



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
Fairlie Warehouse
6, Fairley Place, Kolkata- 700 001.

REASONED ORDER NO.13 DT 23.05.2022
PROCEEDINGS NO.1888 OF 2021

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

-vs-

M/s. Vijai Shree Pvt. Ltd.

F O R M - "B"

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

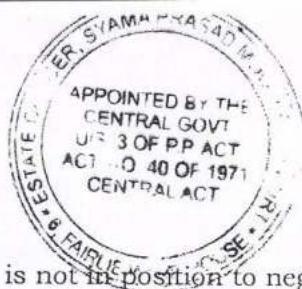
WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that **M/s. Vijai Shree Pvt. Ltd, 24/1/1, Alipore Road, Kolkata - 700 027** is in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

1. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of rental dues etc. as prayed for on behalf of SMPK.
2. That the O.P. has defaulted in making payment of SMPK's rental dues, which has been computed on the basis of Notifications published in the Kolkata Gazette having the statutory force in determining the quantum of dues/charges as payable by O.P. to SMPK.
3. That Port Authority/ SMPK is well within its jurisdiction to demand for rental dues and/or charges for occupation into the Public Premises in question in terms of Schedule of Rent Charges (SoR) notified in the Official Gazette in terms of the provisions of the Major Port Trusts Act, 1963 and the Major Port Authorities Act, 2021.
4. That the O.P. has failed to take the shield of the Order dated 29.05.2015 passed by my predecessor Estate Officer in connection with the proceeding no 1415 of 2013, in order to contradict the present case of SMPK.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
FILED COPY OF THE ORDER
TO THE ESTATE OFFICER
MOOKERJEE PORT
Head Assistant
23.05.2022
D. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

PLEASE SEE ON REVERSE



(2)

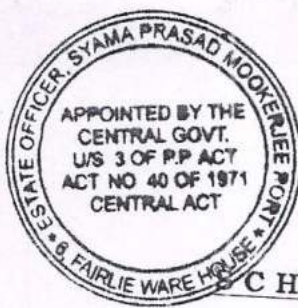
5. That the O.P. is not in position to negotiate the terms for grant of a Lease or to deny/ repudiate their liability for payment to the Port Authority by placing reliance on the Order dated 06.03.2019, which has subsequently been recalled by the Hon'ble High Court, Calcutta in terms of the Order dated 23.03.2021.
6. That the O.P. has failed to establish its claim for "grant of lease" in respect of the Public Premises in question as a matter of right and is in no way empowered to dictate SMPK the terms and conditions for allotment of SMPK's property.
7. That the proceedings at the instance of SMPK against O.P. is not barred by the laws of estoppels, waiver etc.
8. That the O.P. has failed to produce any evidence or document so as to defend the allegations by SMPK of unauthorized construction and encroachment into the Trustees' land.
9. That the O.P.'s contentions regarding non-maintainability of the Proceedings in view of Government Guideline vide Notification dated 08.06.2002 has no any merit in the eye of Law.
10. That the ejectment notice dated 17.09.2021 as served upon O.P. is valid, lawful and binding upon the parties and O.P. is liable to pay damages for wrongful use and enjoyment of Port Property in question upto the date of handing over of clear vacant and unencumbered possession to the Port Authority.
11. That no case has been made out on behalf of O.P. as to how its occupation in the Public Premises could be termed as "authorised occupation" after issuance of notice dated 17.09.2021, demanding possession by the Port Authority and occupation of O.P. has become unauthorized in view of Sec.2(g) of the P.P. Act, 1971.

A copy of the reasoned Order No. 13 dated 23.03.2022 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 **M/s. Vijai Shree Pvt. Ltd, 24/1/1, Alipore Road, Kolkata - 700 027** 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. Vijai Shree Pvt. Ltd, 24/1/1, Alipore Road, Kolkata - 700 027** 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.

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
24.05.2022
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



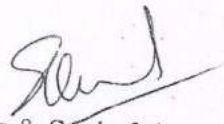
(3)

