

010



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. 46 DT 25.11.2004
PROCEEDINGS NO. 568 OF 2004

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-

Late R.N Poddar (PDP International Pvt. Ltd, Added Party),

F O R M - "B"

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

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that **Late R.N Poddar (PDP International Pvt. Ltd, Added Party) of 8/4, Alipore Park Road, Kolkata-700027 AND 43/A, Hide Road, Opp. Beico Lawrie, Kolkata-700088 AND ALSO AT 'Sagar Estate', 4th Floor, 2 N.C Dutta Sarani, Kolkata-700001** is in unauthorized occupation of the Public Premises specified in the Schedule below:

16023
16024

REASONS

1. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrears dues/damages etc. as prayed for on behalf of SMP, Kolkata.
2. That O.P has failed to file reply to the Show Cause Notice under Sec. 4 of the Act in spite of sufficient chances being given to them.
3. That the Sitting occupant(Added Party) appearing before this Forum has failed to explain their authority to occupy the premises.
4. That the lease as granted to O.P. by SMP, Kolkata had doubtlessly determined by efflux of time, in the facts and circumstances of the case.
5. That the Sitting Occupant(Added Party) has no right whatsoever to claim direct tenancy from Port Authority in respect of the subject premises in question and the Resolution No.299 dated 28.09.1982 is also not applicable to the Added Party.
6. That O.P has made unauthorised construction on the subject premises without any authority of law.
7. That O.P has parted with possession of the subject public premises without any authority of law.
8. The O.P or any other person/occupant has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation".
9. That O.P. or any other person/occupant of the public premises have failed to make out any case in support of their occupation as "authorised occupation", inspite of sufficient chances being provided.

[Handwritten signature]

PLEASE SEE ON REVERSE

(2)

10. That the Sitting Occupant (Added Party) has got no right to hold the property after expiry of the lease (which was granted by the Port Authority in favour of O.P.) by efflux of time dated 28.02.2002.
11. That no case has been made out on behalf of O.P. as to how its occupation in the Public Premises could be termed as "authorised occupation" after issuance of notice dated 01.08.2002, demanding possession by the Port Authority and O.P.'s occupation has become unauthorized in view of Sec.2(g) of the P.P. Act, 1971.
12. That right from the date of expiry of the lease, O.P. has lost its authority to occupy the Public Premises and O.P. is liable to pay dues/compensation charges with interest for wrongful use and enjoyment of the Public Property upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

A copy of the reasoned order No. 46 dated 25.11.2021 is attached hereto which also forms a part of the reasons.

NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said **Late R.N Poddar (PDP International Pvt. Ltd, Added Party) of 8/4, Alipore Park Road, Kolkata-700027 AND 43/A, Hide Road, Opp. Beico Lawrie, Kolkata-700088 AND ALSO AT 'Sagar Estate', 4th Floor, 2 N.C Dutta Sarani, Kolkata-700001** and all persons who may be in occupation of the said premises or any part thereof to vacate the said premises within 15 days of the date of publication of this order. In the event of refusal or failure to comply with this order within the period specified above the said **Late R.N Poddar (PDP International Pvt. Ltd, Added Party) of 8/4, Alipore Park Road, Kolkata-700027 AND 43/A, Hide Road, Opp. Beico Lawrie, Kolkata-700088 AND ALSO AT 'Sagar Estate', 4th Floor, 2 N.C Dutta Sarani, Kolkata-700001** and all other persons concerned are liable to be evicted from the said premises, if need be, by the use of such force as may be necessary.

SCHEDULE

Plate no - D-270/8/A

The piece or parcel of land comprising 1187.12 sq.m or thereabouts in the 1st belt (land lying within 50 metres from the road) and 1248.43 sq.m or thereabouts in the 2nd belt (land lying 50 metres from the road) altogether measuring 2435.55 sq.m or thereabouts is situate at Hide Road Extension Thana. Garden Reach (now Taratala) District-24 Parganas, Registration District-Alipore. It is bounded on the north partly by a kutchra drain and partly by the open land now belonging to the Eastern Railway authorities and proposed to be handed over to the Trustees' on the east by Hide Road Extension on the south by the Trustees' land leased to Balmer Lawrie and Company Limited and on the west by the Trustees' open land beyond which in their Railway truck. Trustee's means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata).

Dated: 26.11.2021



**Signature & Seal of the
Estate Officer.**

COPY FORWARDED TO THE ESTATE MANAGER, SYAMA PRASAD MOOKERJEE PORT, KOLKATA 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. 568 Of 2004 Order Sheet No. 29

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Late R.N. Poddar (PDP) vs International Pvt. Ltd. (Added Party)

46
25/11/2021

FINAL ORDER

The instant Proceedings No. 568 of 2004 arises out of the application filed on 16.10.2002 by the **Syama Prasad Mookerjee Port, Kolkata** (erstwhile Kolkata Port Trust) hereinafter referred to as **SMP, Kolkata**, the Applicant herein, praying for order of eviction against **Estate of Late R.N Poddar (PDP International Pvt. Ltd, Added Party)**, the O.P. herein, under the relevant provisions of Public Premises (Eviction of Unauthorised Occupants) Act 1971. The material facts of the case is summarized here under.

It is submitted by SMP, Kolkata that O.P. came into possession of SMP, Kolkata's land msg. 2435.55 sq.m situated at Hide Road Extension, Thana-Garden Reach(now Taratala), Dist. 24 Parganas, Registration Dist. Alipore under Plate No. D-270/8/A with effect from 01.03.1972 as long term lessee for a period of 30 years without any option of renewal, as evident from the lease deed executed by and between both the parties. It is submitted that in gross violation of such tenancy agreement O.P. (a) has unauthorisedly erected construction on the demised land, (b) sub-let and parted with the tenancy right without prior approval of SMP, Kolkata and also continued possession after expiry of such lease on 28.02.2002.

In view of such ^{breaches} committed by O.P. and in view of expiry of such lease, SMP, Kolkata had issued a Notice being No.Lnd.4579/II dated 01.08.2002 asking the O.P. to quit, vacate and deliver up peaceful possession of the said public premises on 22.08.2002. It is the case of SMP, Kolkata that even after issuance of said Notice dated 01.08.2002, O.P. failed to remedy the breaches and also did not apply for further extension of such lease after it's expiry on 28.02.2002 and neglected to hand over possession of the public premises to SMP, Kolkata. Rather, O.P. has been continuing to occupy the said port premises wrongfully and in unauthorised manner for which SMP, Kolkata is entitled to have the O.P. evicted from the public premises and O.P. is liable to pay arrear dues/damages/compensation charges and also accrued interest till O.P. delivers up the vacant possession.

Notice/s dated 01.08.2005(vide Order No.5 dated 02.08.2005) was issued by this Forum to O.P. u/s 4 of the Act to Show Cause as to why an order of eviction should not be made against the O.P. and O.P. was also called upon to appear before this Forum in person or through the duly

By Order of
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
26.11.2021
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

[Handwritten signature]

[Handwritten signature]



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 568 Of 2004 Order Sheet No. 30

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Late R.M. Poddar (PDP International Pvt Ltd) (Addl Party) VS (Addl Party)

46
25/11/2021

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
26.11.2021
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

authorised representative capable of answering all material questions connected with the matter along with the evidence which the O.P. intends to produce in support of the cause.

On 19.09.2005, one Mr. K.N Jha and another one Mr. Pankaj Kumar claiming themselves as the authorized representatives of O.P. appeared before this Forum and filed their Letter of Authority to contest the instant matter on behalf of O.P. It is noticed in course of hearing that O.P. went on making regular payments towards liquidation of their dues as per the direction of the Estate Officer and finally on 18.12.2007 it was revealed that O.P had removed the encroachment by erecting a new boundary wall inside the area previously leased to them and paid all requisite charges as per SMP, Kolkata's demand. It was also revealed that O.P had made a representation to SMP, Kolkata for grant of a fresh lease according to the terms & condition of SMP, Kolkata and on the basis of such fact the Forum gave liberty to SMP, Kolkata for taking action in accordance with law.

Thereafter, almost 10 years later i.e on 15.02.2017 SMP, Kolkata vide an application being No. Lnd. 4579/III/16/1616 dated 3.08.2016 intimated the Forum that in compliance of the Order dated 18.12.2007 an inspection was held on 28.08.2015 and it is seen from such inspection that there is no existence of R.N Poddar on the subject plot of land and one PDP International Pvt. Ltd (sitting occupant) is functioning over said premises and breach of unauthorized constructions has been still persisting on such land. However, considering such application of SMP, Kolkata Forum gave a direction to SMP, Kolkata for confirming the fact that if any fresh lease has at all been executed between the SMP, Kolkata and O.P. or not. On 17.02.2017 one Mr. R. Gupta (without Vakalatnama) expressing himself as an Advocate of PDP International Pvt. Ltd appeared before the Forum and submitted that PDP International Pvt. Ltd was functioning at the subject premises and it was also submitted on his behalf that vide Order No.23 dated 18.02.2007, the matter was referred to SMP, Kolkata for grant of a fresh lease. However, the Forum after hearing the submission of PDP International Pvt. Ltd directed them to file an application describing their authority to occupy such public premises in question. Thereafter on 20.03.2017 Ld' Advocate of PDP International Pvt. Ltd filed their Vakalatnama along with an application dated 20.03.2017 with a prayer for regularization of their



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. 568 Of 2004 Order Sheet No. 91

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Late R.N. Poddar (PDP International Pvt. Ltd. (Added Party)) VS

46
25/11/2021

occupation. It is stated in such application that PDP International Pvt. Ltd is an international Freight Forwarding Company with "MTO" Multimodal Transport Organization accreditation by Ministry of Shipping, Govt. of India which falls with category of port users and have been operating a warehouse from the captioned plot of land since 1995 as an agent of R.N Poddar, the Opposite Party herein. There was an agreement between PDP International Pvt. Ltd and the Opposite Party to that effect and Opposite Party used to raise bills on account of rent and PDP International Pvt. Ltd had been paying the same on regular basis. Drawing the attention of the Forum on such application, later on the Advocate of PDP International Pvt. Ltd sought adjournment of the hearing before the Forum till such time when SMP, Kolkata would be able to take any decision. However in the meantime, PDP International Pvt. Ltd was added as party to this proceedings and SMP, Kolkata was directed to file their Comment/reply to such application of Sitting Occupant (Added Party). On 19.04.2017, SMP, Kolkata has filed their comment/reply denying the averments of Added Party. SMP, Kolkata has submitted as follows:

By Order of :
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
26.11.2021
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

- SMP, Kolkata is in dark as to how PDP International Pvt. Ltd came into possession of the subject premises,
- The status of PDP International Pvt. Ltd is merely of a trespasser and it is not obligatory for SMP, Kolkata to correspond with trespasser,
- In the lease of O.P. there was no clause for renewal, hence pendency of the process of renewal of lease does not arise,
- After expiry of the lease on 01.03.2002, O.P. lost its authority to occupy the premises, therefore, issuance of 'No objection' forwarded by the Letter dated 13.12.2002 by OP in favour of A.P(Added Party), was not valid in the eye of law,
- No payments have been received from PDP International Pvt Ltd. On the contrary the cheques forwarded by PDP International Pvt. Ltd during the year 2013-2014 were not encashed and returned to them vide SMP, Kolkata's Letter.
- SMP, Kolkata's present Land Policy does not permit settlement of direct tenancy in favour of sitting occupants.

Handwritten signature/initials

Handwritten signature/initials



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. 568 Of 2004 Order Sheet No. 32

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Late R.M. Poddar (PDP International Pvt. Ltd. (Added Party) vs. (Added Party))

46
25/11/2021

- After expiry of lease, O.P. as also PDP International Pvt. Ltd has no authority to occupy the subject premises and eviction has been prayed for.

Thereafter on 24.05.2017 Advocate of Sitting Occupant (Added Party) filed an application drawing the attention of the Forum on encashment of certain Cheques issued by Added Party, however, at the time of final hearing, the representatives of SMP, Kolkata drawing the attention of the Forum on the application dated 19.04.2017 categorically submitted that no payment whatsoever have been received from PDP International Pvt. Ltd (Added Party). Both the Sitting Occupant (Added Party) and SMP, Kolkata were heard extensively on that issue and Sitting Occupant (Added Party) was directed to adduce documents in support of their claim. Thereafter on 18.10.2017 the matter took an interesting turns when the Forum has received the Letter of one Sri Sudarshan Poddar who by filing the Death Certificate of O.P. (Certificate No.0412679 dated 23.07.2010) claimed himself as a son of Late R.N Poddar. In his letter Mr. Poddar contended that he had no previous knowledge about the pendency of the instant proceeding and without hearing him nothing could be done. Thereafter, he filed an application for adjournment of hearing of the instant matter. Ld' Advocate of the Sitting Occupant (Added Party) filed their reply to the Show Cause on 08.01.2018. Thereafter on 28.03.2018 it appears from record that one Mr. Shaikh claiming himself as a Ld' Advocate of O.P. has already been appeared before the Forum and filed his Vakalatnama to contest the instant matter on behalf of O.P. He contended before the Forum that as the necessary documents have not been received from O.P's end, he is not been able to file his reply. Thereafter in view of the submission of Ld' Advocate of O.P. forum gave further chances to O.P. as per the principles of natural justice. However, after getting several opportunities when O.P. or his Advocate has failed to appear before the Forum and failed to file any reply to the Show Cause, the matter was reserved for final order on 23.12.2020.

Now, while passing the Final Order, I have carefully considered the documents on record and the submissions of the parties. After due consideration of all relevant papers/documents as brought before me in course of hearing, I find that following issues have come up for my adjudication :

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
26.11.2021
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. 568 of 2004 Order Sheet No. 93

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Late P. A. Poddar (P.P.P) vs. International Port Ltd. (A.J. Party)

45
25/11/2021

1. Whether proceedings against O.P. is maintainable or not;
2. Whether the Added Party's contention regarding grant of direct tenancy to them by SMP, Kolkata in respect of the actual area in occupation by them on the ground of remedy of breaches allegedly committed by O.P has got any merit or not;
3. Whether the contention raised by the Added Party treating the Sitting Occupants of other SMP, Kolkata's premises as regularized/direct tenant under Resolution No.299 dated 28.09.1982 is applicable to the Added Party or not;
4. Whether the prayer of Sitting Occupant(Added Party) for acceptance of 'No Objection' given by the O.P. dated 13.12.2002 & 17.01.2008 has got any merit or not;
5. Whether Added Party being the Sitting Occupant has got any right to hold the Public Premises even after expiry of lease or not;
6. Whether O.P has unauthorisedly erected any construction on the demised land or not.
7. Whether O.P. has unauthorisedly sub-let and parted with possession of the tenancy right without prior approval of SMP, Kolkata or not;
8. Whether after alleged expiry of such long term lease O.P. or any other occupation could be termed as "unauthorised occupation" in view of Sec.2 (g) of the P.P. Act and whether O.P. is liable to pay damages to SMP, Kolkata during the period of its unauthorised occupation or not;

By Order of
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
26/11/2021
Head Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

[Handwritten signature]

As regards the **issue No. 1**, I must say that the properties owned and controlled by the Port Authority has been declared as "public premises" by the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and Section-15 of the Act puts a complete bar on Court's jurisdiction to entertain any matter relating to eviction of unauthorized occupants from the public premises and recovery of rental dues and/or damages, etc. SMP, Kolkata has come up with an application for declaration of representatives of O.P's status as unauthorized occupant into the public premises with the prayer for order of

[Handwritten signature]



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 568

Of 2004

Order Sheet No. 34

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Late R. M. Po. Har (PDP International Pvt. Ltd. 27) (Aided Party) VS

42
25/11/2021

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
26.11.2021
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

eviction, recovery of compensation etc against O.P. on the ground of termination of authority to occupy the premises as earlier granted to O.P. in respect of the premises in question. So long the property of the Port Authority is coming under the purview of "public premises" as defined under the Act, adjudication process by serving Show Cause Notice/s u/s 4 & 7 of the Act is very much maintainable and there cannot be any question about the maintainability of proceedings before this Forum of Law. In fact, proceedings before this Forum of Law is not statutorily barred unless there is any specific order of stay of such proceedings by any competent court 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 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 if there is an interim order of status-quo of any nature in respect of possession of any public premises in favour of anybody by the Writ Court. Relevant portion of the said order is reproduced below:

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

Hon'ble Division Bench of Calcutta High Court had the occasion to decide the jurisdiction of the Estate Officer under 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 argument that it is only upon an occupier at any public premises being found as an unauthorized occupant would he be subject to the Estate Officer's jurisdiction for the purpose of eviction, the intent and purport of the said Act and



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. 568 Of 2004 Order Sheet No. 95

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Late P. M. Poddar (PDT International Pvt. Ltd.) (Added Party) **VS** ...

46
25/11/2021

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".

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

Issues No. 2, 3, 4 & 5 could be discussed analogously for the sake of convenience. Sitting Occupant(Added Party) in para No.17 of their application dated 20.03.2017 has claimed that "the Added party has all along in possession of the said plot of land since 1995 and very much interested in taking lease of the said plot." and also in para no. 3 of such application stated that "they had been operating a warehouse as an agent of O.P. and the lease with the said Opposite Party was due to expire, the applicant by a letter dated January 31, 2002 made a representation to the Chairman, KoPT, Kolkata expressing their desire to get lease of the said plot of land directly in their name." It is amply clear from such statements of the Added Party that they had no locus standi to contest the proceeding from very inception and moreover they have admitted their position as an agent of O.P. as such claim of Sitting Occupant(Added Party) is not tenable in the eye of law. Further, it is the settle question of law that a Sitting Occupant like Added Party cannot claim any better treatment/right than the right available by O.P. as lessee. Although the Sitting Occupant(Added Party) has claimed that they have paid all charges demanded by SMP, Kolkata on regular basis however, in my view, such claim of Sitting Occupant (Added Party) has no basis because SMP, Kolkata vide their Office Letter being No.Lnd.4579/III/14/2660 dated 02.12.2014 as annexed with their comment has placed before the Forum that SMP, Kolkata has not accepted such payments of Added Party as they are the third party. It is specifically mentioned in such Office Letter that any payment being preferred by party other than R.N

