



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. 41 DT
PROCEEDINGS NO. 912, 912/R OF 2007

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. Alstom Ltd. [M/s. Marathon Electric Motors (India) Ltd],
58, Taratala Road,
Kolkata- 700 024.
AND
D/2, Gillander House,
Netaji Subhas Road,
Kolkata - 700 001.

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 17.09.2021 you were called upon to show- cause on/or before 22.09.2021 why an order requiring you to pay a sum of Rs. 19,33,00,102.25/- (Rupees Nineteen Crores Thirty Three Lakhs One Hundred and Two 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 objections and/or evidence produced before this Forum;

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. 19,33,00,102.25/- (Rupees Nineteen Crores Thirty Three Lakhs One Hundred and Two and paise Twenty Five *only*.) for the period from 01.08.2007 to 12.07.2021 assessed by me as damages on account of your unauthorised occupation of the premises to Kolkata Port Trust, by 31.12.2021.

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.

Please see on reverse

:2:

A copy of the reasoned order no. 41 dated 13.12.2021 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 - D 400/A

Piece or parcel of land msg. 3622.10 Sq.m. in 1st belt and 8578.48 Sq.m. in the 2nd belt msg. altogether 12200.58 Sq.m at Taratala Road and Diamond Harbour Road, Thana-Taratala, District - 24 Parganas (South), Registration District : Alipore. It is bounded on the North by the Trustees' Taratala Road, on the South by the Trustees' land, on the East by the Trustees' land partly leased to M/s. CESC Ltd. and partly by Diamond Harbour Road, on the West by Trustees' land occupied by M/s. Indian Jute Industries and Research Association.

Trustee's means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata.)

Dated: 14.12.2021



Signature and seal of the
Estate Officer.

COPY FORWARDED TO THE ESTATE MANAGER, KOLKATA PORT TRUST FOR INFORMATION.

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. 912, 912/R of 2007 Order Sheet No. 72

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/s Alstom Ltd M/s Marathon Electric Motors (India) Ltd,

41

13/12/2021

FINAL ORDER

The instant proceedings No. 912, 912/R of 2007 arises out at the instance of **Syama Prasad Mookerjee Port, Kolkata** [erstwhile Kolkata Port Trust, hereinafter referred to as '**SMP, Kolkata**'], the applicant herein, praying for an order of recovery of dues on account of compensation/ damage/ mesne profit along with accrued interest thereon in respect of the subject public premises, against **M/s. Alstom Ltd. [now known as M/s Marathon Electric Motors (India) Ltd.]**, hereinafter referred to as the 'opposite party'/ '**O.P.**', under the relevant provisions of **Public Premises (Eviction of Unauthorized Occupants) Act, 1971** (hereinafter referred to as '**the Act**').

Relevant facts leading to this proceeding are required to be put forward in order to link up the chain of events. It is on record that the O.P. came into occupation of the port property of piece or parcel of land measuring 3622.10 sqm in 1st belt and 8578.48 sqm in the 2nd belt, measuring altogether 12200.58 sqm at Taratala Road and Diamond Harbour Road, Thana- Taratala, morefully described under 'Schedule-I' of the Notice to Show Cause dated 17.09.2021, as a long terms lessee on certain terms and conditions, for a period of 30 years with an option of renewal for another term of 30 years with effect from 01.08.1977. The said lease expired on 31.07.2007. SMP, Kolkata intended to get back possession of the public premises issued notice to quit dated 26.07.2007 upon the O.P. asking them to vacate the premises on 01.08.2007. It had been the case of SMP, Kolkata that the O.P. defaulted in making payment of rental dues, carried out unauthorised construction on the demised land and failed to exercise its option of renewal within the period as stipulated in the mother lease etc. As the O.P. did not vacate the premises, a petition was filed by SMP, Kolkata against the O.P. before this Forum of law under relevant provisions of the Public Premises Act, 1971 for eviction of O.P. and recovery of its dues before my predecessor Estate Officer. A case bearing no 912, 912/R of 2007 was initiated against the O.P. under relevant provision of the Public Premises Act, 1971. Upon contested hearing of the matter, my predecessor Estate Officer passed the Final

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
14/12/2021
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. 912, 912/R of 2007 Order Sheet No. 73

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VS

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Order of eviction dated 10.05.2010 (vide Order No 28 dated 10.05.2010). The Authorised Officer was appointed by my predecessor Estate Officer to recover the possession of the premises. It appears from the records that thereafter, nothing was heard from either of the parties, until recently when SMP, Kolkata filed an application dated 13.09.2021, intimating that the possession of the premises was recovered by the Authorised Officer in vacant and unencumbered condition on 12.07.2021 and SMP, Kolkata is entitled to get outstanding dues, compensation charges, accrued interest from the O.P. for its wrongful possession of the Public Premises till the date of taking over of such possession (i.e. 12.07.2021). SMP, Kolkata has submitted its claim on account of compensation/ mesne profit/ damage charges vide the said application dated 13.09.2021. After consideration of SMP, Kolkata's claim, this Forum formed its opinion to proceed against the O.P. and issued Show Cause Notice dated 17.09.2021 (vide Order No. 32 dated 16.09.2021) u/s 7 of the Public Premises Act, 1971. The Notice was issued calling upon the O.P. to show cause as to why an order requiring payment of arrear compensation/ mesne profit/ damage together with interest would not be made against the O.P. The O.P. was also called upon to appear before this forum in person or through authorized representative/s, capable to answer all material questions connected with the matter, along with the evidence which the O.P. intends to produce in support of this case.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
13.12.2021
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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The O.P. appeared through their Ld. Advocate by filing Vakalatnama. The Ld. Advocate for O.P. made extensive submissions with regard to non-maintainability of the present proceeding, without going through much deliberations on the substantive issues / merits of the present proceeding as mentioned in the Show Cause Notice dated 17.09.2021 issued under Section 7 of the Public Premises Act, 1971. In support of the contentions of such non-maintainability of the show cause notice dated 17.09.2021, a petition was filed before this Forum by the Ld. Advocate of O.P. on 08.10.2021. The Ld. Advocate of O.P., for the first time, brought the fact to the notice of this Forum that the Order dated 10.05.2010 passed by my predecessor Estate Officer, has been challenged before the Court of Ld. Additional District Judge at Alipore,

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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

Proceedings No. 912, 912/R of 2007 Order Sheet No. 74

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where the Ld. Court was pleased to stay the operation of the said order dated 10.05.2010 till disposal of the said Appeal, subject to payment of current monthly rate by the O.P. It was submitted that the said P.P. Appeal is still pending for adjudication before the Learned Court, being the statutory authority conferred upon with the powers to sit in Appeal over the decisions of this Forum of Law.

The Ld. Advocate of O.P. alongwith the representative/s of SMP, Kolkata were heard at length on several occasions. Having heard the submissions of the parties, upon consideration of the materials on record and keeping in mind the basic structure of the Public Premises Act, 1971, which provides for a speedy procedure for the disposal of cases, it was observed that the maintainability issues as raised on behalf of O.P. could easily have taken by the O.P. in the reply to the Show Cause, which, as per the provisions of the Public Premises Act, was required to be filed by O.P. Considering the totality of the circumstance, I found that there is no justification for any grievance on the part of O.P. so far the administration of justice is concerned and the O.P. was directed to file the Reply to the Show Cause Notice dated 17.09.2021 immediately. In other words, I proposed to dispose of the issue of the maintainability, conjointly, after receiving the Reply to the Show Cause Notice, which was required to be filed by the O.P. in terms of the provisions of the Public Premises Act, 1971 by that point of time.

Thereafter, the O.P. filed its reply to the Show cause Notice on 24.11.2021, with a copy given to SMP, Kolkata.

I find that in the instant proceeding, the parties have got sufficient opportunities to substantiate their case and/or ventilate their grievances in a total 7 (seven) plus no. of hearings, which have taken place over a span of more than 2 months, after issuance of the Show Cause Notice dated 17.09.2021. Be it mentioned that all the points were left open for discussions on merit on the basis of the facts and circumstances of the case. Hence, I am satisfied with the number of opportunities provided to the parties and proceed to pass the Final Order in the matter. While passing this Final Order, I have carefully

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THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
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SYAMA PRASAD MOOKERJEE PORT
14.12.2021
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. 912912/R Of 2007 Order Sheet No. 75

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

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considered the deliberations of the parties and gone through the documents placed on record.

The main contentions agitated by the Ld. Advocate of O.P. can be summarised as follows:

- i) The Show Cause Notice and the purported issues as sought to be raised, have been unilaterally decided by Estate Officer without affording any opportunity to O.P. to deal with the same. Hence, the Show Cause Notice is bad in law and violative of the principles of natural justice and fair play.
- ii) The show Cause Notice dated 17.09.2021 is unsustainable in the eye of law for reasons that the same records the word 'satisfaction' of the Estate Officer as regards the question of alleged unauthorized occupation by the O.P. in respect of the Public Premises in question. Hence, a serious doubt is likely to arise as regards the unbiased and impartial conduct of Estate Officer. The Estate Officer could have conclusively arrived at such a unilateral decision after hearing the contentions of the O.P. in this respect.
- iii) The order dated 16.09.2021 passed by the Estate Officer in the present proceeding suffers from several misinformation as have been suppressed and/or deliberately twisted by the representative of SMP, Kolkata.
- iv) Against the order dated 10.05.2010 passed by Estate Officer, inter-alia, holding the O.P. as an unauthorized occupant in respect of the Public Premises in question and directing its eviction from the premises, the O.P. had approached the Court of Ld District Judge at Alipore by filling P.P. Appeal No. 12 of 2010. The said appeal was heard at length and upon contested hearing of the same, an order dated 24.03.2011 was passed by the Ld. Court, inter-alia, staying the operation of the impugned order dated 10.05.2010 till disposal of the appeal subject to the payment at "current rent" per month by the O.P. The said appeal is still pending adjudication before the Ld. Court at Alipore.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
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ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
14.12.2021
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. 912, 912/R of 2007 Order Sheet No. 76

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v) In terms of the order dated 24.03.2011 passed by the Ld. Court at Alipore, the O.P. has been making payment of rents in respect of the said premises in favour SMP, Kolkata in the form of cheques, all of which have been duly received and accepted by SMP, Kolkata without raising any objection in any manner whatsoever. The payments made have been accepted and adjusted in the account of O.P. as will appear from the Statement of Account filed by SMP, Kolkata in course of hearing of the present proceeding. As such, by their patent act of acceptance of payment, SMP, Kolkata has waived their right, if any, to dispute the quantum of the same at the stage of the proceedings after lapse of a period of more than 10 years since passing of the order by the Ld. Court.

vi) All questions as to fact as well of law which were decided by the Estate Officer by his order dated 10.05.2010 in the present proceeding have all been re-opened by the Ld. Court at Alipore, and the same are yet to be decided, conclusively. As such the Order dated 10.05.2010, passed by the Estate Officer, including the reasons supplied therein have become redundant and are not binding upon the parties.

vii) The legality of the notice dated 26.07.2007 issued by SMP, Kolkata to the O.P. demanding possession of the premises is under challenge before the Ld. Court and as such the same is not binding upon the parties. Since, the legal visibility of the said notice dated 26.07.2007 has not yet been finally decided by the Ld. Court at Alipore, the present proceeding which owe its origin to the said notice forming the basis and substance of the proceeding, the present proceeding cannot continue and is liable to be stayed till final decision is arrived at by the Ld. Court at Alipore,

viii) In view of the fact, that the question of liability of the O.P. to pay damages for wrongful use and occupation in the respect of the said premises from 01.08.2007, as had been decided by the Estate Officer by his order dated 10.05.2010, is also under challenge before the Ld. Court at Alipore in pending P.P. Appeal No. 12 of 2010, the Estate Officer

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14.12.2021
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

Proceedings No. 912, 912/R of 2007 Order Sheet No. 77

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18.12.2021

cannot exceed his jurisdiction and claim to have considered the damages on account of use and occupation of the premises in question for the period from 01.08.2007 to 12.07.2021 as has sought to be done under the said show cause notice. As such, any liability of O.P. to pay compound interest on the same does not arise.

As such, strong arguments have been advanced by the Ld. Advocate of O.P. that for the reasons and under the grounds as stated in the foregoing paragraphs, the show cause notice dated 17.09.2021 as well as the order dated 16.09.2021 issued by the Estate Officer in the present proceeding are bad in law, unsustainable and should not be proceeded with any further.

On the other hand, the main contentions of SMP, Kolkata have been as follows:

- i) The dues of O.P. with regard to the public premises in question has become huge and reached to the tune of Rupees 19 corers 33 lakhs plus. In support of such contentions a statement of accounts was furnished by SMP, Kolkata. My attention was drawn to the Order dated 24.03.2011 passed by the Ld. Additional District Judge, Alipore, wherein the Hon'ble Court was pleased to pass an Order of stay of operation of the impugned order dated 10.05.2010 till disposal of the Appeal on condition of payment by the O.P. (i.e., the appellant in the PP Appeal No. 12 of 2010) of the "current rent" per month to SMP, Kolkata.
- ii) The rate of rent of the premises belonging to the statutory authority SMP, Kolkata is very much guided by the Gazette Notifications of the Tariff Authority for Major Ports (TAMP) exercised its functions under the provisions of the Major Port Trusts Act, 1963 and such TAMP notified rate of rents are uniformly applicable to all users of the port property in a similarly placed situation. My attention was drawn to the payment details filed by O.P. dated 22.10.2021, wherefrom it is apparent that only some payments has been made by O.P. in the year 2019, 2020 etc. It is submitted that it is O.P.'s

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SYAMA PRASAD MOOKERJEE PORT
18.12.2021
Head Assistant
OFFICE OF THE L.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

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own financial statement, which very much indicative, that the O.P. has, on numerous occasions, failed to liquidate the current monthly charges/ "current rent" as per the direction passed by the Ld. Additional District Judge at Alipore vide Order dated 24.03.2011 and as such, O.P. is not entitled to get the protection of the Order dated 24.03.2011 passed by the Ld. Additional District Judge, Alipore.

- iii) Strong argument has been advanced that payments in terms of "current rate per month" as directed by the Ld. Additional District Judge, Alipore means the payments in terms of the rates specified by Tariff Authority for Major Ports (TAMP) in terms of its Gazette Notification and the O.P. was not entitled to pay SMP, Kolkata as per its whims and fancies.
- iv) It is submitted that time and again this Forum has directed the O.P. to point out discrepancy, if any, in the statement of accounts furnished by SMP, Kolkata to O.P. and the O.P. instead to doing such exercise, is vehemently agitating procedural technicalities, just to delay or avoid the process of adjudication.
- v) It is submitted that the O.P. has, on their own accord, handed over possession of the premises on 12.07.2021 and as such the prayer for eviction stands expunged due the recovery of possession.

Heard the submissions of the both sides and considered the matter on the basis of materials on record, I find that the following issues have come up for my adjudication:

1. Whether the issue with regard to the maintainability of the proceeding is required to be decided first, before proceeding with the adjudication of the main matter in terms of the Show Cause Notices issued under Sec 4 and 7 of the Public Premises Act or not
2. Whether the present proceeding for compensation/ damage/ mesne profit is maintainable before this Forum of Law in the fact and circumstances of the case or not.

By Order of
THE ESTATE OFFICER
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SYAMA PRASAD MOOKERJEE PORT
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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3. Whether the present proceeding with regard to the recovery of dues of SMP, Kolkata on account of compensation/ damage/ mesne profit for continuous use and occupation of O.P. in Port premises is bad in law in view of the order of 'status quo' dated 24.03.2011, passed by the Ld. District Court at Alipore and whether the proceeding is required to be dismissed on that ground alone;
4. Whether the Show Cause Notice dated 17.09.2021 issued u/s 7 (2) of the Act by this Forum, can be said to be bad in law on the sole ground of the order of 'status quo' dated 24.03.2011 or not;
5. What is the period of "unauthorised occupation" of the O.P., if any;
6. What are the rates at which O.P. is liable to pay compensation/damages, if any;
7. Whether O.P. is liable to pay the damages to the Port Authority, for the use and occupation of the public premises from 01.08.2007 to 12.07.2021, as claimed for by SMP, Kolkata.
8. Whether the O.P. has complied with the Order dated 24.03.2011, passed by the Ld. Additional District Judge, Alipore in making payments to SMP, Kolkata or not.
9. Whether O.P. is liable to pay interest for delayed payment at all;

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THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
KOLKATA
CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
KOLKATA
16.12.2021
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
KOLKATA

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The issues No 1 and 2 are required to be dealt with together as the issues are related with each other and each issue has impact over the other.

