

**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. 30 DT 28.04.2022
PROCEEDINGS NO. 1829 OF 2020

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

-Vs-

ESTATE CHULAI SINGH

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 **Estate of Chulai Singh, represented by Shri Dharmandra Kr. Singh of 74, Chowringhee Centre, Kolkata-700 016 and also at 26/B, Rani Rashmoni Road, Kolkata-700 013** 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 arrear of rental dues/damages etc. as prayed for on behalf of SMPK.
2. That O.P. was in arrears of rent at the time of issuance of notice to quit dated 28.11.1988 by the Port Authority,
3. That there is no foundation or basis to the contention of O.P. regarding non-enforceability of notice to quit, and the determination of lease of O.P. was valid, legal and binding upon the parties,
4. That O.P. while in possession and enjoyment of the Port Property and while acknowledging the jural relationship as tenant of SMPK cannot take the shield of time barred claim under Limitation Act,
5. 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 to quit dated 28.11.1988, demanding possession by the Port Authority,
6. That O.P. has failed to bear any witness or adduce any evidence in support of its contention regarding "authorised occupation" and O.P's occupation has become unauthorized in view of Sec. 2(g) of the P.P. Act, 1971.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
RECEIVED COPY OF THE ORDER
BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
Assisted by:
28.04.2022
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Please see on reverse

:2:

7. That right from the date of expiry of the period as mentioned in the said notice to quit dated 28.11.1988, O.P. has lost its authority to occupy the Public Premises and O.P. is liable to pay damages for wrongful use and enjoyment of the Port Property upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

A copy of the reasoned order No. 80 dated 28.04.2022 is attached hereto which also forms a part of the reasons.

NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said **Estate of Chulai Singh, represented by Shri Dharmandra Kr. Singh of 74, Chowringhee Centre, Kolkata-700 016 and also at 26/B, Rani Rashmoni Road, Kolkata-700 013 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 Estate of Chulai Singh, represented by Shri Dharmandra Kr. Singh of 74, Chowringhee Centre, Kolkata-700 016 and also at 26/B, Rani Rashmoni Road, Kolkata-700 013 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-155/2

The said piece or parcel of land Msg. about 94.947 Sq.m is situate at Taratala Road, Than : Garden Reach, Kolkata, District: Calcutta , Regn. Dist.: Alipore, It is butted and bounded on the North and West by the land belonging to private parties on the East by Trustees' strip of open land and on the south by the Trustees' open land used as passage

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

Dated: 29, 04, 2022

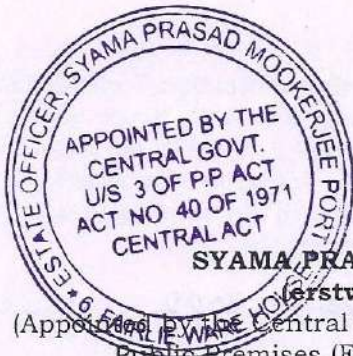

Signature & Seal of the
Estate Officer.

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

By Order of :
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

29, 04, 2022
A Head Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



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

**ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

(erstwhile KOLKATA PORT TRUST)

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

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. 30 DT 28.04.2022
PROCEEDINGS NO. **1829/D of 2020**

Form "G"

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

To
**Estate of Chulai Singh,
represented by Shri Dharmandra Kr. Singh of
74, Chowringhee Centre,
Kolkata-700 016
and also at
26/B, Rani Rashmoni Road,
Kolkata-700 013.**

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

And whereas by written notice dated 27.09.2021 (Vide Order No 16 dated 22.09.2021) you were called upon to show- cause on/or before 01.10.2021 why an order requiring you to pay a sum of Rs 7,69,692.00 (Rupees Seven Lakhs Sixty Nine Thousand Six Hundred Ninety Two only) at 1 x SoR for the period from 01.02.1989 to 31.03.2019 and Rs. 3,35,740.00 (Rupees Three Lakhs Thirty Five Thousand Seven Hundred Forty only) at 2x SoR for the period from 01.07.2017 upto 31.03.2019 being damages payable together with compound interest for unauthorised use and occupation of the said premises, should not be made.

AND WHEREAS I have considered your objection and/or the evidence produced by you,

Now, therefore, in exercise of the powers conferred on me by Sub-section (2) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971, I hereby order you to pay the sum of Rs 7,69,692.00 (Rupees Seven Lakhs Sixty Nine Thousand Six Hundred Ninety Two only) at 1 x SoR for the period from 01.02.1989 to 31.03.2019 and Rs. 3,35,740.00 (Rupees Three Lakhs Thirty Five Thousand Seven Hundred Forty only) at 2x SoR for the period from 01.07.2017 upto 31.03.2019 assessed by me as damages on account of your unauthorised occupation of the premises to Kolkata Port Trust, by

16.05.2022

Please see on reverse

By Order of:
**THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT**
CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
29.04.2022
Assistant Estate Officer

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, which is the current rate of interest as per the Interest Act, 1978 (as gathered by me from the official website of the State Bank of India) on the above sum with effect from the date of incurrence of liability, till its final payment in accordance with Notification Published in Official Gazette/s.

A copy of the reasoned order no. 90 dated 28.04.2022 is attached hereto.

In the event of your refusal or failure to pay the damages within the said period or in the manner aforesaid, the amount will be recovered as an arrear of land revenue.

SCHEDULE

Plate no - D-155/2

The said piece or parcel of land Msg. about 94.947 Sq.m is situate at Taratala Road, Than : Garden Reach, Kolkata, District: Calcutta , Regn. Dist.: Alipore, It is butted and bounded on the North and West by the land belonging to private parties on the East by Trustees' strip of open land and on the south by the Trustees' open land used as passage

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

Dated: 29.04.2022



Signature and seal of the
Estate Officer.

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

By Order of :
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
Head Assistant
29.04.2022
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



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

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

(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)
Public Premises (Eviction of Unauthorised Occupants) Act 1971
OFFICE OF THE ESTATE OFFICER
6, Fairlie Place (1st FLOOR) KOLKATA-700001

Form " E "

PROCEEDINGS NO. **1829/R of 2020**

ORDER NO. **90** DATED: **28. 04. 2022**

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

To
**Estate of Chulai Singh,
represented by Shri Dharmandra Kr. Singh of
74, Chowringhee Centre,
Kolkata-700 016
and also at
26/B, Rani Rashmoni Road,
Kolkata-700 013.**

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

AND WHEREAS, by written notice dated you were called upon to show cause on/or before 01.10.2021 why an order requiring you to pay a sum of Rs. 21,095.38 (Rupees Twenty One Thousand Ninety Five and paise Thirty Eight 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 objection and/or the evidence produced by you,

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. 21,095.38 (Rupees Twenty One Thousand Ninety Five and paise Thirty Eight Only) for the period 30.06.1980 upto 31.01.1989 (both days inclusive) to Kolkata Port Trust/ SMPK by

16.05.2022

BY Order of:
ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
Kolkata-700 001
28.04.2022
Assistant
ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

PLEASE SEE ON REVERSE

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, which is the current rate of interest as per the Interest Act, 1978 (as gathered from the official website of the State Bank of India) till liquidation of the same from the date of incurrance of liability in accordance with the notification of KoPT issued under Authority of Law as per adjustments of payments made so far by O.P. as per KoPT's books of accounts.

A copy of the reasoned order no. 30 dated 28.04.2022 is attached hereto.

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-155/2

The said piece or parcel of land Msg. about 94.947 Sq.m is situate at Taratala Road, Than : Garden Reach, Kolkata, District: Calcutta , Regn. Dist.: Alipore, It is butted and bounded on the North and West by the land belonging to private parties on the East by Trustees' strip of open land and on the south by the Trustees' open land used as passage

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


Dated: 29.04.2022


Signature and seal of the
Estate Officer

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

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

CERTIFIED COPY OF THE ORD.
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE


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. 1829, 1829/R & 1829/D of 2020 Order Sheet No. 28

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
Estate CHULAI SINGH

FINAL ORDER

The instant proceedings No. 1829, 1829/R and 1829/D of 2020 arise out of the application bearing No. LM 4257 dated 15.04.1989 filed by **Syama Prasad Mookerjee Port, Kolkata** [erstwhile Kolkata Port Trust/ KoPT], hereinafter referred to as '**SMPK**', the applicant herein, under the provisions of the **Public Premises (Eviction of Unauthorised Occupants) Act, 1971** (hereinafter referred to as '**the Act**') praying for an order of eviction and recovery of rent and compensation/ damage charges etc., along with accrued interest in respect of the public premises, being the piece or parcel of land measuring about 94.947 sq.m. or thereabouts situated at Tratala Road, Thana: Garden Reach, Kolkata against **Chaulai Singh**, (hereinafter referred to as **O.P.**).

It is the case of SMPK that O.P. was given a monthly Lease in respect of the said SMPK' land, more fully described under the Schedule 'A' of said SMPK's application dated 15.04.1989 and the O.P. has made several breaches of the terms and conditions of the said Lease, such as default in payment of monthly rents and taxes, unauthorizedly parted with possession to rank outsiders, erected unauthorized constructions and encroached upon SMPK's vacant land. It is further the case of SMPK that a notice to quit dated 28.11.1988 was issued to O.P. by SMPK requiring the O.P. to hand over vacant peaceful possession of the premises on the expiry of the month of January, 1989 in terms of the said notice. SMPK has made out a case that O.P. has no authority to occupy such premises after the determination of tenancy in question upon service of the quit notice dated 28.11.1988 and is liable to pay compensation/damage charges for its continuous use and enjoyment of the premises in question till the time its possession is recovered.

30

28.04.2022

By Order of:
THE ESTATE OFFICER,
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER,
SYAMA PRASAD MOOKERJEE PORT
29.04.2022
Hear [Signature]
ESTATE OFFICER,
SYAMA PRASAD MOOKERJEE PORT

[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. 1829, 1829/R, 1829/D Of 2020 Order Sheet No. 29

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
ESTATE CHULAI SINGH

90
08.04.2022

[Handwritten signature]

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
Head Assistant
29.04.2022
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Since the matter pertains to some old records, initially some efforts have been made (vide Orders dated 21.10.2020, 13.11.2020, 25.11.2020, 09.12.2020, 18.12.2020, 27.01.2021, 05.02.2021, 12.02.2021, 03.03.2021, 07.04.2021, 23.04.2021, 05.05.2021, 02.07.2021) for obtaining information/ status of premises and consolidation of the same in order to obtain a clear factual understanding of the matter and to proceed further against the O.P. under the relevant provisions of the Act. SMPK filed application bearing no Lnd 4257 (Loose)/21/715 dated 02.03.2021 informing that during a survey cum inspection of the premises on 27.01.2021, it has been revealed a number of unauthorised entities have been functioning over the premises. As per the said application dated 02.03.2021, a total 7 (seven) no of unauthorised occupants have been found to be carrying on variety of businesses in the premises, viz. hotel, shop, STD Booth etc. A TMC party office was also found situated in the premises. In support of such submission, SMPK has produced copies of some photographs of the premises with the said application dated 02.03.2021. It is also stated by SMPK that 25 sqm of SMPK's vacant land was found to be encroached by O.P. and a sketch plan bearing no 10393-D-III dated 27.01.2021 was produced in order to maintain such claim. It is also mentioned that SMPK has made a written communication to the concerned Police Station seeking an enquiry as to whether O.P./ Chulai Singh is alive and in case of his death, the name of heirs, if any, of said Chulai Singh/ O.P. Further, SMPK has produced a detailed statement of account with regard to the premises in question under the cover of its application dated 19.07.2021.

Considering the case of SMPK, this Forum of Law formed its opinion to proceed against O.P. and issued 3 (three) no. of Show Cause Notices, all dated 27.09.2021 (vide order No. 16 dated 22.09.2021), upon the O.P. as per the Rules made under the Act. One of the notices was issued u/s 4 of the Act for adjudication of the prayer of eviction, the rest of the notices were issued u/s 7 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. 1829, 1829/R, 1829/P Of 2020 Order Sheet No. 30

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
ESTATE CHULAI SINGH

30

28.04.2022

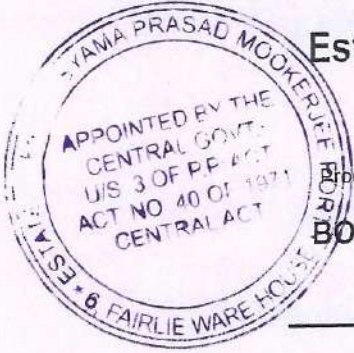
the Act for adjudication of the prayer of rental as well as compensation/ damages dues, alongwith the accrued interest, stated to be due and recoverable from O.P.

The said Notices/s were served though 'Speed Post' upon both the recorded addresses of O.P. viz. '74, Chowringhee Centre, Kolkata - 700 016' and '26/B, Rani Rashmoni Road, Kolkata - 700 013'. The Notice sent to Rani Rashmoni Road did not return undelivered by the Postal Department, inevitably raising a presumption of its service upon the O.P., however, the Notice sent to Chowringhee Centre returned undelivered by Postal Authority. The Process Server attached with this Forum has filed the report dated 07.10.2021 intimating that the notices could not be served personally, by hand delivery, to O.P. as the door of the premises was in closed condition during his visit on the premises on 07.10.2021. However, the notice was affixed on a conspicuous part of the premises on the same very day for a notice to all concerned about the pendency of the proceeding, as it appears from said report of Process Server dated 07.10.2021. However, all efforts remain futile as neither O.P. nor anyone interested in property appeared before this forum and/or filed the reply to Show cause issued by this forum at the appointed date and time or even thereafter. Following the principles of natural justice that no one should be condemned unheard, a decision was then taken to publish a notice in an English Daily Newspaper having circulation in the locality for a notice to all concern regarding the pendency of the present proceeding. A notice was published in Classified Column of the Times of India, Kolkata Edition on 20.11.2021.

Subsequent to such newspaper publication, one Shri Dharmendra Kr. Singh, expressing himself as the son of Chulai Singh has appeared before the Forum on 24.12.2021 and stated that his father Chaulai Singh had expired on 03.10.2000. However, no copy of Death Certificate of Chaulai Singh was produced. Considering the submission, said Dharmendra Kr.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
28.04.2022





Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1829, 1829/R, 1829/D of 2020 Order Sheet No. 21

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

ESTATE CHULAI SINGH

BO
28.04.2022

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
Head Assistant
28.04.2022
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Singh was directed to produce the death certificate of Chaulai Singh/ O.P. as well as to file Reply to Show Cause issued by the forum. After that, the said Dharmendra Kr. Singh appeared through his Ld. Advocate, who filed his Vakalatanama. Shri Singh filed an application dated 14.01.2022 stating that Chaulai Singh died intestate on 03.10.2000, leaving behind his three sons viz. Shri Dharambir Singh, said Shri Dharmandra Kr. Singh and Shri Manoj Singh and the estate of Chulai Singh is now being represented by the above named sons as the legal heirs and representatives of the deceased. A copy of death certificate of Sri Chulai Singh and a copy of Voter ID Card of said Dharmandra Kr. Singh have been filed in support of such submission. From the self attested photo identity proof of Dharmandra Kr. Singh it could be meaningfully established that Dharmandra Kr. Singh is the son of Chulai Singh / O.P. I must mention that taking cognizance of the death of Chulai Singh / O.P., I have continued this proceedings against "Estate Chulai Singh" as O.P. thereby giving opportunity to the legal heirs and representatives of Chulai Singh to contest the matter. Thereafter, copies of certain documents such as copy of Quit Notice and Lease Agreement was prayed by O.P. Thereafter, SMPK vide application dated 14.02.2022 filed photocopies of the quit notice dated 24.10.1975 alongwith acknowledgment copies of service of such notice and a copy of Certificate of Possession of land. I must mention here that the veracity or legality of such documents filed by the parties is discussed at the following part of the Order, as the flow of factual narratives of the case remain undisturbed at this juncture. A copy of such application alongwith all its annexure has been handed over to O.P. It appears that the O.P. filed their Reply to Show Cause on 25.02.2022, with a copy to SMPK. The main contentions/ point of challenge of the said Reply dated 25.02.2022 may be summarized as follows:



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

Order Sheet No. 1829, 1829/R, 1829/D Of 2020 Order Sheet No. 32

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
ESTATE CHULAI SINGH

30

28.04.2022

- i) The copy of notice to quit provided by SMPK under the cover of application dated 14.02.2022 is different from the notice to quit mentioned in SMPK's original application dated 15.04.1989. SMPK vide original application dated 15.04.1989 had submitted that notice to quit dated 28.11.1988 was issued upon O.P. However, at present SMPK, under the cover of their application dated 14.02.2022, has produced the copy of a notice to quit issued on a different date viz. 24.10.1975. As the notice to quit dated 28.11.1988 could not be produced by SMPK, the existence of such notice is not established and as such, the question of service of such notice to O.P. does not and cannot arise.
- ii) An order of eviction cannot be passed unless it is established that the tenancy with the O.P. has been lawfully terminated. As the existence of notice to quit dated 28.11.1988 is in doubt, the determination of tenancy of O.P. was not established.
- iii) The copy of lease agreement has not been provided by SMPK inspite of order/s passed by this Forum.
- iv) The provisions governing quit notice are provided under the Transfer of Property Act, 1882 and not under the Public Premises Act, 1971.
- v) The notice to quit lost its executable force after alleged date of issuance i.e. 28.11.1988, as 12 years had been passed and the land Lord/SMPK failed to initiate the eviction proceeding within such period of 12 years and hence, the proceeding is barred by limitation and void ab-initio. The unwanted supply of notice quit dated 24.10.1975 could not come into rescue of SMPK.
- vi) SMPK has failed to produce the copy of Lease agreement in support of their claim that O.P. is a monthly lease holder. The copy of only Possession Certificate provided by SMPK under the cover of application dated 14.02.2022 does not establish beyond

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
Head Assam
OFFICE OF THE I.D. 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. 1829, 1829/R, 1829/D of 2020 Order Sheet No. 33

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

ESTATE RHULAI SINGH

30
28.04.2022

doubt that O.P. was a monthly lease holder under SMPK and it is established that O.P. is a monthly tenant under SMPK.

vii) In the absence of the lease agreement, it cannot be definitely said that O.P. has no power for creation of sub-tenancy rights.

viii) The claim of SMPK for the period from 30.06.1980 to 31.01.1989 is barred by the laws of Limitation and the only amount SMPK could claim is the rent for 3 years previous to the date of demand notice.

ix) The basis of SMPK's claim of compensation/damage charges is erroneous as the determination to tenancy by the said quit notice dated 28.11.1988 has not been established by SMPK.

SMPK filed their comments dated 10.03.2022 against the Reply of O.P. dated 25.02.2022 and it is stated that several demand letters, such as letters dated 21.12.1987, 21.07.1988 were sent to O.P., however, all efforts remain futile as the O.P. did not make payments constraining SMPK to serve the notice of ejection dated 28.11.1988. At this stage, SMPK has filed a photocopy of the said notice to quit dated 28.11.1988 under the cover of their said application dated 10.03.2022. It is further stated in the said application dated 10.03.2022 that a survey-cum-inspection was carried out on the premises on 27.01.2021 (in terms of the Orders passed by this forum dated 21.10.2020 and 27.01.2021) when it was revealed that certain other persons/ entities have been occupying the subject premises and running their respective business/ affairs unauthorisedly. It has also been observed, during such survey on 27.01.2021, that O.P. has encroached SMPK's vacant land msg. 25 Sq.m. as shown in the enclosed sketch plan bearing no 10393-D-III dated 27.01.2021. In support of such submission SMPK has produced certain photographs of the Public Premises in question. It is pointed out that no

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
A Head Assistant
29.04.2022
GROUP OFFICER, 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. 1829, 1829/R, 1829/1 Of _____ Order Sheet No. 34

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
ESTATE CHULAI SINGH

30
28.04.2022

[Handwritten signature]

document (viz. Succession Certificate/ Legal Heir Certificate) establishing the relationship with O.P. /Chulai Singh has been produced by the appearing party expressing himself as the son of O.P. It is also pointed out that the notice to quit dated 24.10.1975 was served previously upon the O.P. and as the O.P. tendered some payments thereafter, the same was withdrawn. However, as the O.P. was in default of payment once again w.e.f. 08.11.1979, as may be evident from the statement of accounts of public premises in question, consequent thereto the ejection notice dated 28.11.1988 was served upon O.P. asking them to vacate the premises on the expiry of the month of January, 1989. It is submitted that the notice to quit dated 24.10.1975, as submitted vide application of SMPK dated 14.02.2022, be ignored and prayer is made to take cognizance of the notice to quit dated 28.11.1988, by which the tenancy with O.P. was lawfully determined by SMPK. It is stated that dues of O.P. including interest charges has reached to the tune of Rs 24,53,676.65 as on 09.03.2022 at 3x SoR against Plate No D 155/2 and the bills were raised upto 31.03.2019 and is being stopped due to non-payment of O.P. for last 5 years. Additionally, it is stated the Limitation Act has no applicability to the present proceedings before this Forum as it exercises quasi-judicial powers under the Public Premises Act and is not a Civil Court governed by the Code of Civil Procedure and this Forum is not a 'Court' within the scheme of Limitation Act.

The O.P. has filed the Additional Reply to Show Cause arising out of the Reply/ Comments of SMPK dated 10.03.2022. It has been stated in the said additional reply that SMPK filed only a copy of the alleged notice to quit dated 28.11.1988 as evidence of termination of tenancy, but failed to produce the original copy of the said notice to quit dated 28.11.1988 as evidence. The memo of service of said notice to quit dated 28.11.1988 was not filed in original. No person was examined regarding service of such notice to quit. It is stated that Shri

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
Head Assistant
29.04.2022
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. 1529, 1829/R, 1829/D Of 2020 Order Sheet No. 35

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

ESTATE CHULAI SINGH

30
28.04.2022

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
28.04.2022
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Manoj Kumar Singh might be a minor person at the time of acknowledging service of said notice to quit dated 28.11.1988. It is further been stated that the instant proceeding is time barred as the original application of SMPK dated 15.04.1989 was not served within 3 (three) years from the date of filing before this Forum and the proceeding was initiated after 23 (twenty three) years on the basis of the alleged notice to quit dated 28.11.1988. It is pointed out that through the letters of SMPK dated 11.11.1987 and 21.07.1988, demands were raised by SMPK upon O.P., however, no statement of accounts has been provided for the payments of O.P. of Rs 6,600/- and Rs. 13,900/- kept in suspense account. It is stated that until and unless a statement of accounts is produced for the period 08.11.1979 to 31.03.1988, the claim of SMPK regarding its rental dues would not sustain. It is stated that the rental dues of SMPK has become time barred. It is stated that until the termination is proved on the basis of alleged notice to quit dated 28.11.1988, the O.P. is not entitled to pay any damage charges to SMPK. In support of such contentions copies of a Judgment passed by Hon'ble Supreme Court of India, delivered by Hon'ble Justice A.C. Gupta J. and Hon'ble Justice Jaswant Singh J., in Civil Appeal No 988 of 1968 and 2 (two) Judgments passed by Hon'ble High Court, Calcutta delivered by Hon'ble Justice Soumen Sen J. in ACO No 91 of 2016 read with APO No 222 of 2016 and Hon'ble Justice Arijit Banerjee J. and CO No 1063 of 2008 have been filed.

During the course of hearing, the representative of SMPK has submitted that large scale unauthorized constructions are being erected by some local and unauthorised person and in this regard a compliant is lodged before the Officer-in-Charge of Gander Reach Police Station. In terms of SMPK's application dated 11.04.2022 that during a visit to the subject premises on 10.04.2022, it was found that RCC Structure/ Brick wall is being erected by local and unauthorized people on the Road Berm of Taratala Road just opposite to godown

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. 1829, 1829/R, 1829/D of 2020 Order Sheet No. 36

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
ESTATE CHULAI SINGH

30
28.04.2022

of M/s. Krishna Shipping Agency and adjacent to the eastern corner of the Schedule premises for which SMPK never accorded any permission to any authority. In the instant proceeding, as the O.P. has already been under notice issued under Sec.4 of the Act and as I was in seisin of the matter, I have passed Order dated 12.04.2022 in exercise of powers conferred under the Act and directed for immediate removal/demolition of the said unauthorized structure being the RCC structure/ brick wall within 16.04.2022, failing which SMPK was entitled to proceed for demolition/ removal of the unauthorised structure alongwith the assistance from the concern Police Station in order to maintain the law and order situation during such removal/demolition. In my view, such immediate intervention by this Forum of Law was unavoidable in order to bulldoze such illegal activity being carried out at the Public Premises in question. It is seen that in this connection SMPK has preferred another application dated 20.04.2022 before this forum of law and intimated that SMPK moved an application u/s 144 of CRPC before the Court of Ld. Executive Magistrate, Alipore being registered as M.P. case No. 1106 of 2022 wherein, the Ld. Magistrate was pleased to inter-alia direct the Garden Reach Police Station to see that no illegal construction be made by any unauthorized occupant. It has further been stated that when the Inspector, Port Security Organization (PSO) of SMPK went on the subject premises on 16.04.2022, it is noticed and further reported that the alleged illegal constructions has been on verge of completion even after passing of the Order passed by Ld. Executive Magistrate dated 13.04.2022. It was further reported to be noticed that some electrical work was still ongoing on the said premises. In this connection an official complaint was lodged by the PSO official with the Garden Reach Police Station on 16.04.2022. It is further mentioned that SMPK vide e-mail communication dated 16.04.2022 requested the Dy. Commissioner of Police, Port Division as

[Handwritten signature]

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
29.04.2022

[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. 1829, 1829/R, 1829/P Of 2020 Order Sheet No. 37

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

^{VS}
ESTATE CHULAI SINGH

Bo
28.04.2022

well as the Officer-in-Charge of Garden Reach Police Station to deploy adequate Police force at the subject premises on 17.04.2022 to enable the officials of SMPK to peacefully execute the order dated 12.04.2022 passed by this Forum of Law. It is stated that in response to such e-mail communication of SMPK, the Garden Reach Police Station vide e-mail communication dated 17.04.2022 intimated that the next date for Police Assistance would be informed soon after proper assessment from all concerned about the matter. It is stated that thereafter SMPK preferred a writ petition being W.P.A. No. 6935 of 2022, inter alia, for Police in-action before the Hon'ble High Court at Calcutta. It is further stated that the Hon'ble High Court was pleased to pass an Order of "status-quo" on 18.04.2022 restraining the private respondents from making any further construction in respect of the property in question till 16.05.2022 or until further Order/s, whichever is earlier. The Hon'ble Court was also pleased to direct the Garden Reach Police Station to ensure that no such construction is made. Let it be noted here that no further development in the said writ petition or of the case before Ld. Executive Magistrate has been intimated by SMPK till passing of the instant Order.

Now, while delivering this order, I have carefully gone through the contentions made by the parties along with supporting documents submitted in support thereof. First and foremost I must mention that upon perusal of such documents filed by Sri Daharmandra Kr. Singh and considering the case that the representative of SMPK did not object to the said reporting of death of Chaulai Singh and as there is no other better piece of evidence available on record either contradicting or in denial of such submission of Sri Dharmendra Kr. Singh, this Forum acknowledged the death of Chaulai Singh and as on death of the original tenant the liability of making payment devolves upon the heirs of the tenant/O.P., the heirs of Chaulai Singh as was reported in terms of the application dated 14.01.2022 have been

[Handwritten signature]

By Order of :
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
@ 29.04.2022
Head Assistant
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. 1829, 1829/R, 1829/D Of 2020 Order Sheet No. 38

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
ESTATE CHULAI SINGH

implicated in the proceeding and the Cause Title was amended accordingly to "Estate Chaulai Singh"/ O.P.

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:-

1. Whether the Proceedings against O.P. is maintainable or not;
2. Whether the contention of O.P. with regard to the non-enforceability of notice to quit dated 28.11.1988 has any merit with regard to facts and circumstances of the case or not;
3. Whether the allegations of default of rent, against O.P., have any merit or not;
4. Whether O.P. can take the shield of Limitation Act to contradict the eviction proceedings against O.P. and the claim of SMPK on account of dues while in possession and enjoyment of the Port Property in question or not;
5. Whether O.P's occupation could be termed as "unauthorised occupation" in view of Sec.2 (g) of the P.P. Act and O.P. is liable to pay damages to SMPK during the period of its unauthorised occupation, or not;
6. Whether O.P is liable to pay damages for wrongful use and enjoyment of the Port property or not.

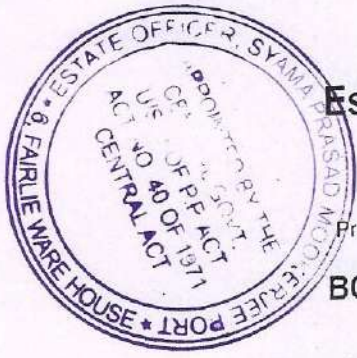
Regarding Issue no. 1, I must say that the properties owned and controlled by the Port Authority has been declared as "public premises" by the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and Sec. 15 of the Act puts a complete bar on any Court's jurisdiction to entertain any matter relating to eviction of unauthorized occupants from the public premises and recovery of rental dues and/or damages, etc. SMPK has come up with an application for declaration of O.P's status as unauthorized occupant in to the public premises with the prayer

30

28.04.2022

By Order of
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
29.04.2022

[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. 1829, 1829/R, 1829/D or 2020 Order Sheet No. 39

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

ESTATE CHULAI VS SINGH

30
28.04.2022

for order of eviction, recovery of dues etc on the ground of expiry of authority to occupy 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.

Issue Nos 2 and 3 are taken up together, for convenient discussions. A monthly lease like the one that was granted to the O.P., continues on month to month basis on the basis of conduct of both the parties. To clarify the position of a lease continuing on month to month basis, I must say that O.P. is recognized as a monthly lessee on the basis of renewal of lease by monthly demand and O.P. in turn acknowledges such grant of lease by way of making payment to SMPK on the basis of such demand from SMPK's end. O.P. cannot claim to be a tenant without making payment of monthly rent on demand from SMPK. The moment, Port Authority decided to stop sending demand/bill to O.P., such act on the part of SMPK is required to be considered under law as unwillingness on the part of the Port Authority to recognize O.P. as tenant in respect of the property in question. Even at the cost of reiteration, I must say that a tenant like O.P. cannot claim its occupation as "monthly tenancy" or "authorized occupant" without making payment of monthly rent for a particular month on evaluation of the factual aspect involved in this matter. True to say that there cannot be any tenancy to be continued on month to month basis without making payment of monthly rental dues.

[Handwritten signature]

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
29.04.2022
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

During course of hearing, SMPK has produced computerised statement of accounts dated 14.07.2021 under the cover of its

[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. 1829/1829/R, 1829/D of 2020 Order Sheet No. 40

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
ESTATE CHULAI SINGH

30
28.04.2022

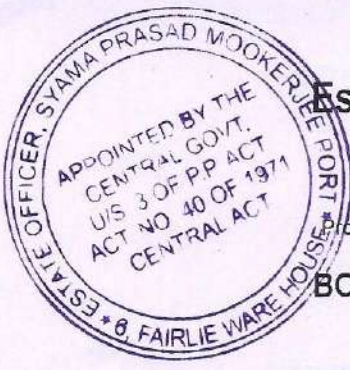
application dated 19.07.2021 maintained in official course of business. I have no reason to disbelieve such statements produced by the Statutory Authority. On the other hand, the reply dated 25.02.2022 and the additional reply dated 25.03.2022 filed by the representative of O.P. is vague and evasive and in my view, mere denial of SMPK's claim is not sufficient to establish the defence of the O.P. As per law, a denial/objection by the O.P. has to be specific and not evasive. Upon consideration of the said reply and the additional reply of O.P., I find no specific denial at all. Moreover, it is settled law that the O.P. must produce the documents he intend to rely upon, alongwith the statement of accounts. Whereas, no statement of accounts or document in support of O.P.'s regular payment to SMPK whatsoever has been relied upon by O.P.

In my view, O.P's continuance in occupation in the Public Premises was never consented by the Port Authority as there is no demand for monthly rent from O.P. signifying SMPK's assent for such occupation. As per law, institution of proceedings/suit is sufficient to express the intention of the landlord. Here Port Authority has already issued notice to quit dated 28.11.1988 (duly served on the O.P. through his son, as confirmed by O.P. vide application dated 25.02.2022) and legality of serving such notice cannot be challenged by O.P. It is as per the information provided by O.P., followed by submission of the copy of Death Certificate by O.P. that Chulai Singh was alive at the time when the notice to quit dated 28.11.1988 was issued to his recorded address and he has died on 03.10.2000, as is apparent from the copy of death certificate furnished before this Forum. When a strong case has been made out on behalf of SMPK regarding O.P.'s failure to pay the monthly rental dues as agreed upon on the basis of the conditions for grant of monthly term lease, it is futile to assert that SMPK cannot terminate the tenancy, as granted to O.P. under monthly term lease, in question. No case has been made out on behalf of the O.P. as to how they can

[Handwritten signature]

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
29/04/2022
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. 1829, 1829/R, 1829/D of 2020 Order Sheet No. 41

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
ESTATE CHULAI SINGH

30
28.04.2022

escape from the fundamental condition for grant of monthly lease and that too after accepting possession of the premises as established vide Certificate of Possession dated 12.05.1954 filed under the cover of SMPK's application dated 14.02.2022 and paying monthly rent for a considerable period upto April, 1984 as evident from the detailed statement of accounts dated 14.07.2021. I have come across letters dated 11.11.1987 and 21.07.1988 issued by SMPK to the O.P. demanding payment of the arrear rent and taxes, accruing right from July, 1987 and March 1988. Thereafter, since the rental dues were not cleared by the O.P., notice to quit dated 28.11.1988 came to be issued by the Port Authority. The said letters clearly mention that in case the payment was not made to SMPK, the tenancy with O.P. would be terminated by SMPK.

Therefore, there cannot be an iota of doubt that the O.P. was in arrears of rent, at the time of issuance of notice to quit dated 28.11.1988 by the Port Authority. In my view, the submissions of the Port Authority appear to me to be consistent and uniform and as such, I do not find any reason to disbelieve the claim of the Port Authority.

The Issues no 2 and 3 are thus decided against the O.P.

Regarding Issue no.4, I am of the view that admittedly, O.P is in occupation and enjoyment of the Public Premises after expiry of the period mentioned in notice to quit dated 28.11.1988. The various submissions made before this Forum on behalf of the O.P. clearly demonstrate that O.P is in admittance of its liability towards payment of charges for occupation but disputing SMPK's claim as per SMPK's demand on the basis of notification issued by the Tariff of Authority for Major Ports. It is the contention of SMPK that the charges for occupation have been claimed against O.P on the basis of Schedule of Rent charges in force for the relevant period. I am taking note of the fact that SMPK's

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
@ 29.04.2022
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

1829, 1829/R, 1829/D

Of 2020 Order Sheet No. 42

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
ESTATE CHULAI SINGH



30
23.04.2022

enhancement of rent charges is on the basis of notified rate of rent as per notification issued by the authority of law as per provisions of the Major Port Trusts Act, 1963, as amended from time to time and now as per Major Port Authorities Act, 2021. Such notified rates of rent (Rent Schedule) has been upheld by the Hon'ble High Court Calcutta and the Hon'ble Apex Court. It is my well considered view that unless there is any material/argument to substantiate O.P.'s claim regarding their entitlement to pay for occupation into the public premises, mere statement contradicting SMPK's claim is not acceptable under law. In fact O.P. cannot claim differential treatment from other occupiers/users of the Port Property for making payment of charges in terms of the notification published in Official Gazettes in a similarly placed situation.

In my view, the Limitation Act does not permit O.P to take the plea of "time barred claim", while in occupation and enjoyment of the property as per Sec. 22 of the Limitation Act in the event of continuing breaches on the part of O.P. after expiry of the period mentioned in the ejection notice. As per law, O.P was under obligation to hand over possession of the property to SMPK in vacant and unencumbered condition and failure on the part of O.P. to discharge such statutory liability is a breach of contract.

Now the question survives whether O.P can take the plea of time barred claim under Limitation Act, while in possession and enjoyment of the property. It is my considered view that O.P. cannot escape their liability towards payment of rental dues on the plea of "limitation" as per Sec. 25 of the Indian Contract Act, while acknowledging the jural relationship as debtor. No attempt has been made on behalf of O.P. as to how O.P.'s 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 SMPK's notice to quit dated 28.11.1988, demanding possession from O.P.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
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. 1829, 1829/R, 1829/D of 2020 Order Sheet No. 43

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
ESTATE CHULAI SINGH



30

28.04.2022

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
28.04.2022

My view is based on various decisions of the Hon'ble Apex Court of India and Hon'ble Calcutta High Court, wherein it has been decided that Limitation Act has no application before Forum of Law which is not a civil court to be governed by the Civil Procedure Code. The judgment of the Hon'ble Apex Court of India reported in New India Assurance Case - 2008 (3) SCC 279 = AIR 2008 SC 876 is very much relevant in deciding the question whether this Forum is a court or not. It was decided by the Supreme Court that Civil Procedure Code and Indian Evidence Act are not applicable for proceedings before the Estate Officer under P.P. Act which provided a complete code. The Limitation Act applies to "suits" to be governed by CPC and Indian Evidence Act. When the basic elements for adjudication of a "suit" are totally absent for proceedings under P.P. Act, 1971, it is futile to advance any argument for its application. The judgments of different High Courts including that of Delhi High Court could be accepted as a guiding principle. 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 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 worthy to record that there is no prescribed period of limitation in the Limitation Act itself for recovery of "damages". It would not be out of scope to mention that Limitation Act bars the remedy by way of "suit" but not the entitlement. In my view, there is a clear distinction between 'rent' and 'damages'. So long both the parties admit their relationship as landlord and tenant, the question of paying damages does not arise. In other words, if the tenant is asked to pay rent by the landlord, the element of authorized occupation could be inferred but in case of demand for damages, there is element of unauthorized use 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. 1829, 1829/R, 1829/P of 2020 Order Sheet No. 44

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
ESTATE CHULAI SINGH



30
28.04.2022

enjoyment of the property (1996) 5 SCC 54 (Shangrila Food Products Ltd. & Anr vs Life Insurance Corporation of India & Another).

In view of the discussion above, I am of the view that this Forum of Law is very much competent under law to adjudicate the claim of SMPK against O.P. and Limitation Act has no application to the proceedings before the Estate Officer which is a quasi-judicial authority under P.P. Act and is neither a Civil Court to be governed by the Civil Procedure Code nor a "court" within the scheme of the Indian Limitation Act. In holding so, I have also relied on the judgment delivered by the Hon'ble Supreme Court of India on 23.4.2015 in Civil Appeal No. 4367 of 2004 (M.P. Steel Corporation -vs- Commissioner of Central Excise) reported in (2015) 7 SCC 58. I have also taken a note of Sec.29 of The Limitation Act, 1963 read with Sec.25 of the Indian Contract Act, 1872. It is my well considered view that even if for the sake of argument, Limitation Act is taken to apply to the proceedings before the Estate Officer (not admitting), Sec.25 of the Indian Contract Act will definitely come into play against O.P.'s plea for "time barred" claim under Limitation Act. I am of the view that O.P. acknowledged its relationship as debtor and Sec. 25 of the Contract Act debars O.P. to take the plea of "barred by limitation", in the facts and circumstances of the case. Hence, the issue 4 is decided in favour of SMPK.

[Handwritten signature]

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
Head Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
29.04.2022

Issues 5 and 6 are required to be discussed analogously. Discussion against the foregoing paragraphs will certainly lead to the conclusion that the notice for determination of lease dated 28.11.1988 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 SMPK are coming under the purview of "public premises" as defined under the Act. Now the question

[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. 1829, 1829/R, 1829/D Of 2020 Order Sheet No. 45

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
ESTATE CHULAI SINGH

30
28.04.2022

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 determined by the Port Authority and institution of proceedings against O.P. by SMPK 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 SMPK's contentions regarding determination of lease by notice to quit dated 28.11.1988, 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 28.11.1988, 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 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 premises comes to an end and for

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
29.04.2022
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

[Signature]

Estate Office SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceeding No.

1829, 1829/R, 1829/P

Of

2020

Order Sheet No.

46

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
ESTATE CHULAI SINGH

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 SMPK 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 SMPK'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 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 SMPK to obtain an order of eviction and declaration that SMPK is not in a position to recognize O.P. as tenant under monthly lease.

The Port Authority has a definite legitimate claim to get its revenue involved into this matter as per the SMPK's Schedule of Rent Charges for the relevant period and O.P. cannot claim continuance of its occupation without making payment of requisite charges as mentioned in the Schedule of Rent Charges. To take this view, 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

[Handwritten signature]

Order of:
ESTATE OFFICER
AD MOOKERJEE PORT
A COPY OF THE ORDER
BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
Has been sent
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. 1829, 1829R/1829/D of 2020 Order Sheet No. 47

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS ESTATE CHULAI SINGH



30
28.04.2022

is very much relevant for the purpose of determination 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 SMPK that the charges claimed on account of damages is on the basis of the SMPK'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 and now under the Major Port Authorities Act, 2021. In my view, such claim of charges for damages by SMPK 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 deliver up vacant and peaceful possession of the public premises to SMPK 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 SMPK. 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 SMPK. 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 SMPK.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
22.09.2022



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1829, 1829/R, 1829/P Of 2020 Order Sheet No. 48

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
BSTAB CHULAI SINGH



30
28.04.2022

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

- i. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear of rental dues/damages etc. as prayed for on behalf of SMPK.
 - ii. That O.P. was in arrears of rent at the time of issuance of notice to quit dated 28.11.1988 by the Port Authority,
 - iii. That there is no foundation or basis to the contention of O.P. regarding non-enforceability of notice to quit, and the determination of lease of O.P. was valid, legal and binding upon the parties,
 - iv. That O.P. while in possession and enjoyment of the Port Property and while acknowledging the jural relationship as tenant of SMPK cannot take the shield of time barred claim under Limitation Act,
 - v. 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 to quit dated 28.11.1988, demanding possession by the Port Authority,
 - vi. That O.P. has failed to bear any witness or adduce any evidence in support of its contention regarding "authorised occupation" and O.P's occupation has become unauthorized in view of Sec. 2(g) of the P.P. Act, 1971.
- That right from the date of expiry of the period as mentioned in the said notice to quit dated 28.11.1988, O.P. has lost its authority to occupy the Public Premises and O.P. is liable to pay damages for wrongful use and enjoyment of the Port Property upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

[Handwritten signature]

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
DATE 28.04.2022
A. H. SINGH
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. 1829, 1829/R, 1829/D of 2020 Order Sheet No. 49

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
ESTATE CHULAL SINGH

30
28.04.2022

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 the representatives of O.P. or any person/s whoever may be in occupation, to vacate the premises. I make it clear that all person/s, whoever may be in occupation, 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 the estate of O.P., in accordance with the canons of Law till the date of unencumbered recovery of possession of the same.

SMPK is directed to submit a comprehensive status report of the Public Premises in question on inspection of the property after expiry of the 15 days as aforesaid, so that necessary action can be taken for execution of the order of eviction u/s 5 of the Act, as per Rule made under the Act.

During the course of hearing, I am given to understand by SMPK that the rent as well as mesne profit/compensation/ damages charged from time to time is based on the rates notified by the Tariff Authority for Major Ports (TAMP) in the Official Gazette, which is binding on all users of the port property and non-payment of dues by O.P. appears to be established. Hence, I have no bar to accept the claim of SMPK on account of rent as well as damages/compensation/ mesne profit etc. I have nothing to disbelieve in respect of SMPK's claim against O.P as per the records maintained regularly in SMPK's office in regular course of business.

It is my considered view that a sum of Rs. 21,095.38 (Rupees Twenty One Thousand Ninety Five and paise Thirty Eight Only) for the period from 30.06.1980 upto 31.01.1989 (both days inclusive) is due and recoverable from O.P. by Port Authority on account of rental dues.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
Head Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
28.04.2022



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1829, 1829/R, 1829/P of 2020 Order Sheet No. 50

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
BSTATE CHULAI SINGH

30
28.04.2022

It is also my considered view that a sum of Rs 7,69,692.00 (Rupees Seven Lakhs Sixty Nine Thousand Six Hundred Ninety Two only) at 1 x SoR (i.e. one time of Schedule of Rent Chrages) for the period from 01.02.1989 to 31.03.2019 and Rs. 3,35,740.00 (Rupees Three Lakhs Thirty Five Thousand Seven Hundred Forty only) at 2x SoR (i.e. twice the Schedule of Rent Chrages) for the period from 01.07.2017 upto 31.03.2019 are due and recoverable from O.P. by Port Authority on account of compensation dues/ damages/ mesne profit

The estate of O.P., represented by said Shri Dharmandra Kr. Singh must have to pay the dues to SMPK on or before 16.05.2022

Such rental and compensation dues shall attract compound interest @ 6.30 % per annum, which is the current rate of interest as per the Interest Act, 1978 (as gathered from the official website of the State Bank of India) from the date of incurrance of liability, till the liquidation of the same, as per the adjustment of payments, if any made so far by O.P., in terms of SMPK's books of accounts. I sign the formal orders u/s 7 of the Act.

I make it clear that SMPK is entitled to claim damages against O.P./ estate of O.P. for unauthorized use and occupation of the public premises right upto the date of recovery of clear, vacant and unencumbered possession of the same in accordance with Law, and as such the liability of O.P./ estate of O.P. to pay damages extends beyond 31.03.2019 as well, till such time the possession of the premise continues to be under the unauthorized occupation with the O.P. SMPK is directed to submit a statement comprising details of its calculation of damages after 31.03.2019, indicating therein, the details of the rate of such charges, and the period of the damages (i.e. till the date of taking over of possession) together with the basis on

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



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1829, 1829/R, 1829/D Of 2020 Order Sheet No. 50 51

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
ESTATE CHULAS SINGH

30
28.04.2022

which such charges are claimed against the Estate of 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 Estate of O.P. to pay the amounts to SMPK as aforesaid, Port Authority is entitled to proceed further for recovery of its claim 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
CERTIFIED COPY OF THE
PASSED BY THE ESTATE
SYAMA PRASAD MOOKERJEE
Head Assistant
28.04.2022
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT