

O/C  
**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 1<sup>st</sup> Floor  
Of Kolkata Port Trust's  
Fairlie Warehouse  
6, Fairley Place, Kolkata- 700 001.

REASONED ORDER NO. 70 DT 16.02.22  
PROCEEDINGS NO. 755 OF 2006



**BOARD OF TRUSTEES OF THE PORT OF KOLKATA  
-Vs-  
M/s Warsi Traders(O.P.)**

**F O R M - "B"**

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

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that **M/s Warsi Traders of 5, Hide Road, Kolkata-700043 AND ALSO AT Tau and Eta Shed, Kantapukur** is in unauthorized occupation of the Public Premises specified in the Schedule below:

**REASONS**

1. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrears of rental dues/damages etc. as prayed for on behalf of SMP, Kolkata and the Notice/s issued by this Forum are in conformity with the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act 1971.
2. That in gross violation of the terms and conditions of the subject monthly lease, O.P has defaulted in making payment the rental dues and taxes payable to SMP, Kolkata.
3. That O.P has raised unauthorized construction on the subject premises without having any authority of law.
4. That O.P. has unauthorisedly parted with possession of the subject Public Premises and failed to vacate the premises upon determination of the period as mentioned in the notice to quit dated 24.12.2004 as issued by the Port Authority.
5. That O.P. cannot take the plea of time barred claim by SMP, Kolkata, taking the shield of Limitation Act.
6. That O.P. cannot claim relief against forfeiture of the lease in question, in the facts and circumstances of the case.
7. That no case has been made out on behalf of O.P. as to how its occupation in the Public Premises could be termed as "authorised occupation" after issuance of notice dated 24.12.2004, demanding possession by the Port Authority.
8. That O.P. has failed to bear any witness or adduce any evidence in support of their contention regarding "authorised occupation" and O.P's occupation has become unauthorized in view of Sec.2(g) of the P.P. Act and O.P. is liable to pay damages for unauthorised use and enjoyment of the Port Property in question upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

**PLEASE SEE ON REVERSE**

(2)

A copy of the reasoned order No. 70 dated 16.02.22 is attached hereto which also forms a part of the reasons.

NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said **M/s Warsi Traders of 5, Hide Road, Kolkata-700043 AND ALSO AT Tau and Eta Shed, Kantapukur** and all persons who may be in occupation of the said premises or any part thereof to vacate the said premises within 15 days of the date of publication of this order. In the event of refusal or failure to comply with this order within the period specified above the said **M/s Warsi Traders of 5, Hide Road, Kolkata-700043 AND ALSO AT Tau and Eta Shed, Kantapukur** 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-657

The piece and parcel of the land measuring about 10596.69 sq.m. or thereabouts at erstwhile Tau and ETA Shed is situated at Kantapukur, Thana a portion of "THETA" shed at Kantapukur, Thana-South Port Police Station, Kolkata, District 24 Parganas(South), Registration Dist. Alipore. It is bounded on the north by the portion of Trustees strip of open land beyond which dock boundaries wall, on the east by trustee's Kantapukur shed, on the south by the trustee's Remount Road, and on the West by the Trustee's Road beyond which dock boundaries wall.

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

Date- 28/2/22

  
Signature & Seal of the  
Estate Officer.

COPY FORWARDED TO THE ESTATE MANAGER, SMP, KOLKATA FOR INFORMATION.



**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 1<sup>st</sup> Floor  
6, Fairlie Place Warehouse  
Kolkata-700001

**Form " E "**

PROCEEDINGS NO.755/R OF 2006  
ORDER NO. 70 DATED: 16-02-22

Form of order under Sub-section (1) and (2A) of Section 7 of the Public  
Premises (Eviction of Unauthorised Occupants) Act, 1971.

To  
M/s Warsi Traders  
5, Hide Road,  
Kolkata-700043.  
AND ALSO AT  
Tau and Eta Shed,  
Kantapukur.

WHEREAS you are in occupation of the public premises described in the  
Schedule below. (Please see on reverse).

AND WHEREAS, by written notice dated 03.03.2006 you are called upon  
to show cause on or before 27.03.2006 why an order requiring you to pay  
a sum of Rs.63,29,518/- (Rupees Sixty three Lakh twenty nine thousand  
five hundred eighteen only) being the rent payable together with  
compound interest in respect 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 by sub-section  
(1) of Section 7 of the Public Premises (Eviction of Unauthorised  
Occupants) Act 1971, I hereby require you to pay the sum of Rs.  
63,29,518/- (Rupees Sixty three Lakh twenty nine thousand five  
hundred eighteen only) for the period 1<sup>st</sup> day of June 2006 to 31<sup>st</sup> day of  
January 2005(both days inclusive) to SMP, Kolkata by 15-03-22.

PLEASE SEE ON REVERSE

: 2 :

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 @ 6.30 % per annum on the above sum till its final payment being the current rate of interest as per the Interest Act, 1978.


In case the said sum is not paid within the said period or in the said manner, it will be recovered as arrears of land revenue through the Collector.

### SCHEDULE

#### Plate No. D-657

The piece and parcel of the land measuring about 10596.69 sq.m. or thereabouts at erstwhile Tau and ETA Shed is situated at Kantapukur, Thana a portion of "THETA" shed at Kantapukur, Thana-South Port Police Station, Kolkata, District 24 Parganas(South), Registration Dist. Alipore. It is bounded on the north by the portion of Trustees strip of open land beyond which dock boundaries wall, on the east by trustee's kantapukur shed, on the south by the trustee's Remount Road, and on the West by the Trustee's Road beyond which dock boundaries wall. Trustee's means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata.)

Dated: 28/2/22

  
Signature and seal of the  
Estate Officer

COPY FORWARDED TO THE ESTATE MANAGER, SMP, 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

Case No. 755, 755/R of 2006 Order Sheet No. 106



70

16.02.2022

**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

**VS**

**M/s WARSJI TRADERS**

**FINAL ORDER**

The instant proceedings No. 755, 755/R of 2006 arose out of an application being No. Lnd. 5222/05/6075 dated 30.11.2005 filed by Syama Prasad Mookerjee Port Kolkata(erstwhile Kolkata Port Trust)hereinafter referred to as SMP, Kolkata, Applicant herein, praying for an order of eviction and recovery of arrear rent, taxes, compensation along with interest etc. against **M/s Warsji Traders**, the O.P. herein, under relevant provisions of the Public Premises (Eviction of Unauthorised Occupant) Act 1971. The facts of the case is summarised here under.

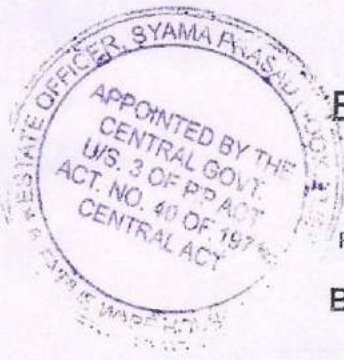
O.P. came into occupation of the port property being Land formerly known as TAU & ETA SHED measuring 10,596.69 sq.mtrs or thereabout situated at Kantapukur (under Plate No.D-657) Thana- South Port Police Station, District-24 Parganas(S), as monthly lessee with effect from 1.12.2000 on payment of monthly rent on certain terms and conditions as embodied in SMP, Kolkata's offer/letter for allotment bearing no. Lnd.4863/II dated 30.12.1999. SMP, Kolkata has submitted that while in possession of the port property as lessee, OP violated the condition for such lease by way of not making the payment of rental dues to SMP, Kolkata for use and enjoyment of the Port property in question the details of which has been given in 'Schedule-B' of the SMP, Kolkata's application dated 30.11.2005.

It is also the case of SMP, Kolkata that in gross violation of the terms of said tenancy O.P has erected unauthorized structure on the demised land and also parted with possession of the subject premises to third parties without taking any permission from SMP, Kolkata.

In view of the aforesaid breaches committed by the O.P., SMP, Kolkata had issued notice to quit being No. Lnd.5222/04/2793 dated 24.12.2004 asking the O.P. to hand over clear, vacant, peaceful and unencumbered possession of the property to SMP, Kolkata on 01.02.2005.SMP, Kolkata submits that O.P. has no authority under law to occupy the public premises after determination of the lease period and was required to hand over the possession of the property in question to SMP, Kolkata on 01.02.2005 as required under the

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**THE ESTATE OFFICER**  
**SYAMA PRASAD MOOKERJEE PORT**  
CERTIFIED COPY OF THE ORDER  
PASSED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
*[Signature]*  
Hdqs Assistant  
OFFICE OF THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

*[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. 755, 755/R of 2006 Order Sheet No. 107

**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

**VS**

M/S WARSI TRADERS.

70

16-02-2022

By Order of:  
**THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT**

CERTIFIED COPY OF THE ORDER  
PAGES BY THE ESTATE OFFICER  
**SYAMA PRASAD MOOKERJEE**

16-02-2022  
Head Assistant  
OFFICE OF THE LD. ESTATE OFFICER  
**SYAMA PRASAD MOOKERJEE**

notice to quit. It is the case of SMP, Kolkata that O.P. is in wrongful occupation in the public premises on and from 02.02.2005 and is liable to pay compensation charges/mesne profits for unauthorized use and occupation of the Port Property in question.

Considering the submission advanced by SMP, Kolkata and the documents on record, Notice/s to Show Cause under section 4 and 7 of the Public Premises (Eviction of Unauthorized Occupation) Act, 1971 all dated 03.03.2006 (vide Order No.2 dated 23.02.2006) were issued by this forum to O.P. The Notice/s were issued in terms of the said provisions of the Act calling upon the O.P. to appear before this Forum in person or through authorized representative capable of answering all material questions in connection with the matter along with the evidence which the opposite party intends to produce in support of their case.

The said notice/s were served through Registered post to the recorded addresses of O.P. at 5, Hide Road, Kolkata-700043 and also at "Tau and Eta Shed, Kantapukur". It appears from records that the Notice/s sent through registered post to "Tau and Eta Shed, Kantapukur" returned undelivered to the Forum however, the Notice sent to 5, Hide Road, Kolkata-700043 was not returned back. The report of the Process Server dated 13.04.2006 further depicts that the said notices were served upon O.P. personally and the same has been received by the representative of O.P. with signature.

O.P. initially contested the matter though it's Learned Advocate Mr. Sanjay Saha who submitted his Vakalatnama on 27.03.2006 to contest the instant matter on behalf of O.P. signed by Ahmed Ali Warsi, Sole Proprietor and signatory on behalf of O.P. Subsequently Mr D. Biswas Ld' Advocate on behalf of O.P appeared and filed an application on 04.07.2018 for an appropriate order and SMP, Kolkata files their parawise comment against such application on 24.08.2018 and thereafter Advocate of O.P. files another two applications on 25.06.2019 one against SMP, Kolkata's comment dated 07.05.2018 and another in connection with the parawise comment filed by SMP, Kolkata on 24.08.2018. Finally the Learned Advocate for O.P. also submitted written

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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. 755 755/R of 2006 Order Sheet No. 108

**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

**VS**

M/S WARSI TRADERS.

16-02-2022

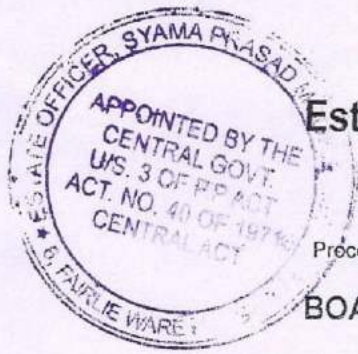
notes of arguments on 03.09.2019 when the matter was reserved for passing final order.

O.P. in its oral as well as written arguments submits that O.P. was granted monthly lease in respect of the subject premises for the purpose of development and operation of a public Truck Terminal on the basis of an Offer Letter being No.Lnd.4863/II dated 30.12.1999. To satisfy the purpose of such lease O.P. arranged some basic amenities at their own cost with the knowledge and satisfaction of the port Authority for which no permission was required. Thereafter, on 24<sup>th</sup> December 2004 SMP, Kolkata issued an eviction notice on some alleged ground of non-payment of rent & taxes, unauthorised construction and parting with possession and subsequently on 30<sup>th</sup> November 2005 on the aforesaid grounds the plaint of the purported proceeding (being No.755, 755/R of 2005) was filed before the Estate Officer praying an order of eviction against O.P.

O.P. further argues that the present proceeding is not maintainable against O.P. because the particulars of unauthorised construction and parting with possession are not pleaded by SMP, Kolkata in their application and the claim of SMP, Kolkata is also barred by the Limitation Act -1963. Relying on the Hon'ble Supreme Court Judgment dated 20.04.1976 in Civil Appeal No. 988 of 1968 New Delhi Municipal Committee -vs- Kalu Ram and Anr reported in AIR 1976 SC 1637, O.P. further submits that the amount is not recoverable as per Art 52 of the Limitation Act according to which three years are to be counted when the rent became due. Sec 3 does not allow Estate Officer to adjudicate any claim which is barred by limitation. Sec 7 of the PP Act provides for order on arrear rent "payable" and "payable" means which is legally recoverable and not barred by limitation. It is further claimed by O.P. that O.P. is entitled to get protection under 114 of T.P Act as they have cleared their dues. Moreover, the Inspection Report dated 12<sup>th</sup> August, 2013 also does not disclose any encroachment and unauthorised construction on the part of O.P. and SMP, Kolkata cannot hold O.P. as guilty for any breach of an expressed condition of lease agreement. Ld' Estate Officer never served any notice upon the interested parties or the alleged occupiers of

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SYAMA PRASAD MOOKERJEE PORT  
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SYAMA PRASAD MOOKERJEE PORT  
for Head of Department  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

17



# 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. 755, 755/R of 2006 Order Sheet No. 109

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/s. WARI Traders.

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16-02-2022

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

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

*[Signature]*  
16-02-2022  
OFFICE OF THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

the said premises under Section 4 of the P.P Act and Port Authority has also failed to adduce any evidence to substantiate their contention regarding parting with possession because O.P. never parted with possession of any portion of land in favour of third party. O.P further pointed out that SMP, Kolkata's allegation of subletting also has no basis because the agreement dated 15<sup>th</sup> June 2006 does not disclose anything regarding subletting and the persons namely Sri Sarup Singh and Rajindar Singh who are found functioning during Joint inspection (16<sup>th</sup> November 2012) are merely functioning as service provider of O.P.As regards the Eviction Notice, O.P further alleged in their application that Eviction Notice is also not maintainable in the eye of law.

SMP, Kolkata, the petitioner, denying the claim of O.P. argued that SMP, Kolkata has issued Quit Notice and instituted Proceeding against O.P. claiming rent and compensation charges within legitimate period therefore, Limitation Act has no application on the proceedings before the quasi-judicial authority like this Forum and the proceedings is very much maintainable. Moreover, the situation in which the Hon'ble Apex Court delivered its judgment has drastically changed upon amendment of the Public Premises Act, 1971 with the introduction of Sec.15 of the Act. The Apex Court delivered its judgment in New Delhi Municipal Committee case on Public Premises Act 1958 wherein Sec.15 regarding taking away of jurisdiction of all Courts into the matters concerning the public premises was not there. It is further pointed out by SMP, Kolkata that the Report of joint inspection dated 12.08.2013 which was conducted in presence of the representative of both the parties on 16.11.2012 clearly shows that Sri Swarup Singh and Rajindar Singh were functioning on the subject premises as unauthorised subtenant of O.P. without having any permission from SMP, Kolkata and O.P has admitted their dues/compensation of SMP, Kolkata and the breach of unauthorised construction & unauthorised parting vide their letter dated 24.06.2005. Moreover, the sketch plan being No. 8887-D-II dated 29.11.2012 as submitted before the Forum clearly shows unauthorised construction on the part of O.P. Land was allotted to O.P. through tender process on 'as is where is basis' after

*[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. 755, 755/R of 2006 Order Sheet No. 110

**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

**VS**

M/S. HARSJI TRADERD.

acceptance of the term and condition of such lease O.P. cannot challenge the Offer Letter of SMP, Kolkata as unconstitutional. Further it is argued by SMP, Kolkata that the rate and charges as fixed by the SMP, Kolkata are not fixed whimsically however, such rate and charges are time to time fixed by the Tariff Authority of Major Ports therefore, O.P. cannot deny their liability to pay such rate, charges and interest according to the notification published by the Tariff Authority of Major Ports. Show Cause Notice u/s 4 was validly issued upon O.P. on 23.02.2006 and O.P continued their occupation unauthorisedly on & from 02.02.2005 inspite of receiving such Quit Notice. O.P's application for recalling the order dated 23.05.2018 as regards the submission of SMP, Kolkata is tainted with ill intention and is a dilatory tactics of O.P. to frustrate the very intention of the proceeding under PP Act. O.P. also fails to produce any scheme of Liquidation as per the direction of the Forum dated 23.05.2018.

Heard the rival arguments from both the sides and considered all the documents placed before me including SMP, Kolkata's quit notice dated 24.12.2004, petition dated 30.11.2005, SMP, Kolkata's application dated 12.01.2009, 19.10.2009, 01.04.2010, 16.01.2018, 07.05.2018, 24.08.2018, 06.08.2019, Joint Inspection Report dated 12.08.2013, Statement of Accounts (03.08.2019), O.P.'s application dated 08.08.2006, 02.02.2010 (as received by the Forum), 21.06.2010, 30.08.2010, 01.11.2010, 01.06.2011, 05.09.2011, 12.10.2011, 05.02.2013, 18.11.2013, Application to the Estate Manager dated 07.04.2017, reply/written Objection to show cause notice show cause notice filed on 23.05.2018, Application dated 04.07.2018 & reply to SMP, Kolkata's comment dated 25.06.2019 & 03.09.2019 & O.P.'s written notes of argument dated 03.09.2019.

After careful consideration of all relevant papers/documents as brought before me in course of hearing and after due consideration of all the submissions/ arguments made on behalf of the parties, I find that following issues have come up for my adjudication :-

16-02-2022

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THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
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SYAMA PRASAD MOOKERJEE PORT  
for Heavy Assistant  
OFFICE OF THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

*[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. 755, 755/R of 2006 Order Sheet No. 111

## BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS  
M/S. WARS, TRADERS

70  
16-09-2022

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THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

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SYAMA PRASAD MOOKERJEE PORT

*[Signature]*  
Head Assistant  
OFFICE OF THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

- I. Whether the instant proceeding is maintainable or not;
- II. Whether the plea taken by O.P. regarding "non-service of Show Cause notice (U/S-4) upon O.P" for initiation of proceeding dated 30.11.2005 has got any merit or not;
- III. Whether proceedings against O.P. is maintainable on the ground of "barred by limitation" or not;
- IV. Whether claim of SMP, Kolkata against O.P. is barred by limitation in view of judgment of the Hon'ble Supreme Court of India, in Kaluram's case reported AIR 1976 SC 1637 or not.
- V. Whether O.P. can take the shield of time barred claim under Limitation Act to contradict the claim of SMP, Kolkata on account of rental dues or not;
- VI. Whether O.P. has defaulted in making payment of rental dues to SMP, Kolkata at the time of issuance of the notice to quit dated 24.12.2004 and whether O.P. can claim relief against forfeiture of lease u/s 114 of the T.P. Act or not;
- VII. Whether O.P has erected any unauthorized construction or not;
- VIII. Whether O.P has parted with possession of the subject premises or not;
- IX. Whether notice to Quit dated 24.12.2004 as issued by the Port Authority to O.P. is valid and lawful or not.
- X. Whether O.P. is liable to pay damages for wrongful occupation of the public premises or not.

**Issues No. I & II** are taken up together for convenient discussion,, 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 Unauthorized 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

*[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. 755, 755/R of 2006 Order Sheet No. 112

**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

**VS**

**M/s. KARSJ TRADERS**

rental dues and/or damages, etc. SMP, Kolkata has come up with an application for declaration of O.P.'s status as unauthorized occupant in to the public premises with the prayer for order of eviction, recovery of rental dues and damages against O.P. on the plea of determination of lease 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 Mr. Justice 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 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

16.02.2022

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

*[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. 755, 755/R of 2006 Order Sheet No. 113

## BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S. KARSİ TRADERS

70  
16.09.2022

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
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SYAMA PRASAD MOOKERJEE PORT  
OFFICE OF THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

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 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".

O.P's contention regarding non-service of Show Cause notice has also received the due attention of the Forum. It appears from record that the Show Cause notice under sec 4 and 7 of the P.P Act were served through Registered post to the recorded addresses of O.P. at 5, Hide Road, Kolkata-700043 and also at "Tau and Eta Shed, Kantapukur". The Notice/s sent through registered post to "Tau and Eta Shed, Kantapukur" returned undelivered to the Forum however, the Notice sent to 5, Hide Road, Kolkata-700043 was not returned back. The report of the Process Server dated 13.04.2006 further depicts that the said notices were served upon O.P personally and the same has been received by the representative of O.P. with signature. In view of such fact it cannot be said that no show Cause notice u/s 4 was ever been served upon O.P. In my view, the importance of a notice served in the official course of business of India Post cannot be ignored by mere nonappearance of the O.P. A notice which was served in regular course of official business of a Statutory Authority like SMP, Kolkata must have some probative value of the substance unless it appears that such notice was wrongly addressed. The presumption of law will

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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. 755 of 755/R Of 2002 Order Sheet No. 114

## BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

**VS**  
*M/S. WARSI TRADERS*

16.02.2022

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16/02/2022

certainly support the case of SMP, Kolkata regarding service of notice to O.P. in this instant case. Moreover, O.P. has appeared to contest the instant proceeding therefore, O.P.'s plea of non service of Show Cause Notice is not at all tenable in view of the fact and circumstances of the present case.

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

**Issues No.III, IV, V & VI** are also required to be discussed analogously as the issues are related with each other. I must say that occupation and enjoyment of the public premises, one must have to pay the requisite charges for such occupation. O.P. must have to pay the charges for occupation and enjoyment of the Port Property either in the form of arrear charges equivalent to rental dues for the relevant period or in the form of damages as the case may be and occupation of a public premises without paying requisite charges is opposed to public policy. On the question of time barred claim of SMP, Kolkata on "limitation", opposing submissions have received my due attention. It is the case of O.P. that SMP, Kolkata's claim against O.P. is time barred and strong reliance has been placed upon New Delhi Municipal Corporation case wherein it was decided by the Hon'ble Apex Court of India that claim beyond 3 years is time barred and time barred claim cannot be recovered. SMP, Kolkata on the other hand submits with argument that New Delhi Municipal Corporation case has no relevance in the present case where SMP Kolkata's claim on account of rental dues and damages is required to be adjudicated and there is no denial on the part of O.P. for payment of rent for occupation in the Port Property.

Admittedly, O.P. has accepted the jural relationship between SMP, Kolkata and itself that is to say as debtor. In my view a combined reading of the relevant provisions of the Limitation Act read with the provision of the Indian Contract Act leaves no room for doubt that O.P. has specifically acknowledged its dues/charges for occupation into the Port property while acknowledging



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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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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S. WARSJI TRADERS.

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the jural relationship between the parties as debtor and as such cannot take the plea of time barred claim. It would not be out of scope to mention that the argument on the basis of the Apex Court Judgment in New Delhi Municipal Corporation case regarding "time barred claim" should not be applicable in the instant case as the situation in which the Hon'ble Apex Court delivered its judgment has drastically changed upon amendment of the Public Premises Act, 1971 with the introduction of Sec.15 of the Act. The Apex Court delivered its judgment in New Delhi Municipal Corporation case on Public Premises Act 1958 wherein Sec.15 regarding taking away of jurisdiction of all Courts into the matters concerning the public premises was not there. The Public Premises Act 1971 has come into force after eliminating all constitutional infirmities. At the time of the Apex Court judgment the 1958 Act was in force being the Public Premises (Eviction of Unauthorized Occupants) Act, 1958. This Act gave a choice of procedure to the Government. The fact that a contradictory process could be followed led to repeal of the 1958 Act and enactment of the Public Premise (Eviction of Unauthorized Occupants) Act 1971 which introduced Sec. 15 with the object of making the Act constitutionally valid and not violative of Article 14 of the Constitution of India. The Limitation Act is applicable for Civil Courts to try suits unless barred by some other Act. Se.9 of the Civil Procedure Code reads as follows:

"The courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred."

There are provisions for filing of suit in Civil Court with regard to territorial jurisdiction, pecuniary jurisdiction and jurisdiction with regard to subject matter of dispute. But in case of recovery of possession of public premises and recovery of arrear rental dues and damages etc. in respect of public premises, this Forum of Law is the only competent adjudicating authority and civil court has no jurisdiction to entertain any matter in respect of the public premises as defined under the P.P. Act.

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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. 755/R Of 2006 Order Sheet No. 116

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**VS**

M/S NARSI TRADERS.



The Limitation Act has no application in the proceedings before the Estate Officer which is not a Civil Court, governed by the Civil Procedure Code. Sec. 15 of the Act puts a complete bar on entertaining any matter before the Civil Court in respect of Public Premises. I am firm in holding that Limitation Act has its no application in the instant case and the Division Bench judgment of Madhya Pradesh High Court in AIR 1980 MP 196(DB) wherein it was decided that *Limitation Act has no application to the proceedings before the Estate Officer as it is not a Court to be governed by the Civil Procedure Code, keeping in view the bar under Sec.15 of the P.P. Act* has its applicability in all sense of law.

In my understanding Civil Suits are tried by the Courts as per the Civil Procedure Code and proceedings before this Forum of Law are guided by the P.P. Act which provides a code for adjudication of matters relating to public premises. However, Civil Procedure Code has only a limited application to the proceedings before the Estate Officer in-as-much-as that an Estate Officer shall for the purpose of holding an enquiry under the P.P. Act, have the powers as are vested in a Civil Court under the Code of Civil Procedure while trying a suit in respect of summoning and enforcing attendance of any person and examining him on oath which requires the discovery and production of documents. Section 8 of P.P. Act makes it abundantly clear that an Estate Office under P.P. Act enjoys a very restricted power of CPC in terms of the Order-XVI, Rules 1 to 21 of the Civil Procedure Code (CPC) and Order- XI, Rule 12 to 21. No doubt the Estate Officer has been given power as vested in a Civil Court under CPC for the limited purpose of holding enquiry under the P.P. Act. Yet it is not a court to be governed by the Civil Procedure Code. As per CPC, the courts shall have jurisdiction to try all suits of a civil nature, excepting suits for which their cognizance is either expressly or impliedly barred.

There is no scope for interpretation with regard to jurisdiction of the Civil Court in respect of the matters specified under P.P. Act against the legislative mandate u/s.15 of the P.P. Act read with Sec.9 of CPC. As it is abundantly clear that Estate Officer, the Adjudicating

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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. 755, 755/R Of 2002 Order Sheet No. 117

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S. NARSI TRADERS.

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SYAMA PRASAD MOOKERJEE PORT

Authority under the P.P. Act is not a Civil Court to be governed by the Civil Procedure Code, the proceedings before the Estate Officer cannot be considered under law to be a suit or proceedings under the CPC. As such, I am firm in holding that Limitation Act has no application in the instant case. The Division Bench judgment of Madhya Pradesh High Court reported in AIR 1980 MP 196 (D.B) (L.S. Nair -VS- Hindusthan Steel Ltd. & Ors.) has its applicability in all sense of law. In this connection I am fortified by a judgment of the Hon'ble High Court, Calcutta in S.N. BHALOTIS -VS- L.I.C.I. & Ors. reported in 2000(1) CHN 880 with reference to the most celebrated judgment reported in AIR 1972 Tripura 1 (Hemchandra Charkraborty -Vs- Union of India) wherein it was clearly held that proceedings initiated by an Estate Officer are not in the nature of suit nor the Estate Officer acts as a Court while deciding proceedings before him. It is my considered view that the contention with regard to "limitation" on behalf of O.P. is applicable in case of Civil suit before the Civil Court to be governed by CPC not before this Forum of Law, which is a quasi-judicial authority under P.P. Act which provides a complete code. More specifically, Limitation Act has its application for suits to be governed under CPC.

Further on the issue of nonpayment of rent and taxes, O.P vide their application dated 04.07.2018 has denied their dues. It is the categorical submission of O.P that they have cleared all the dues of Port Trust with interest for the said land during pendency of the proceeding and they are entitled to get protection under Section 114 of Transfer of Property Act, 1882. Before this Forum, SMP, Kolkata has filed an updated Statement of Accounts as generated on 09.08.2021, which clearly indicates the huge dues on the part of the O.P. Such a submission made by Statutory Authority like SMP, Kolkata in their regular course of business cannot be disbelieve. Although during the course of hearing O.P had made payments but never succeeded in complete and full discharge of such dues taxes and interest due to SMP, Kolkata. Moreover, during the course of hearing O.P. was given opportunity to reconcile their dues with port authority but O.P. had not complied such order. In my considered view, the Port Authority has a definite legitimate claim to get its revenue involved into the Port Property in question as per

*[Signature]*



# Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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the SMP, Kolkata's Schedule of Rent Charges for the relevant period and O.P. cannot deny such payment of requisite charges as mentioned in the Schedule of Rent Charges.

It appears from the record that at the time of issuing Quit Notice breach of non-payment was very much evident therefore, O.P cannot bypass their liability of payment of rent on the basis of their present plea. More so, the Ejectment Notice dated 24.12.2004 served upon O.P. clearly spells out that any payment tendered by O.P. after 01.02.2005 i.e. the date of expiry of the period to vacate the subject premises, is deemed as compensation for wrongful use and occupation and acceptance of such payments will be strictly without prejudice to this notice to quit and also to the SMP, Kolkata's right to take further action in the matter. The said notice to quit further states that Kolkata Port Trust (applicant herein) has no intention /desire to revive O.P's status as tenant under the Board of Trustees for the Port of Kolkata.

As such, I have no bar to accept that a sum of Rs 63,29,518/- had fallen due against O.P. at the time of issuance of Quit notice by the Port Authority dated 24.12.2004 and is still due on account of rent. The payments so far tendered by O.P. is the compensation /occupational dues/charges for unauthorised use and occupation and not rental dues which is still due and payable by O.P. The language in quit Notice dated 24.12.2004 is unambiguous and there is nothing to disbelief the intent of SMP, Kolkata to terminate the relationship with O.P.

As regard the application dated 04.07.2018 praying for waiver/relief against forfeiture u/s 114 of the T.P. Act I must say that mere acceptance of rent during pendency of the eviction proceedings does not amount to waiver of notice to quit. As per law, in order to constitute a waiver of notice to quit/s, O.P. must have to prove that SMP, Kolkata by accepting rent had intended to treat the lease as subsisting. In absence of any such intention on the part of SMP, Kolkata being proved, mere acceptance of an amount tendered by O.P. during pendency of the proceedings cannot be said to be a "waiver" on the part of SMP, Kolkata. In the present case in hand SMP, Kolkata

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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. 755, 755/R of 2006 Order Sheet No. 119

## BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S. WARS; TRADERS

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16.08.2022

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actively prosecuted the proceedings for ejection against O.P. and as such it cannot be an accepted proposition that the notice to quit/s have been waived by any sense of law.

**Issue No VII & VIII** are also taken up together as they are related to each other. With regards to the 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 being No.Lnd.5222/04/2147 is very much vital in deciding the issues. It reveals that SMP, Kolkata has given one more opportunity to O.P to remove the breaches before issuing the Quit notice dated 24.12.2004 terminating the lease in question. However, subsequently during the course of hearing O.P vide its application dated 04.07.2018, submits that by the inspection report dated 12.08.2013 SMP, Kolkata has admitted that there was no unauthorised construction over the subject premises and after such admission by the Port authority such allegation loses its force. But I am not at all convinced by the submission of O.P. because SMP, Kolkata has also come up with specific drawing/sketch Maps being No. 8887-D-II dated 29.11.2012 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 Act 1971, 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 such unauthorized construction in the subject premises, and since it is a settled law that admitted facts need not be proved, I have no bar in accepting that the breach of unauthorized construction was existing when the notice to quit dated 24.12.2004 came to be issued by the Port Authority.

Now as regards unauthorized parting with possession, mere claim on behalf of O.P. that it has never parted with possession of the premises to any third party or is itself in use and occupation of the premises etc. are, in my view not sufficient to defend this type of serious allegation such as unauthorized parting with possession.

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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Proceedings No. 755/P. 755/P of 2006 Order Sheet No. 120

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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The O.P could have very well produced documents related to their trade or business from that premises but O.P chose to produce nothing. Even O.P did not produce any single photographic evidence to counter the allegation of SMP, Kolkata. O.P. vide their application dated 04.07.2018 further submitted that Sri Swarup Singh and Rajindar Singh who alleged to be functioning on the premises for the purpose of repairing and sales of spare parts are merely the service provider of O.P. and O.P. has already disclosed their relation by submitting the copy of agreement. However, such submission of O.P. is not acceptable to me and O.P. has also failed to give any proper explanation of keeping electric meters in the name of Rajindar Singh & Swarup Singh. Further it appears from a letter of SMP, Kolkata that subject occupation is being used by different subtenants by way of running different business such as restaurant, machine shop, automobile work shop etc and by way of warehousing for which no permission was taken from SMP, Kolkata. As such it is very difficult to accept the claim of the O.P which is bereft of any cogent reason. More over induction of a third party without the approval of SMP, Kolkata is also against spirit of tenancy. Thus the issues are decided in favour of SMP, Kolkata.

Discussions against the foregoing issues must dominate the **Issues no. IX and X**, leading to the conclusion that the notice to quit dated 24.12.2004 as issued by the Port Authority, demanding possession from O.P. is very much valid, lawful and binding upon the parties. I have deeply gone into the submissions/ arguments made on behalf of the parties in course of hearing. The properties of the Port Trust are coming under the purview of "public premises" as defined under the Act. Now the question arises as to how a person become unauthorized occupant into such public premises. As per Section 2 (g) of the Act the "unauthorized occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. The lease granted to O.P. was undoubtedly

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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. 755, 755/R of 2006 Order Sheet No. 121

**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

**VS**

*m/s. WARSI TRADERS*

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16.09.2022

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determined by the Port Authority by due service of notice to quit and institution of proceedings against O.P. by SMP, Kolkata is a clear manifestation of Port Authority's intention to get back possession of the premises. In such a situation, I have no bar to accept SMP, Kolkata's contentions regarding determination of lease by notice dated 24.12.2004, on evaluation of the facts and circumstances of the case. "Damages" are like "mesne profit" that is to say the profit arising out of wrongful use and occupation of the property in question. I have no hesitation in mind to say that after expiry of the period as mentioned in the said notice to Quit dated 24.12.2004, O.P. has lost its authority to occupy the public premises, on the evaluation of factual aspect involved into this matter and O.P. is liable to pay damages for such unauthorized use and occupation. To come into such conclusion, I am fortified by the decision/ observation of the Hon'ble Supreme Court in Civil Appeal No.7988 of 2004, decided on 10<sup>th</sup> 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 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. ....

.....  
.....  
....."

In course of hearing, the representative of SMP, Kolkata states and submits that Port Authority never consented in continuing O.P's occupation into the public premises and never expressed any intention to accept O.P as tenant. It is contended that SMP, Kolkata's intention to get back possession is evident from the conduct of the Port Authority and O.P. cannot claim its occupation as "authorized" without receiving any rent demand note. The monthly lease was doubtlessly determined by the

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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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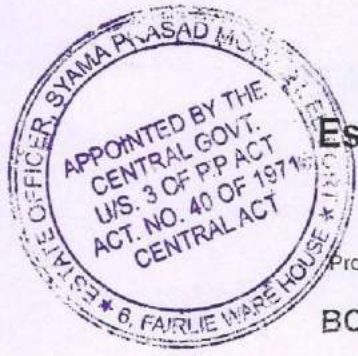
landlord by notice, whose validity for the purpose of deciding the question of law cannot be questioned by O.P. Therefore, there cannot be any doubt that the O.P. was in unauthorized occupation of the premises, once the lease was determined. In my opinion, institution of this proceedings against O.P. is sufficient to express the intention of SMP, Kolkata to obtain an order of eviction and declaration that SMP, Kolkata is not in a position to recognize O.P. as tenant under lease.