On the question of maintainability of the proceedings etc., I must say that Public Premises Act, 1971 is very much clear about its intent and object. The Act is to provide speedy machinery for eviction of unauthorized occupants from the public premises and recovery of arrear rental dues, damages/ compensation/ mesne

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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

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profit etc. arising out of occupations in the public premises as defined under the Act.

During the course of hearing the Ld. Advocate for O.P., initiated argument on the question of maintainability of the present proceeding and filed an application to that effect.

I observed that the maintainability issues as raised on behalf of O.P. could easily have taken in the reply to the Show Cause, which, as per the provisions of the Public Premises Act, was required to be filed by O.P. In fact, the scheme of the Public Premises Act provides ample opportunity for dealing with any matter, in a comprehensive reply to the Show Cause Notice, in order to avoid multiplicity of dealings and to save time. It is not at all mandatory to raise maintainability issues for a stand-alone adjudication before filing the reply to the Show Cause on behalf of O.P. Still, the O.P. has chosen to file application for maintainability at the first stage without filing the reply to the Show Cause Notice issued by this Forum. Though, at the final stage of the proceeding, the O.P. has filed the Reply to Show Cause.

I have gone through the maintainability application filed by O.P., considered the points agitated therein and find that the points raised on behalf of O.P. are the questions of law and fact as well. Hence, I proposed to dispose of the issue of the maintainability conjointly, with the other substantive issues in the proceedings as detailed in the Notice to Show Cause dated 17.09.2021 issued by this forum of Law. It is in the fitness and fairness of things that this Forum has taken upon the proceedings to arrive at an equitable outcome, after assiduously going through the deliberations made by the parties.

Now, I must say that the properties owned and controlled by the Port Authority has been declared as "public premises" by the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and Section-15 of the Act puts a complete bar on Court's jurisdiction to entertain any matter relating to eviction of unauthorized occupants from the public premises and recovery of rental dues and/or compensation/ damage/ mesne profit etc. SMP, Kolkata has come

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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

Proceedings No. 912, 912/R of 2007 Order Sheet No. 81

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

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13.12.2009

up with an application for recovery of its dues on account of compensation/mesne profit/ damages against the O.P. So long the property of the Port Authority is coming under the purview of "public premises" as defined under the Act, adjudication process by serving Show Cause Notice u/s 7 of the Act is very much maintainable and there cannot be any question about the maintainability of proceedings before this Forum of Law. To take this view, I am fortified by an unreported judgment of the Hon'ble High Court, Calcutta delivered by Hon'ble Justice Mr. Jyotirmay Bhattacharya (as his Lordship then was) 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.

The 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 P.P. 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:-

"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

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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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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 Division Bench of Calcutta High Court, particularly to the paragraphs 28 and 29 regarding the duty cast upon the Estate Officer under the Public Premises Act, 1971 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 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

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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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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".

Thus, the issues are decided accordingly.

On Issue 3 and 4, It has been the submission of the Ld. Advocate of O.P. that there is a bar on this Forum to issue the Show Cause Notice dated 17.09.2021, in view of the Order dated 24.03.2011, passed by the Ld. Additional District Judge at Alipore. During the course of hearing, the O.P. has claimed that the Notice u/s 7, as issued by this Forum, is bad in law and ought not to be acted upon.

I have carefully gone through the Order dated 24.03.2011 passed by the Ld. Additional District Judge, Alipore and understood the meaning and content thereof. I find that the Ld. Court in its wisdom

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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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was pleased to pass an order of stay of operation of the impugned order dated 10.05.2010 of this Forum till disposal of the Appeal subject to payment of the "current rent" by O.P. Now, in terms of the said Order dated 10.05.2010 passed by this Forum the occupation of O.P. was already declared as "unauthorised" in terms of section 2 (g) of the Public Premises Act, 1971 for various reasons/ grounds mentioned therein. Simultaneously, in terms of the said Order dated 10.05.2010 the O.P. was directed to pay the dues only on account of "rent" to SMP, Kolkata by a specified date. No deliberation or adjudication was made by the Estate Officer in terms of the Order dated 10.05.2010 to determine the quantum of "damage/ compensation/ mesne profit" payable by the O.P. for its unauthorised use and enjoyment of the Port Property in question.

Now, I must make a deliberation on the meaning of 'rent' and 'damages'/'compensation' for a better understanding of the issues involved in the proceeding. Firstly, both 'rent' and 'damages' connotes 'Occupational Charges' payable for use and enjoyment of a property by the user of such property for particular period. While 'Rent' means periodical payment for use of another's property when the relationship of landlord and tenant exists, 'Damages' or 'compensation' means a pecuniary compensation or indemnity which may be recovered in the courts by any person who has suffered loss, detriment or injury, whether to his person, property or rights through the unlawful act or omission or negligence of another. It signifies a sum of money awarded to a person injured by the tort of another. Money compensation sought or awarded as a remedy for a breach of contract or for tortious act. 'Damages'/'Compensation' are like 'mesne profit' that is to say the profit arising out of wrongful use and occupation of the property in question.

Now, appraisal of the factual aspects involved in this matter will certainly lead to the question that if this Forum of Law has committed any wrong in initiating a proceeding to asses or quantify the amounts payable by the O.P. on account of 'Damages'/'Compensation', in view of the Order dated 24.03.2011 passed by the Ld. Additional District Judge, Alipore. It is my view, that the

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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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Port Authority has chosen the recourses of law to ventilate their grievances against O.P. for recovery of dues on account of 'Damages'/ 'Compensation'. The protection of possession by the interim order of the Court of Ld. Additional District Judge, Alipore during the period of O.P.'s occupation in premises does not necessarily mean that Port Authority is restrained from exercising of their legal right under law to lodge claim on account of 'Damages'/ 'Compensation'. It requires to bear in mind that the Estate Officer had assessed only the 'Rent' payable by O.P., for the period of occupation upto 31.07.2007, in terms of Order dated 10.05.2010, the operation of which ultimately got stayed by Order dated 24.03.2011 passed by Ld. Additional District Judge, Alipore. Thus, SMP Kolkata has got every authority under law to claim for 'damages'/ 'compensation' for the rest period of occupation by the O.P., starting from 01.08.2007, in the Port Property in question. Thus, it is my considered view that SMP, Kolkata has a very legitimate claim on account of 'Damages'/ 'Compensation' and it is not debarred from raising such claim by the said Order dated 24.03.2011, passed by the Ld. Additional District Judge, Alipore.

May I reiterate here that the properties owned and controlled by the Port Authority have been declared as "public premises" by the Public Premises Act, 1971 and Section-15 of the Act puts a complete bar on the 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. I am conscious of the view that P.P. Act operates in a field where the Act itself specifically provides for the unfettered jurisdiction of this Forum of Law to decide on the quantum of amount payable on account of 'Damages'/ 'Compensation' subject occupation as Forum of first instance.

As discussed above, I am not agreeable to the case made out by the O.P. praying for dismissal of the present proceeding on the ground of the order dated 24.03.2011 passed by Ld. Additional District Judge at Alipore. In my view, the order dated 24.03.2011 passed by the Ld. Additional District Judge at Alipore, cannot create any bar to proceed with adjudication with the 'Damages'/ 'Compensation'

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HEAD ASSISTANT
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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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within the four corners of the Public Premises Act, 1971 and accordingly, O.P.'s prayer for dismissal of proceedings on that ground is not acceptable and hence, rejected.

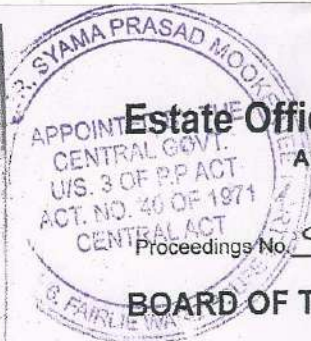
Hence the issues are decided accordingly.

Issue No. 5 drives me to the period of unauthorised occupation by the O.P. at the public premises in question. In the instant case, the lease granted to O.P. in respect of land in question was expired due to efflux of time on 31.07.2007. No further lease was granted to O.P. by SMP, Kolkata. No reason or evidence has been brought forth by the O.P. as to how its occupation after expiry of the Lease in question could be termed as "authorised occupation" in the absence of any renewal of the lease in question. In such a situation, the rights and liabilities of the parties in dispute cannot be the same during the currency of lease tenure and sequel to expiry of the contractual period of lease in question. For such occupation and enjoyment of a Public Premises one must have to pay requisite charges for occupation. I have deeply gone into the submissions/arguments made on behalf of the parties in course of hearing. I have no hesitation in mind to say that right from the date of expiry of the lease in question, O.P. is liable to pay the 'Damages'/ 'Compensation' for such unauthorised use and occupation. It is the admitted position that the possession of the public premises is with SMP, Kolkata on 12.07.2021.

Hence, the possession in the public premises by the O.P. from the date of expiry of Lease i.e. 01.08.2007 till the date of taking over of possession i.e. 12.07.2021, is nothing but "unauthorized occupation" within the meaning of sec 2 (g) of the P.P. Act, 1971, which reads as under:

"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

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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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he was allowed to occupy the premises, has expired or has been determined for any reason whatsoever."

To come into such conclusion, I am fortified by a Full Bench Judgment of the Hon'ble Supreme Court of India reported in AIR 1981 SC 670 (Jain Ink Manufacturing Company vs Life Insurance Corporation of India) It was held that Lease was definitely determined by efflux of time limited thereby. As per Transfer of Property Act, lessee is bound to deliver back possession to its lessor in its original condition and in the event the lessee fails to handover the possession in its original condition to the lessor, the occupation becomes unauthorised, immediately after expiry of the lease period.

It is needless to mention that Transfer of Property Act provides for determination of lease by way of efflux of time as per Section 111 of the Act.

As such, I have no doubt or confusion to hold that the period of unauthorised occupation of the O.P. is from 01.08.2007 to 12.07.2021.

The Issue is thus decided accordingly.

On **Issue Nos 6, 7 and 8**, I must first say that it is settled principle of law that a person is liable to compensate the landowner, in case of unauthorised occupation of land. As per law, O.P. was bound to deliver up vacant and peaceful possession of the public premises in its original condition to SMP, Kolkata after expiry of the contractual period of lease, which the O.P. had failed to do. As discussed, 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 lease in question, O.P. had lost its authority to occupy the public premises, and O.P. is liable to pay damages for such unauthorised use and occupation. To come into such conclusion, I am fortified by the decision/observation of the Hon'ble Supreme Court in Civil Appeal No.7988 of 2004, decided on 10th December 2004, reported (2005)1

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OFFICE OF THE LD. ESTATE OFFICER
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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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SCC 705, para-11 (Atma Ram's case) of the said judgement reads as follows:

Para:11-" under the general law, and in cases where the tenancy is governed only by the provisions of the Transfer of Property Act 1882, once the tenancy comes to an end by determination of lease u/s.111 of the Transfer of Property Act, the right of the tenant to continue in possession of the premises comes to an end and for any period thereafter, for which he continues to occupy the premises, he becomes liable to pay damages for use and occupation at the rate at which the landlord would have let out the premises on being vacated by the tenant.

It appear that the dues of O.P. on account of 'Damages'/ 'Compensation' is huge and has reached to the tune of Rs 19,33,00,102.25 (Rupees Nineteen Crores Thirty Three Lakhs One Hundred and Two and paise Twenty Five only), as per the statement of accounts furnished by SMP, Kolkata. My attention is drawn to the Order dated 24.03.2011 passed by the Ld. Additional District Judge, Alipore, wherein the Ld. Court was pleased to pass an order of stay of operation of the impugned order dated 10.05.2010 till disposal of the Appeal on condition of payment by the O.P. (i.e., the appellant in the P.P. Appeal No. 12 of 2010) of the "current rent" per month to SMP, Kolkata. It was submitted by the representatives of SMP, Kolkata that the rate of rent of the premises belonging to the statutory authority SMP, Kolkata is very much guided by the Gazette Notifications of the Tariff Authority for Major Ports (TAMP) exercising its functions under the provisions of the Major Port Trusts Act, 1963 (now Major Port Authorities Act, 2021) and such TAMP notified rate of rents are uniformly applicable to all users of the port property in a similarly placed situation. It can be easily noticed from the payment details filed by O.P. dated 22.10.2021, that apart from some other monthly defaults, huge defaults in payment have been made by O.P. in the year 2019, 2020 and 2021. It is clear that O.P. has failed pay the current monthly charges or "the current rent per month" in terms of the direction dated

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24.03.2011 passed by Ld. Additional District Judge at Alipore on various occasions and it would not be improper to say that the fact of non-payment or non-compliance should be brought to the notice of the Ld. Additional District Judge, Alipore immediately. In such a scenario, I find that SMP, Kolkata authorities has no bar to approach the Court of Ld. Additional District Judge, Alipore for vacation of the interim order dated 24.03.2011.

Be that as it may, strong argument was advanced by SMP, Kolkata that payments in terms of "current rate per month" as directed by the Ld. Additional District Judge, Alipore vide order dated 24.03.2011, means the payments in terms of the rates specified by Tariff Authority for Major Ports (TAMP) in terms of its Gazette Notification and the O.P. could not be allowed to pay SMP, Kolkata with the rate calculated as per its whims and fancies. During the course of hearing, this Forum has directed the O.P. to point out discrepancy, if any, in the statement of accounts furnished by SMP, Kolkata to O.P. During the course of hearing, the representative of SMP, Kolkata has stated that in case the O.P. has any issue, such as non-adjustment of payments made by O.P. etc., with regard the statement of account, the O.P. is at liberty to approach SMP, Kolkata at anytime and sit with the accounts officer of SMP, Kolkata in order to arrive at a correct financial position. However, I find that no such step was required to be taken by O.P., perhaps for the reason that no discrepancy in the statement of accounts of SMP, Kolkata could have been identified by the O.P.

I agree with the submissions of SMP, Kolkata that during the period of unauthorised occupation, O.P. is liable to pay damages/compensation/mesne profit as per the rates notified in the Official Gazette from time to time by the Tariff Authority for Major Ports (TAMP). Such rates are uniformly applicable on all users of the port property and an unauthorised occupant like that of the O.P. cannot claim any preferential treatment. I take note of the fact that in 1997, Sec. 52 of the Major Port Trusts Act, 1963 was repealed and different mechanism was evolved by which power to fix rent was given to the Tariff Authority for Major Ports (TAMP). Sec. 49 of said Act was also amended by the Port Laws

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

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(Amendment) Act 1997 in the year 1997. The validity of these provisions of the said 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 such a situation, I find that the rates notified by the said TAMP has statutory force and is binding on all concerned. In its application dated 13.09.2021, SMP, Kolkata has given the calculations regarding computation of the damages of unauthorised occupation, based on the rates notified by the TAMP. I find nothing wrong with such calculations. With such conclusion, I hold that the calculations of damages/compensation amounts by SMP, Kolkata are correct and just and O.P. is liable to pay such amounts to SMP, Kolkata.

The issue is thus decided accordingly.

On the issue involved in **Issue 9**, I must say that it is settled law that the interest is neither a penalty nor punishment. Interest is normal accretion on capital, for delayed payment. In my view, O.P. has not shown any cause as to why it should not be held responsible for delayed payment/non-payment. In other words, O.P. has failed to explain how the delay is not attributable to it. As such, it is my firm understanding that O.P. has to pay interest, for default in payment of the damages.

The issue is thus decided accordingly.

NOW THEREFORE, I hereby assess the 'Damages'/'Compensation'/'Mesne Profit' payable by the O.P. for wrongful and unauthorised occupation of the public premises in question, for the period 01.08.2007 to 12.07.2021 is Rs 19,33,00,102.25 (Rupees Nineteen Crores Thirty Three Lakhs One Hundred and Two and paise Twenty Five only) (principal amount). The O.P. is directed to pay the said amount to SMP, Kolkata by 31.12.2021.

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

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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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have found that the highest rate of interest offered by State Bank of India stood at 6.20 % 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, the said damages shall attract compound interest @ 6.20 % per annum, from the date of incurrance of liability, till the liquidation of the same, as per the adjustment of payments, if any, made so far by O.P., in terms of SMP, Kolkata's books of accounts.

However, I make it clear that that the findings of this Forum, as above, are ultimately subject to the orders/directions of the Court of Ld. Additional District Judge, Alipore and the decision of this Forum shall not be put into execution if any order to the contrary is passed by any competent Court of Law.

The formal order u/s 7 of the Act is signed accordingly. The parties shall have the liberty to mention the matter by filing necessary application/s, if the circumstances so deserve.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL

(K.K. Manna)
ESTATE OFFICER

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

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