By Order of :
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
26/11/2021
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

[Handwritten signature]

[Handwritten signature]



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 568 of 2004 Order Sheet No. 36

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Late R. M. Poddar (PDP International Pvt. Ltd. (Added Party)) VS

46
25/11/2021

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
26/11/2021
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Poddar cannot be accepted by Kolkata Port Trust towards compensation.

Further, such Sitting Occupant (Added Party) cannot claim direct renewal of their occupation as because there was no option of renewal of such lease. Moreso, lack of O.P's interest coupled with prolonged enjoyment of a public premises by Sitting occupant (Added Party), deserves no protection in all sense of law. As such, I am not at all inspired by the prayer of such Sitting Occupant (Added Party) and when the right of lessee/O.P. is no more in existence/determined, Sitting Occupant as a Added Party has no right at all in respect of the property in question. In the facts and circumstances of the case Added Party has no right to hold the property in the event of determination/expiry of lease hold interest of O.P. A prayer has been made by Sitting Occupant (Added Party) to grant them direct tenancy under SMP, Kolkata in respect of the area in their occupation. I do not find any scope to consider any matter with regard to grant of tenancy in favour of any body. Hence, such prayer of granting tenancy is not tenable before this Forum of Law. Relying on a decision in Catholic Syrian Bank Ltd. Vs. CIT (2012) 3 SCC 784, the Sitting Occupant (Added Party) vide their objection/ application dated 20.03.2017 has claimed that as per the Resolution No.299 dated 28.09.1982 SMP, Kolkata has granted/settled direct tenancy to many sitting Occupants, despite of being on similarly placed situation Added Party cannot be singled out.

I have considered the citation as well as the guidelines filed before me & found dissimilarity with the present case in hand. Although, the Added Party by citing many instances, tried to establish similarity of the subject matter with the case narrated in Resolution No.299 dated 28.09.1982, it is seen that by virtue of said Resolution (Being No.299 dated 28.09.1982) direct tenancy were only allowed to those sitting occupants upon some guidelines "such as settlement of tenancy to sitting occupant be considered only in case where the decree of eviction has passed against the recorded tenant by the appropriate Court of Law or in other words, settlement of tenancy in favour of sitting occupant will replace execution proceeding arising out of decree passed by the Court." Hence, in my view such contention of Added Party has no basis. I am firmly of the view that every case is run by its own merit. The factual aspect of this instant matter is totally different from all other instances as referred by Added Party, therefore, I am not at all inspired

[Handwritten signature]



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

568

Of 2004

Order Sheet No. 37

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Late P. N. Poddar (P.P International Pvt. Ltd. (Added Party)) **VS**

46
25/11/2021

by the Added Party's submission. Moreover, this Forum is only bound by the provisions of the P.P Act which never confers any power upon the Forum to decide the direct tenancy like issue which essentially comes under the domain of the landlord SMP, Kolkata.

The Sitting Occupant (Added Party) has already vide their reply/written objection has prayed before the Forum for acceptance of such 'No objection' as repeatedly given by O.P. on 13.12.2002 and on 17.01.2008 in the matter of renewal of such lease in their favour. However, in my view, such 'No Objection' of O.P. has no basis because after expiry of a lease O.P. loses their authority, therefore, they cannot suggest any renewal unto anyone's favour. In this instant matter O.P. has adopted such course, therefore, Sitting Occupant(Added Party)'s plea is not acceptable in the present fact & circumstances of the case. Moreover, after expiry of lease such 'No Objection' Letter has no validity in the eye of law. Therefore the issues are accordingly decided in favour of SMP, Kolkata.

As regards the **issue No. 6 & 7** i.e on allegation of SMP, Kolkata regarding unauthorized construction and unauthorized parting with possession by O.P in violation of lease term, the content of SMP, Kolkata's letter to O.P dated 14.03.2002 & 10.06.2002 are very much vital in deciding the issues. It reveals that SMP, Kolkata has given several opportunities to O.P to remove the breaches before issuing the Office Letter dated 01.08.2002, terminating the lease in question. In reply to SMP, Kolkata's allegation regarding unauthorized construction, O.P. vide their Letter/Applications dated 27.10.2006 admitted such unauthorised construction and showed their intention to make payment for regularization of such unauthorised construction. However, it appears from a subsequent application of SMP, Kolkata dated 03.08.2016 that such unauthorised construction was not removed or regularised. SMP, Kolkata has also come up with specific drawing/sketch Maps being No. 9006-D-III dated 15.09.2015 highlighting the unauthorized construction in red hatch but O.P is silent as to how this construction can be said to be authorized in nature. As per the P.P Act1971, once the Notice U/S-4 is issued, burden is on the O.P to Show Cause and/or produce evidence but in this case O.P has hopelessly failed to do so. In my view, the O.P. has sufficiently admitted about the existence of unauthorized construction in the premises, and since it is a settled law

By Order of :
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
26.11.2021
Head Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

[Handwritten signature]

[Handwritten signature]



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 568 Of 2004 Order Sheet No. 38

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Late P. M. Pollard (PDP International Pvt Ltd. (Added Party)) **VS** (Added Party)

46
25/11/2021

that admitted facts need not be proved, I have no bar in accepting that the breach of unauthorised construction was existing when the proceeding was initiated before the Forum after expiry of such lease.

Now the allegation of SMP, Kolkata regarding "unauthorised parting" with possession has received my due attention in the context of appearance of Sitting Occupant (Added Party), though no formal reply to the Show Cause Notice U/S 4 of the Act has been filed on behalf of O.P., contradicting the allegation regarding unauthorised parting with possession, however, it is seen that in its application/comment dated 19.04.2017, SMP, Kolkata has categorically spelt out how the public premises is being used and enjoyed by Added Party like unauthorised sitting occupant. In fact, the presence of Sitting Occupant in the premises (admittedly, for a long time) is sufficient enough to conclude "parting of possession" by the O.P. It is evident from the application filed by the Sitting Occupant (Added Party) on 20.03.2017 that they are occupying the premises since 1995 without any authority whatsoever and the said occupant have rather sought relief on "humanitarian grounds". I must say that this Forum is to adjudicate the matters strictly in terms of the P.P. Act while ensuring natural justice is not denied to anyone. In my view, the lack of any interest of the O.P. coupled with prolonged enjoyment of a vital public premises at a prime location by an unauthorised occupant, deserves no protection in all sense of law. Moreover, induction of a third party without the approval of SMP, Kolkata is also against the spirit of tenancy. Therefore, both these issues are decided in favour of SMP, Kolkata.

As regards the **issue No.8**, I must say that a lessee like O.P. cannot claim any legal right to hold the property after expiry of the period of lease. O.P has failed to satisfy this Forum about any consent on the part of SMP, Kolkata in occupying the public premises. I am consciously of the view that SMP, Kolkata never recognized O.P. as a lawful user/tenant in respect of the property in question after expiry of the period of such long term lease. As per Section 2 (g) of the P. P. Act the "unauthorised 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 in the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
F.S.M.
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
26/11/2021
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

[Handwritten mark]

[Handwritten mark]



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. 568 Of 2006 Order Sheet No. 39

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Late R. K. P. J. J. (PDP) vs International Pvt. Ltd. (A & J Party)

46
25/11/2021

allowed to occupy the premises has expired or has been determined for any reason whatsoever. Further, as per the Transfer of Property Act, a lease of immovable property determines either by efflux of time limited thereby or by implied surrender or on expiration of notice to determine the lease or to quit or of intention to quit, the property leased, duly given by one party to another. It is also a settled question of law that O.P, occupier cannot claim any legal right to hold the property after expiry of the lease, without any valid grant or allotment from SMP, Kolkata's side. Moreover, as per the Transfer of Property Act, 1882, a lessee is under legal obligation to hand over possession of the property to its landlord/lessor in its original condition after expiration of tenancy under lease. The tenancy of the O.P. automatically stands terminated upon expiry of the lease-hold period and no additional Notice is required in the eye of law on the part of the landlord to ask the O.P. to vacate the premises. In other words, in case of a long term lease having a specific date of expiration, there is no legal compulsion upon the landlord to issue any Notice to Quit. The landlord is, however, free to issue such a Notice as a reminder or as an act of gratuity. In the instant case, the landlord i.e. SMP, Kolkata adopted such a course and claims to have issued a Notice to O.P. dated 01.08.2002 asking for vacation of the said premises on 22.08.2002. Whether such Notice has been received by O.P. or not is quite immaterial inasmuch as O.P. was duty bound to hand over possession to SMP, Kolkata after expiry of such lease which it had failed to do so. Therefore, O.P's occupation is unauthorized.

"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, O.P. has lost its authority to occupy the public premises and O.P. is liable to pay damages for such unauthorized use and occupation.

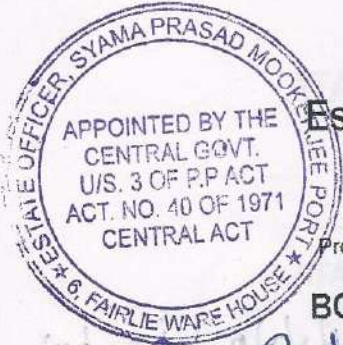
To come into such conclusion, I am fortified by the decision/observation of the Hon'ble Supreme Court in Civil Appeal No.7988 of 2004, decided on 10th December 2004, reported (2005)1 SCC 705, para-11 of the said judgment reads as follows.

Para:11-" under the general law, and in cases where the tenancy is governed only by the provisions of the Transfer of Property Act 1882, once the tenancy comes to an end by determination of lease u/s.111 of the Transfer of Property Act, the right of the tenant to continue in possession of the

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
S.S.M.
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
26.11.2021
Head Assistant
ESTATE OFFICER
MOOKERJEE PORT

[Handwritten signature]

[Handwritten signature]



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 568 Of 2106 Order Sheet No. 40

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Late R. M. Podder (P.P. International) vs. Ptd. Ltd. (Adjudged Party)

46
25/11/2021

premises comes to an end and for any period thereafter, for which he continues to occupy the premises, he becomes liable to pay damages for use and occupation at the rate at which the landlord would have let out the premises on being vacated by the tenant.

The Port Authority has a definite legitimate claim to get its revenue involved into this matter as per the SMP, Kolkata's Schedule of Rent Charges for the relevant period and O.P. cannot claim continuance of its occupation as "authorized occupation" without making payment of requisite charges. I am fortified by the Apex Court judgment reported in JT 2006 (4) Sc 277 (Sarup Singh Gupta -vs- Jagdish Singh & Ors.) wherein it has been clearly observed that in the event of termination of lease the practice followed by Courts is to permit landlord to receive each month by way of compensation for use and occupation of the premises, an amount equal to the monthly rent payable by the tenant. In my view, the case in hand is very much relevant for the purpose of determination of damages upon the guiding principle as laid down by the Hon'ble Apex Court in the above case. In course of hearing, it is submitted on behalf of SMP, Kolkata that the charges claimed on account of damages is on the basis of the SMP, Kolkata's Schedule of Rent Charges as applicable for all the tenants/occupiers of the premises in a similarly placed situation and such Schedule of Rent Charges is notified rates of charges under provisions of the Major Port Trusts Act 1963. In my view, such claim of charges for damages by SMP, Kolkata is based on sound reasoning and should be acceptable by this Forum of Law. As per law, when a contract has been expired by efflux of time and party continues their occupation unauthorisedly, the another party who suffers by such violation is entitled to receive, from the party who has violated the terms of the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such violation of the terms, or which the parties knew, when they made the contract to be likely to result from the such violation.

O.P. failed to substantiate as to how its occupation could be termed as "authorised" in view of Sec. 2(g) of the P.P Act, after expiry of the period as mentioned in the SMP, Kolkata's notice dated 01.08.2002, demanding possession from O.P. I have no hesitation to observe that O.P.'s act in continuing occupation after expiry and determination of the lease is unauthorised and O.P. is liable to pay damages

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
26/11/2021
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

[Handwritten signature]

[Handwritten signature]



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 568 Of 2004 Order Sheet No. 41

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA



vs
Indra R.N. Podder (P.O.P. International Pvt. Ltd. Added Party)

46

25.11.2021

for unauthorized use and occupation of the Port property in question upto the date of delivering vacant, unencumbered and peaceful possession to SMP, Kolkata.

NOW THEREFORE, the logical conclusion which could be arrived at that O.P's occupation and the occupation of anybody asserting any right through O.P. like A.P. have become unauthorized and they are liable to be evicted u/s.5 of the Act on the following grounds/reasons.

1. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear dues/damages etc. as prayed for on behalf of SMP, Kolkata.
2. That O.P has failed to file reply to the Show Cause Notice under Sec. 4 of the Act in spite of sufficient chances being given to them.
3. That the Sitting occupant(Added Party) appearing before this Forum has failed to explain their authority to occupy the premises.
4. That the lease as granted to O.P. by SMP, Kolkata had doubtlessly determined by efflux of time, in the facts and circumstances of the case.
5. That the Sitting Occupant(Added Party) has no right whatsoever to claim direct tenancy from Port Authority in respect of the subject premises in question and the Resolution No.299 dated 28.09.1982 is also not applicable to the Added Party.
6. That O.P has made unauthorised construction on the subject premises without any authority of law.
7. That O.P has parted with possession of the subject public premises without any authority of law.
8. The O.P or any other person/occupant has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation".
9. That O.P. or any other person/occupant of the public premises have failed to make out any case in support of their occupation as "authorised occupation", inspite of sufficient chances being provided.
10. That the Sitting Occupant(Added Party) has got no right to hold the property after expiry of the lease

By Order of :
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED TRUE COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
26.11.2021
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. 568 of 2004 Order Sheet No. 192

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
Late R.N. Podder (PDP-International Pvt Ltd-Added-Party)

46
25.11.2021.

(which was granted by the Port Authority in favour of O.P.) by efflux of time dated 28.02.2002.

11. That no case has been made out on behalf of O.P. as to how its occupation in the Public Premises could be termed as "authorised occupation" after issuance of notice dated 01.08.2002, demanding possession by the Port Authority and O.P's occupation has become unauthorized in view of Sec.2(g) of the P.P. Act, 1971.
12. That right from the date of expiry of the lease, O.P. has lost its authority to occupy the Public Premises and O.P. is liable to pay dues/compensation charges with interest for wrongful use and enjoyment of the Public Property upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

ACCORDINGLY, I sign the formal order of eviction u/s 5 of the Act as per Rule made there under, giving 15 days time to O.P. and any person/s whoever may be in occupation to vacate the premises. I make it clear that all person/s whoever may be in occupation are liable to be evicted by this order and the Port Authority is entitled to claim damages for unauthorized use and enjoyment of the property against O.P. in accordance with Law up to the date of recovery of possession of the same. SMP, Kolkata is directed to submit a comprehensive status report of the Public Premises in question on inspection of the property after expiry of the 15 days as aforesaid so that necessary action could be taken for execution of the order of eviction u/s. 5 of the Act as per Rule made under the Act.

From the discussion above it further appears that it is argued by SMP, Kolkata that the lease of the subject premises was expired on 28.02.2002 and O.P. is in wrongful occupation on and from 01.03.2002 and is liable to pay compensation charges/mesne profits for unauthorized use and occupation of the Port property in question. Considered the matter on the basis of materials on record. After careful consideration of the materials produced before me, I find that SMP, Kolkata has made out a case to proceed against O.P. under Section 7 of the Public Premises (Eviction of Unauthorised Occupant) Act-1971. However, as the subject premises had been given by ~~SMP~~

HA

HA

HA

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. 568 Of 2004 Order Sheet No. 43



BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Case - R.N. Poddar (PDP - International Pvt Ltd - Added Party) VS

46
25.11.2021

SMP, Kolkata to R.N Poddar (O.P), who unauthorisedly inducted PDP International Pvt. Ltd without there being any authority for such parting, it is my considered view that PDP International Pvt. Ltd also should not be allowed to wash off their hand from the liability of making payment for their unauthorised occupation into the subject premises in question. Accordingly O.P. may be made liable to pay such dues jointly and severally with PDP International Pvt. Ltd (sitting Occupant, Added Party), from the date of incurrence of their liability upto the date of taking over possession. However, all points are left open for discussion on merit of the case.

Thus SMP, Kolkata is directed to submit a report within 3 days regarding its claim on account of dues and damages for the subject premises in question for the respective periods, indicating there-in, the details of the computation of such dues/damages with the rate of charges so claimed for the respective periods (details of computation with rates applicable for the relevant periods) for my consideration in order to assess the dues/damages as per the Act and the Rules made thereunder.

I make it clear that in the event of failure on the part of O.P. or the unauthorised occupants to hand over possession of the public premises to SMP, Kolkata as aforesaid, Port Authority is entitled to proceed further for recovery of possession in accordance with law. All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL

(Kausik Kumar Manna)
ESTATE OFFICER

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

By Order of:
~~THE~~ ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
S.S.M.
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
26.11.2021
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT