as the rate of interest is concerned, I have gone through the Weekly Statistical Supplement, for the relevant period, as published by the Reserve Bank of India in its official website and I have found that the highest rate of interest offered by State Bank of India stood at 6.45 % per annum. Since the interest rates of other classes of Schedules Banks are not readily available, I am constrained to accept the interest rate published by the State Bank of India, for the purpose of determining the highest of the maximum rate of interest. Hence, it is my considered view that the calculation furnished by SMPK in terms of the provisions of Public Premises Act, 1971 read with The Interest Act, 1978 is acceptable to me and the unauthorised entities are liable to make payment accordingly.

Thus the issue is decided accordingly.

In view of the discussions above, the issues are decided accordingly.

Now, therefore, the logical conclusion, which can be arrived at in view of the foregoing discussions, is that it is a fit case for allowing SMPK's prayer for eviction, as prayed for by their application dated 19.02.2007 for the following grounds/ reasons:

By Order of:
THE ESTATE OFFICER,
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
17.10.2022
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. 1256, 1256/D of 2011 Order Sheet No. 69

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
Indian Monolithic Refractories

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17.10.2012

1. That O.P./TIC has no authority to occupy the Public Premises in question upon expiry of the period mentioned in the notice to quit dated 04.04.2006.
2. That O.P./ TIC was under legal obligation to hand over vacant, peaceful and unencumbered possession to SMPK after expiry of the period mentioned in the notice to quit dated 04.04.2006.
3. That O.P. has palpably failed to discharge its liability to hand over possession of the public premises, as a Lessee, in terms of the Transfer of Property Act, 1882.
4. That the O.P. or in case TIC, has defaulted in making payment of rental dues/ occupational charges to SMPK.
5. That SMPK's claim on account of Rent is based on the Schedule of Rent Charges (SoR), as published in the Calcutta Gazette, having statutory force in law in determining the quantum of dues/charges as payable by O.P. /TIC to SMPK.
6. That the instant proceedings does not suffer from 'mis-joinder' and/ or 'non-joinder' of parties.
7. TIC cannot claim better treatment/right than the right/s available to O.P. at the time the lease was subsisting or even thereafter.
8. That no case has been established through evidence/ records that amalgamation of plots has actually taken place in the facts and circumstance of the case.
9. The instant proceeding under Public Premises Act, 1971 cannot be said to be barred by the laws of "Limitation" as claimed by TIC.
10. That O.P./ TIC has failed to bear any witness or adduce any evidence in support of its contention regarding "authorized occupation".
11. That notice to quit dated 04.04.2006 as issued to O.P. by the Port Authority is valid, lawful and binding upon the parties.
12. That occupation of O.P. or in case TIC has become unauthorized in view of Sec 2 (g) of the Public Premises Act

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SYAMA PRASAD MOOKERJEE PORT



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Appointed by the Central Govt. Under Section 3 of the Public Premises
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Proceedings No. 1256, 1256/A of 2011 Order Sheet No. 70

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
Indian Monolithic Refractories

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17.10.2022

and O.P. is liable to pay damages for unauthorized use and enjoyment of the Port property to SMPK upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

ACCORDINGLY, Department is directed to draw up formal order of eviction u/s.5 of the Act as per Rule made there-under, giving 15 days time to O.P. and/or 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 is/are liable to be evicted by this order and the SMPK /Port Authority is entitled to claim damages for unauthorized use and enjoyment of the property against O.P., in accordance with the Law, upto the date of free, fair, peaceful and 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 could be taken for execution of the order of eviction u/s. 5 of the Act as per Rule made under the Act.

In view of the discussions made above, it is my considered view that a sum of Rs 9,42,260.25 (Rupees Nine Lakhs Forty Two Thousand Two Hundred Sixty and Paise Twenty Five only) for the period from 01.11.2007 to 15.03.2017 is due and recoverable from O.P. by the Port authority on account of compensation/ mesne profit/ damage charges.

The O.P. must have to pay such dues to SMPK on or before 02.11.2022.

Such dues attract Compound Interest @ 6.45 % per annum, which is the current rate of interest as per the Interest Act, 1978 (as gathered from the official website of the State Bank of India) from the date of incurrence of liability, till the liquidation of the

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(Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 1256, 1256/D Of 2011 Order Sheet No. 71

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

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same, as per the adjustment of payments, if any, made so far by O.P., in terms of SMPK's books of accounts.

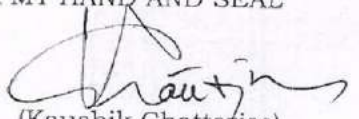
The formal order u/s 7 of the Act is signed accordingly.

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 15.03.2017 as well, till such time the possession of the premise continues to be under the unauthorized occupation with the O.P. SMPK is directed to submit a statement comprising details of its calculation of damages after 15.03.2017, indicating therein, 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 pay the dues/charges as aforesaid; SMPK is at liberty to recover the dues etc. in accordance with law.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL


(Kaushik Chatterjee)
ESTATE OFFICER

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

By Order of :
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

18.10.2022
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT