

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. 94 DT 07.01.2022
PROCEEDINGS NO.162/D,
163/D,164/D, 165/D 166/D OF 1993

Form " G "

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

1. M/s Grand Smithy Works (now known as Grand Smithy Worlds LLP)
A Registered Limited Liability Partnership Firm
having its office at 11, Hemanta Basu Sarani,
Kolkata- 700 069

AND ALSO AT

M/s Grand Smithy Works (now known as Grand Smithy Worlds LLP)
1, Girish Ghosh Road,
P.O. Belurmath, Dist. Howrah
Pin - 711202

AND ALSO AT

M/s Grand Smithy Works (now known as Grand Smithy Worlds LLP)
11, Government Place East,
Kolkata-700 001.

AND ALSO AT

Shri/Shrimati/M/s.

2. Akshay Agarwal,
Designated Partner of Grand Smithy Worlds LLP,
A Registered Limited Liability Partnership Firm
having its office at 11, Hemanta Basu Sarani,
Kolkata- 700 069.
3. Swadheen Agarwal,
Designated Partner of Grand Smithy Worlds LLP,
A Registered Limited Liability Partnership Firm
having its office at 11, Hemanta Basu Sarani,
Kolkata- 700 069.

.....Please see on reverse

4. Shiv Kumar Agarwal
Designated Partner of Grand Smithy Worlds LLP,
A Registered Limited Liability Partnership Firm
having its office at 11, Hemanta Basu Sarani,
Kolkata- 700 069.
5. Satyam Agarwal,
Designated Partner of Grand Smithy Worlds LLP,
A Registered Limited Liability Partnership Firm
having its office at 11, Hemanta Basu Sarani,
Kolkata- 700 069.
6. Shubham Agarwala,
Designated Partner of Grand Smithy Worlds LLP,
A Registered Limited Liability Partnership Firm
having its office at 11, Hemanta Basu Sarani,
Kolkata- 700 069.
7. Ankit Agarwal,
Designated Partner of Grand Smithy Worlds LLP,
A Registered Limited Liability Partnership Firm
having its office at 11, Hemanta Basu Sarani,
Kolkata- 700 069.
8. Sajjan Kumar Agarwal,
Designated Partner of Grand Smithy Worlds LLP,
A Registered Limited Liability Partnership Firm
having its office at 11, Hemanta Basu Sarani,
Kolkata- 700 069.
9. Manick Agarwala,
Designated Partner of Grand Smithy Worlds LLP,
A Registered Limited Liability Partnership Firm
having its office at 11, Hemanta Basu Sarani,
Kolkata- 700 069.

Whereas, in terms of the Order dated 16.09.2021 passed in the Contempt Petition (C) No 688/2020 in connection with SLP (C) 9055 of 2020, the Hon'ble Supreme Court of India was pleased to direct the undersigned, discharging powers and functions as the Estate Officer, Syama Prasad Mookerjee Port, Kolkata to examine the issues involved and quantify the amounts payable by the entities/ respondents in Contempt Petition (C) No 688/2020 for their occupation in the public premises of Syama Prasad Mookerjee Port, Kolkata /SMP, Kolkata' and after such assessment, to submit a Report thereof before this Hon'ble Court.

Whereas, following the dues process of Law, after giving hearing to you alongwith the representatives Syama Prasad Mookerjee Port, Kolkata and Shri Srikant Yadav and after going through the documents/ materials/ papers submitted on record, the Report has been prepared by the undersigned and placed the same before the Hon'ble Supreme Court of India in compliance of the said Order dated 16.09.2021.

Whereas, the Hon'ble Supreme Court of India upon perusal of the said Report and considering the matter, has been pleased to dispose of the contempt petition while passing the Order dated 25.11.2021 directing, inter alia, that the undersigned to recover the amounts as determined/ mentioned in the said Report against the other parties viz. Grand Smithy Worlds LLP and its designated Partners, being the Respondent Nos. 1 to 8 in the said contempt petition.