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 without making payment of requisite charges as mentioned in the Schedule of Rent Charges.

I am fortified by the Apex Court judgment reported in JT 2006 (4) Sc 277 (Satup 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 broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract to be likely to result from the breach of it. Moreover, as per law O.P. is bound to

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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. 755/755/R of 2006 Order Sheet No. 123

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VS

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16-02-2022

deliver up vacant and peaceful possession of the public premises to SMP, Kolkata after expiry of the period as mentioned in the notice to Quit in its original condition. As such, the issues are decided in favour of SMP, Kolkata. I have no hesitation to observe that O.P's act in continuing occupation is unauthorized and O.P. is liable to pay damages for unauthorized use and occupation of the Port property in question upto the date of delivering vacant, unencumbered and peaceful possession to SMP, Kolkata. With this observation, I must reiterate that the ejection notice, demanding possession from O.P. as stated above has been validly served upon O.P. in the facts and circumstances of the case and such notice is valid, lawful and binding upon the parties. In view of the discussions above, the issues are decided in favour of SMP, Kolkata.

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

1. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrears of rental dues/damages etc. as prayed for on behalf of SMP, Kolkata and the Notice/s issued by this Forum are in conformity with the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act 1971.
2. That in gross violation of the terms and conditions of the subject monthly lease, O.P has defaulted in making payment the rental dues and taxes payable to SMP, Kolkata.
3. That O.P has raised unauthorized construction on the subject premises without having any authority of law.
4. That O.P. has unauthorisedly parted with possession of the subject Public Premises and failed to vacate the premises upon determination of the period as mentioned in the notice to quit dated 24.12.2004 as issued by the Port Authority.
5. That O.P. cannot take the plea of time barred claim by SMP, Kolkata, taking the shield of Limitation Act.

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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. 755/R Of 2000 Order Sheet No. 124

**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

**VS**

M/S- HARSI TRADERS

6. That O.P. cannot claim relief against forfeiture of the lease in question, in the facts and circumstances of the case.
7. That no case has been made out on behalf of O.P. as to how its occupation in the Public Premises could be termed as "authorised occupation" after issuance of notice dated 24.12.2004, demanding possession by the Port Authority.
8. That O.P. has failed to bear any witness or adduce any evidence in support of their contention regarding "authorised occupation" and O.P.'s occupation has become unauthorized in view of Sec.2(g) of the P.P. Act and O.P. is liable to pay damages for unauthorised use and enjoyment of the Port Property in question upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

ACCORDINGLY, Department is directed to draw up formal order of eviction u/s.5 of the Act as per Rule made there under, giving 15 days time to O.P. and 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.

It is my considered view that a sum of Rs.63,29,518/- (Rupees Sixty three Lakh twenty nine thousand five hundred eighteen only) for the period 1<sup>st</sup> day of June, 2000 to 31<sup>st</sup> day of January 2005 (both days inclusive) is due and recoverable from O.P. by the Port authority on account of rental dues and O.P. must have to pay the rental dues to SMP, Kolkata on or before ..... Such dues attract compound interest @ 6.30 % per annum, which is the current rate of interest as per the Interest Act, 1978 (as gathered by me from the official



By Order of  
THE ESTATE OFFICER,  
SYAMA PRASAD MOOKERJEE PORT  
CERTIFIED COPY OF THE ORDER  
PASSES BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

*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. 755.755/R of 2006 Order Sheet No. 125

## BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

MS. MARSII TRADERS

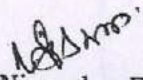
70  
16.02.2022

website of the State Bank of India) from the date of incurrence 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.

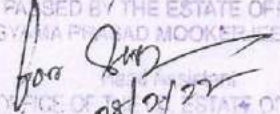
I find that SMP, Kolkata has made out an arguable claim against O.P., founded with sound reasoning, regarding the damages/compensation to be paid for the unauthorised occupation. I make it clear that SMP, Kolkata is entitled to claim damages against O.P. for unauthorized use and occupation of the public premises right upto the date of recovery of clear, vacant and unencumbered possession of the same in accordance with Law as the possession of the premises is still lying unauthorisedly with the O.P. SMP, Kolkata is directed to submit a statement comprising details of its calculation of damages, indicating there-in, the details of the rate of such charges, and the period of the damages (i.e. till the date of taking over of possession) together with the basis on which such charges are claimed against O.P., for my consideration for the purpose of assessment of such damages as per Rule made under the Act.

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

GIVEN UNDER MY HAND AND SEAL

  
(Nirmalya Biswas)  
ESTATE OFFICER

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

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
CERTIFIED COPY OF THE ORDER  
PASSED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
  
OFFICE OF THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
08/2/22