Now, therefore, in exercise of the powers conferred on me by the Hon'ble Supreme Court of India in terms of the Order dated 25.11.2021 passed in the



Contempt Petition (C) No 688/2020 in connection with SLP (C) 9055 of 2020 and in terms of 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 1,90,29,327.43, for 3 (three) plots viz. GR 43/1, GR 43/2 and GR 43/3 from 01.07.1983 to 21.03.2018 and

Rs 1,09,64,511.26, for 2 (two) plots viz. GR 43/4 and GR 43/6 from 01.02.1983 to 31.01.2018 as assessed by me as Compensation/ damages/ mesne profit on account of your unauthorised occupation of the premises to Syama Prasad Mookerjee Port, Kolkata, by 31.01.2022 (31st January, 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 @ 6.20 % 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. Accordingly, I hereby order you to pay the sum of Rs. 62,73,762.63, for 3 (three) plots viz. GR 43/1, GR 43/2 and GR 43/3 and Rs 44,51,646.66, for 2 (two) plots viz. GR 43/4 and GR 43/6 as assessed by me on account of Interest for your unauthorised occupation of the premises to Syama Prasad Mookerjee Port, Kolkata, by 31.01.2022 (31st January, 2022)

A copy of the reasoned order no. 94 dated 07.01.2022 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

Plate no - GR 43/1

Piece or parcel of land measuring 961.55 Sq.m or thereabouts is situate at Garvel siding, Thana South Port Police Station, Calcutta, District 24-Parganas. It is bounded on the north by the Trustees' land occupied by M/s. Grand Smithy Works, on the east and west partly by the Trustees' open land reserved as margin of safety alongside Railway siding and partly by the land occupied by Grand Smithy Works and on the south by the Trustees' land occupied by Grand Smithy Works.

Plate no - GR 43/2

Piece or parcel of land measuring 2149.68 Sq.m or thereabouts is situate at Garvel siding, Thana South Port Police Station, Calcutta, District 24-Parganas. It is bounded on the north by the Trustees' land on the east by the Trustees' land partly open and partly occupied by M/s. Grand Smithy Works, on the south by the Trustees' land occupied by M/s. Grand Smithy Works and on the west by the Trustees' drain.

.....Please see on reverse

Plate no - GR 43/3

Piece or parcel of land measuring 192.77 Sq.m or thereabouts is situate at Garvel siding, Thana South Port Police Station, Calcutta, District 24-Parganas. It is bounded on the north and east by the Trustees' land occupied by M/s. Grand Smithy Works, on the south by the Trustees' land partly reserved as Railway Margin of Safety and partly licensed to by M/s. Lee & Muirhead (India) Pvt. Ltd. and on the west by the Trustees' drain.

Plate no - GR 43/4

Piece or parcel of land measuring 2127.200 Sq.m or thereabouts is situate at Garvel siding, Thana South Port Police Station, Calcutta, District 24-Parganas. It is bounded on the north by the Trustees' leased to M/s. Lee & Muirhead (India) Pvt. Ltd and on the east by the Trustees' land reserved as Railway Margin of Safety, on the south by the Trustees' land occupied by M/s. Armen Georage & Co. Pvt. Ltd. and on the west by the Trustees' Roadway.

Plate no - GR 43/6

Piece or parcel of land measuring 259.757 Sq.m or thereabouts is situate at Garvel siding, Thana South Port Police Station, Calcutta, District 24-Parganas. It is bounded on the north by the Trustees' land occupied by M/s. Verma & Co. on the east by the Trustees' strip of open land reserved as Railway Margin of Safety alongside their Railway siding, on the south by the Trustees' land occupied by M/s. Grand Smithy Works and on the west by the Trustees' Roadway.

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

Dated: 07.01.2022



Signature and seal of the
Estate Officer.



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. 162/D, 163/D, 164/D, 165/D, 166/D of 1993 Order Sheet No. 113

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/s Grand Smithy Works (Now known as Grand Smithy Worlds LLP)

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FINAL ORDER

In terms of the Order dated 16.09.2021 passed in the Contempt Petition (C) No 688/2020 in connection with SLP (C) 9055 of 2020, the Hon'ble Supreme Court of India was pleased to direct the undersigned, discharging powers and functions as the Estate Officer, Syama Prasad Mookerjee Port, Kolkata to examine the issues involved and quantify the amounts payable by the entities/respondents in Contempt Petition (C) No 688/2020 for their occupation in the public premises of Syama Prasad Mookerjee Port, Kolkata (hereinafter referred to as 'SMP, Kolkata') and after such assessment, to submit a Report thereof before this Hon'ble Court.

In compliance of the said direction passed by the Hon'ble Court, I have issued notice individually, upon the appearing respondents in the Contempt Petition (C) No. 688/2020 viz. the Grand Smithy Worlds LLP (Respondent No 1), all of its Designated Partners (Respondents no 2 to 8) and Shri Srikant Yadav (Respondent No 9). A newspaper publication of such notice has also been made in widely circulated English daily 'The Times of India, Kolkata edition' on 12.10.2021 for a notice to all concerned regarding the proceedings to be held by the undersigned. The parties viz. Grand Smithy Worlds LLP and Shri Srikant Yadav have appeared before me through their respective Ld. Advocates. I have heard the parties on several occasions on 05.10.2021, 18.10.2021, 21.10.2021, 22.10.2021, 26.10.2021, 27.10.2021, 28.10.2021, 29.10.2021 and lastly on 01.11.2021 along with the representatives of SMP, Kolkata in order to quantify the dues payable by each of the entities for their respective period of occupation in 5 (five) no of plots (GR 43/1, GR 43/2, GR 43/3 GR 43/4 and GR 43/6) of land being the 'Public Premises' as defined under Section 2 (e) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as Public Premises Act, 1971) held by Grand Smithy Worlds LLP under certain terms and conditions as a tenant of SMP, Kolkata. I have recorded the submissions/ arguments advanced by the parties on daily basis in the 9 (nine) nos. of scheduled dates of hearings commencing from 05.10.2021 to

By Order of :

THE ESTATE OFFICER

SYAMA PRASAD MOOKERJEE PORT

CERTIFIED COPY OF THE ORDER

PASSED BY THE ESTATE OFFICER

SYAMA PRASAD MOOKERJEE PORT

12.01.2022

Head Assistant

OFFICE OF THE LD. ESTATE OFFICER

SYAMA PRASAD MOOKERJEE PORT.



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 162/D, 163/D, 164/D / 165/D, 166/D Of 1993 Order Sheet No. 114

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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01.11.2021. During the course of such process, I have carefully gone through the contentions advanced by the parties and the documents/ materials/ papers submitted on record.

Upon considering all, a Report has been prepared by the undersigned and the same has been filed before the Hon'ble Supreme Court of India. The Report contains the assessment of dues payable by each unauthorised occupant/s viz. Grand Smithy Worlds LLP and Shri Srikant Yadav for their respective period of occupation in the Public Premises in question from the date of incurrance of liability for payment till the possession of the premises were taken.

Pausing here for a moment, the historical development of the matter is required to be put forward, in a nutshell, for a better understanding of the factual aspects involved in the matter.

The instant proceeding No 162/D, 163/D, 164/D, 165/D, 166/D of 1993 arises out of the application bearing No. Lnd. 4104/4/14/VII/20/2092 dated 05.10.2020 filed by SMP, Kolkata, under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 praying for an order of compensation/damages and other charges etc. along with accrued interest in respect of the subject Public Premises, against M/s Grand Smithy Works (now known as Grand Smithy Worlds LLP). It is long back that the Final Order of eviction had been passed by this Forum on 02.11.2005 against the unauthorised occupant M/s Grand Smithy Works (now known as Grand Smithy Worlds LLP) for 5 (five) no of occupations being occupation plate nos GR/1 (measuring about 961.55 sqm), GR/2 (measuring about 2149.68 sqm), GR/3 (measuring about 192.77 sqm), GR/4 (measuring about 2127.200 sqm) and GR/6 (measuring about 259.757 sqm). Thereafter, an appeal viz. P.P. Appeal 06 of 2005 was preferred by the Grand Smithy Worlds LLP, which was eventually got dismissed on 27.11.2006. Thereafter, in terms of the provisions the Public Premises Act, the 'Authorised Officer' was appointed by this Forum to take over possession of the subject premises from the

By Order of :

THE ESTATE OFFICER

SYAMA PRASAD MOOKERJEE PORT

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SYAMA PRASAD MOOKERJEE PORT

Head Assistant

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

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unauthorised occupant. The Order directing the Police Authorities was passed by this Forum on 22.03.2018, requiring assistance of the concerned Police Station (West Port Police Station) for removing the unauthorised occupants from the said premises. Thereafter, it was intimated to this Forum that out of the 5 (five) no of occupations of the instant proceedings, the possession of 3 (three) occupations bearing no GR 43/1, GR 43/2 and GR 43/3 have been recovered by the Authorised Officer from the men and agents of the Grand Smithy Worlds LLP in 2018. It was also intimated that the possession of the rest occupations being occupation nos GR 43/4 and GR 43/6 have been found to be with one Shri Srikant Yadav, rank outsider to SMP, Kolkata's properties. In the meantime, Grand Smithy Worlds LLP has preferred a Writ Petition being W.P. No 9988 (W) of 2018 [M/s Grand Smithy Worlds LLP ~~EEB~~ & Ors Vs the Board of Trustees for the Port of Kolkata & Ors] before the Hon'ble Calcutta High Court, which was disposed of by the Hon'ble Court vide order dated 21.02.2019. The relevant portion of the Order is quoted below:

".....(a) SMP, Kolkata is directed to intimate the petitioners the total amount due and payable by them towards occupational charges, compensation and damages along with interest, if any, within a period of two weeks from date;

(b) the petitioners shall pay the said amount to SMP, Kolkata within two weeks thereafter;

(c) in the event such payment is made by the petitioners within the time stipulated above, SMP, Kolkata will allow the petitioners to continue in possession of the said plots of land till a fresh tender-cum-auction process is initiated in respect of the said plots of land;

(d) SMP, Kolkata shall allow the petitioners to participate in the said tender-cum-auction process and the petitioners would also be entitled to the first right of refusal;

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12.01.2022
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

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(e) The petitioners shall continue to pay the present occupational charges to SMP, Kolkata till the fresh tender-cum-auction process in respect of the said plots of land is initiated.....”

Being aggrieved and dissatisfied with the said order dated 21.02.2019, SMP, Kolkata has preferred an appeal being FMA No 545 of 2020 (MAT No 857 of 2019 with CAN No.6959 of 2019 with CAN No 6957 of 2019) before the Hon'ble Division Bench of the Calcutta High Court and the Hon'ble Division Bench was pleased to dispose of the said Appeal vide Order dated 24.02.2020 with the following direction/s:

“.....The private respondents must remove themselves, their men and machinery from the public premises in question in Taratala within a period of a fortnight from date. Not even a screwdriver or a screw of the private respondents' ownership should be left on the property at the end of two weeks from date. The Port will be entitled to throw away any property of the private respondents if left behind at the end of two weeks and the costs and charges therefor would be payable by the private respondent for leaving the place tardy. The auction will be conducted within a period of two months from the date of the private respondents removing themselves and their assets and properties from the premises in question. Adequate advertisements should be published for the sale or auction of the property. The private respondents and the other participants at the auction should have sufficient notice of the date and time fixed for the auction.

In the event the private respondents come out successful in the auction process, the Port will ensure that possession of the premises is made over to the private respondents within a week of the conclusion of the auction and even before other formalities may be completed, except receiving the entire consideration promised at the auction. The judgment and order impugned dated February 21, 2019 are modified to such extent. It goes without saying that the participation of the private respondents at the relevant auction will be subject to the private respondents having cleared all dues in terms of the order passed by the Estate Officer under the Act of 1971 and

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SSM
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12.01.2022
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

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subsequent occupation charges, if any. The Port should furnish the calculations of the amount that may be due and owing from the private respondents to the Port in terms of the order passed by the Estate Officer and the further occupation charges till the private respondents vacate the premises in question. FMA 545 of 2020 along with CAN 6957 of 2019 stand disposed of....."

Against the said Order dated 24.02.2020, passed by the Hon'ble Division Bench of the Calcutta High Court, Grand Smithy Worlds LLP has preferred Special Leave Petition being SLP (C) No 90555/2020 before the Hon'ble Supreme Court of India, and the Hon'ble Supreme Court of India has been pleased to dismiss of the SLP, vide Order dated 14.08.2020, with the following direction/s:

".....We have examined the judgment and the plea urged by learned counsel for the petitioner that there are other similarly situated tenants against whom orders have been passed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 who have been permitted to continue to occupy the premises upon payment of occupation charges at present market rate and the auction to be conducted with occupants in possession of the relevant premises.

We have examined the impugned order in the aforesaid context also and find the reasoning given in the impugned order unexceptionable. If the premises continue to be occupied by the petitioner whose status is a tress-passer, the possibility of getting an appropriate lease amount to the respondents in auction would be detrimentally affected as there would remain the possibility of the ingenuity of litigation by the tress-passer.

We would thus, like to put our imprimatur on the reasoning in the impugned order and affirm the same.

In view of the aforesaid, we are not inclined to exercise our jurisdiction to interfere under Article 136 of the Constitution of India.

At this stage, learned counsel for the petitioner submits that on account of the current scenario, some more time may be given to vacate the premises. Though we were initially disinclined to do so, we, still, grant time till 31st October, 2020 to hand over vacant and

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SYAMA PRASAD MOOKERJEE PORT
12.01.2022
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

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peaceful possession subject to furnishing of the usual undertaking in the Registry of this Court within two weeks from today.

The special leave petition is dismissed in terms aforesaid. Pending applications shall also stand disposed of....."

However, as the possession of the premises had not been handed over, in terms of the directives of the Hon'ble Supreme Court of India at that point of time, the SMP, Kolkata has filed the said Contempt Petition (C) No 688/2020 in connection with SLP (C) 9055 of 2020 before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court of India in terms of the Order dated 16.09.2021 was pleased to direct the undersigned to examine the issues involved and quantify the amounts payable by the entities/respondents in Contempt Petition (C) No 688/2020 for their occupation in the public premises of SMP, Kolkata and after such assessment, to submit a Report thereof before this Hon'ble Court. However, in the meantime the possession of the premises no GR 43/4 and GR 43/6 have been recovered by SMP, Kolkata through support of the concerned police station in compliance of the directives passed by the Hon'ble Supreme Court of India.

Now, I move forward with the discussion from the point I have left, in order to portray the historical chain of events. In compliance with the direction of the Hon'ble Supreme Court of India, I proceeded with such assessment of dues and found that the main contention of the Ld. Advocate appearing for Shri Srikant Yadav in terms of application dated 22.10.2021 read with application dated 01.11.2021 that as the possession of 2 (two) plots of land being occupation nos. GR 43/4 and GR 43/6 have been recovered from Shri Srikant Yadav, the liability of him towards liquidation of the dues extends only for the said 2 (two) plots and he is in no way liable to make any payment for the rest plots of land viz. GR 43/1, GR 43/2 and GR 43/3, whose possession is reportedly not taken from Shri Srikant Yadav. It has further been submitted that being a "Transporter" Shri Srikant Yadav has been in possession of the said 2 (two) plots of land on and from February, 2018 at the request of the partners of Grand Smithy Worlds LLP and used to draw draft in

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SYAMA PRASAD MOOKERJEE PORT

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Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/s Grand Smithy Works (Now known as Grand Smithy Worlds LLP) ^{VS}

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his name, as Grand Smithy Worlds LLP needed fund to meet their necessities. However, no piece of evidence of such contemplated occupation since 2018 has been produced by Shri Srikant Yadav. Objecting to such statement, the representative of SMP, Kolkata submitted that cheques have been forwarded by Shri Srikant Yadav since 2015 as occupational charges for all 5 (five) no. of plots in question namely GR 43/ 1, GR 43/ 2, GR 43/ 3, GR 43/4 and GR 43/6. SMP, Kolkata, in support of their contentions produced certain letters forwarding payments for Plot no. GR 43/1, GR 43/2, GR 43/3 etc. before the undersigned. However, upon perusal of such covering letters forwarding the payments for plot no GR 43/1, GR 43/2 and GR 43/3, the signature of the 'authorised signatory' could not be identified. No mention of the name of such 'authorised signatory' was also found. It was then, SMP, Kolkata as well as Grand Smithy Worlds LLP have been directed to file comments, evidence regarding such contemplated occupation of Shri Srikant Yadav in plot nos. GR 43/4 and GR 43/6. However, such efforts remained futile as no substantial piece of evidence has been filed either by Grand Smithy Worlds LLP or by SMP, Kolkata regarding the date of commencement of admitted occupation of Shri Srikant Yadav in plot no GR 43/4 and GR 43/6.

In such a scenario, where no evidence could be collected in spite of sufficient opportunities provided to the parties, this Forum could not and should not draw any presumption beyond the admission of Shri Srikant Yadav regarding his occupation in Plot no. GR 43/4 and GR 43/6 since February, 2018. Hence, I was constrained to accept the submission made by liable Shri Srikant Yadav and make him liable for the payment of occupational charges in respect of plot nos GR 43/4 and GR 43/6. Further, as no evidence with regard to the actual commencement date of occupation of Shri Srikant Yadav has been produced by any of the parties, I found that the best course of action would be if Shri Srikant Yadav is made liable for payment of occupational charges for Plot No. GR 43/4 and GR 43/6 on and from 01.02.2018 till the date of taking possession of the plots in 23.12.2020.

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12.01.2022
Head 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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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/s Grand Smithy Works (Now known as Grand Smithy Worlds LLP)

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Be that as it may, SMP, Kolkata was directed to serve copies of the detailed statement of accounts with regard to the subject occupations to both Grand Smithy Worlds LLP and Sri Srikant Yadav. In compliance, SMP, Kolkata has filed the application dated 21.10.2021 enclosing a detailed statement of outstanding dues with regard to the 5 (five) no. of occupations. Copies of such application is served upon both the Ld Advocates of M/s Grand Smithy Worlds LLP and Shri Srikant Yadav. The statement of accounts as enclosed in the said application dated 21.10.2021 has been explained in detail by the representatives of SMP, Kolkata to me as well as to the appearing parties viz. Grand Smithy Worlds LLP and Shri Srikant Yadav. Representative of SMP, Kolkata also submitted that 32 nos. of Demand Draft, Bankers' Cheque has become stale and may be encashed only if such instruments would be revalidated or filed afresh. Regarding the revalidation of Bankers' Cheque and Demand Drafts, it is needless to mention that such process might require sometime and such revalidation or filing of fresh instruments, would not, in anyway, bar the process of determination of the respective period of occupancy by the parties in the premises and the quantification of dues payable for such occupation.

On the other hand, Grand Smithy Worlds LLP has in terms of its application dated 26.10.2021, inter alia, challenged the statement of accounts furnished by SMP, Kolkata on the ground of its being erroneous and devoid of the breakup of payments received from them. Accordingly, both the parties i.e. SMP, Kolkata and Grand Smithy Worlds LLP were directed to sit for a reconciliation of accounts in order to find out the actual financial position involved in the matter and to file a Report thereof for my consideration. It is noted that such reconciliation of accounts took place on 28.10.2021, in the office of SMP, Kolkata duly attended by the representatives of Grand Smithy Worlds LLP and SMP, Kolkata. A Report of such reconciliation of accounts dated 28.10.2021, duly signed by both the representative/s of the parties, has been filed before me on 29.10.2021. After perusal of such Report, I have found that both the parties are in consensus with regard to the reconciliation of accounts and the amounts paid by Grand Smithy

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

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Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

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Worlds LLP to SMP, Kolkata. As such, I have found that such reconciliation of accounts is a complete one in all aspects and no intervention of the undersigned is required in the matter. It is noted that a copy of such report of reconciliation is served upon the Ld. Advocate of Shri Srikant Yadav. It is also noted from the Joint Minutes of Reconciliation of Accounts dated 28.10.2021, that the authorised representative of Grand Smithy Worlds LLP undertook to submit fresh demand drafts in lieu of the 32 nos. of stale Demand Draft, Bankers' Cheque upon return of such instruments by SMP, Kolkata or upon receiving its references.

During the course of the proceeding, I have considered the lawful authority of Grand Smithy Worlds LLP or Shri Srikant Yadav to hold and occupy the premises of SMP, Kolkata. Admittedly, permission had been granted by SMP, Kolkata to Grand Smithy Works, now known as Grand Smithy Worlds LLP, to use and enjoy the 5 (five) no. of occupations under certain terms and conditions. Thereafter, Grand Smithy Worlds LLP has been adjudicated as an 'unauthorised occupant' in terms of Section 2 (g) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 vide Order of Eviction dated 02.11.2005 passed by this Forum. Hence, it was not open to the Grand Smithy Worlds LLP to induct any person in the public premises as it chooses as per its whims and fancies. An entity who has already been declared as 'unauthorised', following the due process of Law, could not induct any other person/ entity in the same premises in which it has been so declared. Further, no permission of SMP, Kolkata was obtained by Grand Smithy Worlds LLP while inducting said Shri Srikant Yadav or any other person/entity into the public premises in question. Hence, I have no option but to treat the said act on the part of Grand Smithy Worlds LLP as highly irregular and not at all in accordance with law. I have found that the public premises is being used only for the purpose of making unlawful gains by way of letting it out to unauthorised entities, who did enjoy a prime property thereby depriving the statutory authority vis-à-vis the exchequer. It is my firm view that an unauthorised occupant like Grand Smithy Worlds LLP has no authority under law to induct

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Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

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another occupant viz. Shri Srikant Yadav into the premises, that too for the purpose of making unlawful gains. It is true that there are judicial pronouncements to the effect that mere occupation is not sufficient to infer either sub-tenancy or parting with possession. But it is also true that every case has to be judged in its own merit. In the instant case, I find that Grand Smithy Worlds LLP has inducted Shri Srikant Yadav into the public premises and it is apparent that the management of Grand Smithy Worlds LLP is no way connected with the Shri Srikant Yadav.

I have considered the statement of dues submitted by SMP, Kolkata in terms of its application dated 03.11.2021 filed before me on 05.11.2021. It appears from the said application that SMP, Kolkata has calculated the interest for delayed payment of occupational charges with regard to plots no GR 43/1, GR 43/2, GR 43/3 GR 43/4 and GR 43/6 in two methods. The first method is the calculation on the basis of the rate of interest notified by the Tariff Authority for Major Ports (TAMP), which exercises its function under Section 48 and 49 of the Major Port Trust Act, 1963 (amended as the Major Port Authorities Act, 2021).

The representatives of SMP, Kolkata submitted with arguments that the undersigned should direct the Port Authority to calculate the interest amount at simple rate @ 15% per annum upto 18.09.1996 and thereafter @ 18% per annum upto 06.04.2011 and thereafter @ 14.25% per annum till its liquidation as per the notified rate of said Tariff Authority for Major Ports (TAMP). An argument has been advanced by the representatives of SMP, Kolkata that the rate of interest of the land belonging to the statutory authority under the Major Port Trusts Act, 1963 is very much guided by the Gazette Notifications of the said Tariff Authority for Major Ports (TAMP) and such TAMP notifications are uniformly applicable to all users of the port property. Now the question arises as to how far SMP, Kolkata's claim on account of interest for delayed payment is relevant and acceptable under law. It is the case of SMP, Kolkata that the claim of interest for delayed payment is in accordance with the Schedule of Rent Charges which has been published in the Calcutta Gazette as per provision of the Major Port Trusts Act 1963, after obtaining

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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ESTATE OFFICER
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sanction of the Central Govt. as per provisions of the said Act. The notification published under Authority of Law has statutory force of law and the unauthorised user of port property cannot deny the claim of SMP, Kolkata on the strength of such notification. Be that as it may, 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 amount due to be paid. However, 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 an another case that SMP, Kolkata follows the Schedule of Rent Charges (SoR) notified by the said Tariff Authority for Major Ports (TAMP). However,

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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 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.

In view of the discussions above, I was not inclined to accept the contentions of SMP, Kolkata with regard to the computation of interest for delayed payment by the unauthorised occupant/s of Port Property while in use and enjoyment of such property in question. 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 6.20 % per annum, for the said period. Since the interest rates of other classes of Schedules Banks are not readily available, I was 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. As such, the contentions of SMP, Kolkata is rejected on merit. Hence, it is my considered view that the calculation furnished by SMP, Kolkata in its application dated 03.11.2021, in "Annexure I" calculated as per the second methodology calculated in terms of the provisions of Public Premises Act, 1971 read with The Interest Act, 1978 is

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Appointed by the Central Govt. Under Section 3 of the Public Premises
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acceptable to me and the unauthorised entities are liable to make payment accordingly.

Incorporating the above factual as well as legal position, the Report has been prepared by the undersigned and the same has been placed before the Hon'ble Supreme Court of India in compliance of the Order dated 16.09.2021 passed in the Contempt Petition (C) No 688/2020 in connection with SLP (C) 9055 of 2020. The Hon'ble Supreme Court of India upon perusal of the said Report and considering the matter, has been pleased to dispose of the contempt petition while passing the Order dated 25.11.2021 directing, inter alia, the:

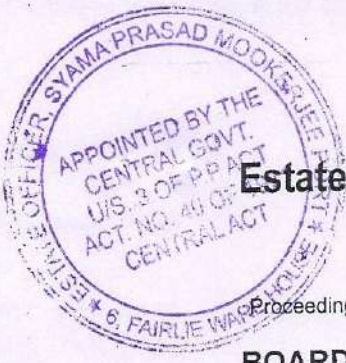
- i) respondent/ contemnor viz. Shri Srikant Yadav to pay the dues as mentioned in the said Report in instalments, and
- ii) undersigned to recover the amounts as determined/ mentioned in the said Report against the other parties viz. Grand Smithy Worlds LLP and its designated Partners, being the Respondent Nos. 1 to 8 in the said contempt petition.

The relevant portion of the said Order is reproduced below:

".....Perused the report and heard learned counsel for parties: The primary responsibility of the respondent-contemnor as determined by the Estate Officer is Rs.1,27,40,110.61 which is still due. Learned counsel for the contemnor submits that the amount being large some installments may be given. After some discussions, it is proposed by learned counsel for respondent/contemnor that a sum of Rs.27,40,110.61 will be paid on or before 31.12.2021. The remaining Rs.1 crore will be paid in equal 5 monthly installments of Rs.20 lakh each, first installment being payable on or before 31.01.2022, and correspondingly the remaining four installments also being payable before the end of the succeeding months. The proposal is accepted. Formal undertaking be filed by the respondent in this behalf within ten days.

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Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Appointed by the Central Govt. Under Section 3 of the Public Premises
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We make it clear that the consequences will now be severe for the respondent/contemnor if he does not adhere to the undertaking in view of his past conduct, and the problem being one of own making of the respondent.

The contempt petition stands disposed of in above terms with liberty to revive in case of any non-compliance.

At the request of learned counsel for the respondent/contemnor, it is made clear that in case they are able to persuade the Estate Officer on account of any calculation aspect, they are at liberty to do but this will not impede, in any manner, the compliance schedule laid down by this Court.

Needless to say, the Estate Officer is at liberty to recover the amounts as determined against other parties....."

Hence, in compliance of the said Order dated 16.09.2021 passed in the Contempt Petition (C) No 688/2020 in connection with SLP (C) 9055 of 2020, I find that Grand Smithy Worlds LLP is liable to make payment of the occupational charges i.e. the principal sum of Rs 1,90,29,327.43, including interest of Rs. 62,73,762.63 , for 3 (three) plots viz. GR 43/1, GR 43/2 and GR 43/3 in full from the date of incurrence of liability i.e. 01.07.1983 till the date of taking over of possession i.e., on 21.03.2018 and the principal occupational charges of Rs 1,09,64,511.26, including interest of Rs 44,51,646.66, for 2 (two) plots viz. GR 43/4 and GR 43/6 from the date of incurrence of liability i.e. 01.02.1983 till 31.01.2018, as admittedly the occupation of Shri Srikant Yadav commenced on 01.02.2018.

Grand Smithy Worlds LLP must have to pay such dues to SMP, Kolkata on or before 31.01.2022 (31st January, 2022).

Needless to mention that SMP, Kolkata shall take into account the adjustment of payments, if any, made so far by Grand Smithy Worlds LLP, in terms of SMP, Kolkata's books of accounts.

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

I make it clear that in the event of failure on the part of Grand Smithy Worlds LLP to pay the dues/charges as aforesaid; SMP, Kolkata 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

(Kausik Kumar Manna)
ESTATE OFFICER

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ESTATE OFFICER

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