SCHEDULE

- HL-201** : All that piece and parcel of Public premises measuring about 121.79 Sq.mts. situated at Shibpur Howrah, P.S. Shibpur. It is bounded on the north side by private property belonging to Vijai Shree Pvt. Ltd. on the South by private property belonging to Vijai Shree Pvt. Ltd. on the East by SMPK's land used as road, on the West by private property belonging to Vijai Shree Pvt. Ltd.
- HL-202** : All that piece and parcel of public premises measuring about 2282.63 Sq.mts. situated at Shibpur Howrah, P.S.: Shibpur. It is bounded on the North side by SMPK's land occupied by Binani Metals Ltd., On the South by SMPK's land now used as Guru Charan Rai Chowdhury Road, on the East by SMPK's old railway siding used as garden on the West by private property in the name of Clubtown Riverdale Housing Complex.
- HL-223** : All that piece and parcel of public premises measuring about 1224.93 Sq.mts. situated at Shibpur, Howrah, P.S.: Shibpur. It is bounded on the North side by SMPK's land occupied by Binani Metals Ltd. on the South by SMPK's land occupied by Burn Standard Co. Ltd. On the East by SMPK's land occupied by Burn Standard Co. Ltd. , on the West by SMPK's land used as Foreshore Road.
- HL-224** : All that piece and parcel of public premises measuring about 66.89 Sq.mts. situated at Shibpur Howrah, P.S.: Shibpur. It is bounded on the North side by SMPK's land occupied by Vijai Shree Pvt. Ltd. on the South by SMPK's land occupied by Burn Standard Co. Ltd. on the East by SMPK's land occupied by Burn Standard Co. Ltd. On the West by SMPK's land occupied by Vijai Shree Pvt. Ltd.
- And 6 Way leave Plates under plates Nos. HL-192/1, HL-193, HL-219, HL-220, HL-221 and HL-222.

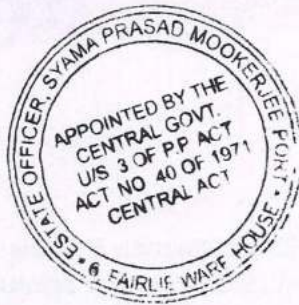
Trustees' means the Board of Trustees' Syama Prasad Mookerjee Port, Kolkata, (Erstwhile Board of Trustees' for the Port of Kolkata)

Date- 24.05.2022


Signature & Seal of the
Estate Officer

COPY FORWARDED TO THE ESTATE MANAGER, SMPK 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
24.05.2022
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



REGISTERED POST WITH A/D.
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**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
6, Fairlie Place Warehouse
Kolkata-700001.

Form "E"

PROCEEDINGS NO. 1888/R OF 2021
ORDER NO. 13 DATED: 25.05.2022

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. Vijai Shree Pvt. Ltd.,
24/1/1, Alipore Road,
Kolkata - 700 027.**

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

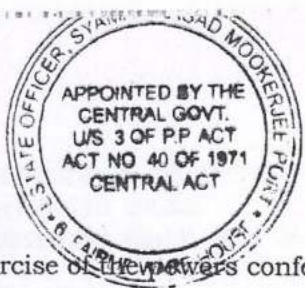
AND WHEREAS, by written notice dated 24.11.2021 you are called upon to show cause on or before 09.12.2021 why an order requiring you to pay a sum of Rs.42,128.71 (Rupees Forty Two Thousand one hundred twenty eight and paise seventy one only) for Plate No.HL-201, Rs.11,19,318.44(Rupees Eleven Lakh nineteen thousand three hundred eighteen and paise forty four only) for Plate No. HL-202, Rs.5,79,129.34(Rupees Five Lakh seventy nine thousand one hundred twenty nine and paise thirty four only) for Plate No.HL-223 and Rs.32,646.72(Rupees Thirty two thousand six hundred forty six and paise seventy two only) for Plate No.HL-224 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 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.42,128.71 (Rupees Forty Two Thousand one hundred twenty eight and paise seventy one only) for Plate No.HL-201 for the period from 31.03.1990 to 02.10.2021(both days inclusive), Rs.11,19,318.44 (Rupees Eleven Lakh nineteen thousand three hundred eighteen and paise forty four only) for Plate No. HL-202 for the period from 30.04.1990 to 02.10.2021(both days inclusive),Rs.5,79,129.34(Rupees Five Lakh seventy nine thousand one hundred twenty nine and paise thirty four only) for Plate No.HL-223 for the period from 31.03.1990 to 02.10.2021(both days inclusive) and Rs.32,646.72(Rupees Thirty two thousand six hundred forty six and paise seventy two only) for Plate No.HL-224 for the period from 30.04.1990 to 02.10.2021 (both days inclusive) to SMP, Kolkata by 09.06.2022.

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
Head Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
24.05.2022



: 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

HL-201 : All that piece and parcel of Public premises measuring about 121.79 Sq.mts. situated at Shibpur Howrah, P.S. Shibpur. It is bounded on the north side by private property belonging to Vijai Shree Pvt. Ltd. on the South by private property belonging to Vijai Shree Pvt. Ltd. on the East by SMPK's land used as road, on the West by private property belonging to Vijai Shree Pvt. Ltd.

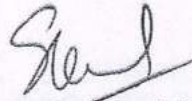
HL-202 : All that piece and parcel of public premises measuring about 2282.63 Sq.mts. situated at Shibpur Howrah, P.S.: Shibpur. It is bounded on the North side by SMPK's land occupied by Binani Metals Ltd., On the South by SMPK's land now used as Guru Charan Rai Chowdhury Road, on the East by SMPK's old railway siding used as garden on the West by private property in the name of Clubtown Riverdale Housing Complex.

HL-223 : All that piece and parcel of public premises measuring about 1224.93 Sq.mts. situated at Shibpur, Howrah, P.S.: Shibpur. It is bounded on the North side by SMPK's land occupied by Binani Metals Ltd. on the South by SMPK's land occupied by Burn Standard Co. Ltd. On the East by SMPK's land occupied by Burn Standard Co. Ltd. , on the West by SMPK's land used as Foreshore Road.

HL - 224 : All that piece and parcel of public premises measuring about 66.89 Sq.mts. situated at Shibpur Howrah, P.S.: Shibpur. It is bounded on the North side by SMPK's land occupied by Vijai Shree Pvt. Ltd. on the South by SMPK's land occupied by Burn Standard Co. Ltd. on the East by SMPK's land occupied by Burn Standard Co. Ltd. On the West by SMPK's land occupied by Vijai Shree Pvt. Ltd. And 6 Way leave Plates under plates Nos. HL-192/1, HL-193, HL-219, HL-220, HL-221 and HL-222.

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

Dated: 24.05.2022


Signature and seal of the
Estate Officer

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

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

Proceedings No. 1888 & 1888/R of 2021 Order Sheet No. 18

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S VIJAI SHREE PVT. LTD.

13
23.05.2022

FINAL ORDER

Relevant facts leading to this proceeding are required to be put forward in order to link up the chain of events. It is the case of **Syama Prasad Mookerjee Port, Kolkata** [erstwhile Kolkata Port Trust/ KoPT], hereinafter referred to as 'SMPK', the applicant herein, that **M/s Vijai Shree Pvt Ltd**, hereinafter referred to as the 'opposite party'/ 'O.P.', came into occupation of the Port Property, being land measuring about 121.79 Sq.m (under Plate No. HL-201), 2282.63 Sq.m (under Plate No. HL-202), 1224.93 Sq.m (under Plate No. HL-223), 66.89 Sq.m (under Plate No. HL-224), alongwith 6 No. of Way leave Plates being Nos. HL-192/1, HL-193, HL-219, HL-220, HL-221 & HL-222 all situated at Shibpore, Howrah, P.S. - Shibpore, as a monthly Lessee w.e.f 08.11.1989, on certain terms and conditions, as outlined in the SMPK's letter No. Lnd 2201/1/4/19/31114 dated 17.01.2019. It is submitted by SMPK that M/s Fort William Co. Ltd., hereinafter referred to as FWCL initially came into possession of the Public premises in question as monthly term Lessee (Short term) and in the mean time, by the year 1987, the company affairs of FWCL were referred to BIFR, wherein the present O.P came into possession of the subject premises and acquired the assets and liabilities of FWCL by virtue of the order of BIFR dated 08.11.1989 and continued their occupation on the subject premises. Consequently, upon the decision of the Competent Authority of SMPK, the present O.P. was granted such month to month lease.

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
24.05.2022

It is the case of SMPK that O.P. violated the condition of such tenancy by defaulting in payment of rent, taxes and other charges of SMPK, by carrying out unauthorized constructions by erecting asbestos shed (ASBR) measuring about 15.16 sq.m under Plate No.HL-201, unauthorisedly constructing RCC beam with some low height pillars under Plate No.HL-

W



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. 1888 & 1888/R of 2021 Order Sheet No. 17

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S VIJAI SHREE PVT. LTD.

13
23.05.2022

202 and 47 sq.m of SMPK land under Plate No.HL-202 and also by indulging encroachment upon the port property by one Riverdale Housing Complex, a private property adjacent to Plate No.HL-202.

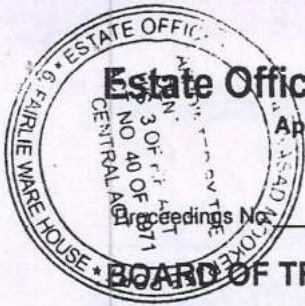
It is the case of SMPK that in view of such aforementioned breaches committed by O.P., SMPK made a request to the O.P. to quit, vacate and deliver up the peaceful possession of the subject premises on 02.10.2021 in terms of the notice to quit bearing no. Lnd 2201/1/VI/21/3338 dated 17.09.2021. As the O.P. did not vacate the premises even after issuance of the notice, the instant proceeding bearing no 1888, 1888/R of 2021 was initiated before the Forum for the eviction of the alleged unauthorized occupant, seeking other reliefs. It is also the case of SMPK that as the O.P. has failed to deliver back possession after expiry of the period mentioned in the notice to quit dated 17.09.2021. It is strongly argued that the O.P. continued unauthorized enjoyment of the premises without paying the requisite charges for occupation militates against the well laid provisions of the Public Policy and as such is highly objectionable.

This Forum of Law formed its opinion to proceed against O.P. under the relevant provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and issued show Cause Notices u/s 4 of the Act (for adjudication of the prayer for eviction) and u/s 7 of the Act (for adjudication of the prayer for realization of Rent etc.) as per the Rules made under the Act, both dated 25.11.2021 (vide order no. 1 dated 24.11.2021).

The O.P. appeared before this Forum through their Ld. Advocate and contested the case and filed several applications/ objections. It reveals from record that O.P. filed their reply to the Show Cause Notice on 28.01.2022. The 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 LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
24.05.2022

9



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. 1888 & 1888/R of 2021 Order Sheet No. 20

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S VIJAI SHREE PVT. LTD.

19

23.05.2022

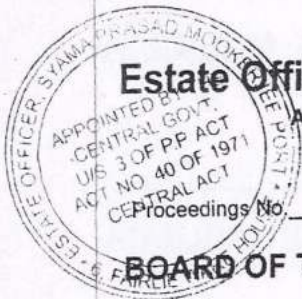
also filed their Written Notes of Arguments on 21.04.2022, SMPK on the other hand, filed their comments dated 06.04.2022 in response to the reply to Show cause filed by O.P.

The main contentions of O.P. can be summarized as follows:-

- 1) The instant proceeding is not maintainable as is barred by the principles of Res-Judicata, Estoppel, Waiver and Acquiescence and principles analogous thereto;
- 2) The instant proceeding is also not maintainable as per the Order dated 29.05.2015 passed in Proceeding No. 1415 of 2013 by the Ld. Estate Officer, wherein it was declared that the status of O.P. is not an "unauthorized occupant" on the strength of the legal notices issued by SMPK way back in 1990 and there was no justification to proceed the matter on the basis of application of SMPK dated 25.02.2013. It has been submitted that such order passed by the Estate Officer is binding on the parties. The O.P. reclaimed their prayer for grant of long term lease on 15.06.2015. Despite such order, which remained unchallenged by SMPK, who continued to raise bills upon O.P. treating them as unauthorized and raising three times (3 x SoR) bills upon O.P.;
- 3) Being aggrieved by the said act of SMPK, a writ petition being W.P. No. 533 of 2017 was preferred by O.P. before the Hon'ble High Court, Calcutta and in compliance of the Order dated 13th September, 2017 passed by the Hon'ble Court, the O.P. has made a payment of 18 lacs to SMPK, however O.P., has failed to understand how the said amount was adjusted against their 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
Hear Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
24.05.2022

9



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. 1888 of 1888 R of 2021 Order Sheet No. 21

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S VIJAI SHREE Pvt. Ltd

13

23.05.2022

- 4) It has further been submitted by O.P. that from 1989 onwards O.P. has been making payments to SMPK as and when any demand was raised by SMPK and as per the assurance of SMPK that a long term Lease would be granted to O.P. w.e.f 01.10.2003;
- 5) In terms of their letter dated 11th December, 2002 O.P. replied to SMPK's letters dated 16th August, 2002 and 3rd December, 2002 stating therein that the O.P. had still been a sick Company as per the provisions of the Sick Industrial Companies(special provisions) Act, 1985 therefore, some concession and reasonable rate could help the O.P.;
- 6) SMPK vide their letter dated 26.03.2004 gave an assurance to grant 99 years lease to O.P. on certain conditions of payment mentioned therein, thereafter O.P. vide their letter dated 27.04.2004 asked for a break-up of the amount claimed by SMPK. SMPK furnished such break-up vide their letter dated 20/24, May 2004 and accordingly SMPK's offer for grant of such 99 years lease was accepted by O.P. vide their letter dated 28.06.2004. However, thereafter SMPK failed and neglected to act in terms of such offer that was accepted by O.P.;
- 7) An amount of Rs. 2,08,705.59 was tendered by O.P. in terms of SMPK's statement dated 15.09.2015 and accordingly informed the same to SMPK vide their letter dated 09.10.2015 for granting long term lease for 99 years;
- 8) O.P. had not made any breach of non-payment or unauthorized construction or encroachment as has been claimed by SMPK. The claim made by SMPK as regards the breach was an afterthought on the part of SMPK with the sole intention to mislead this Forum;
- 9) In order to get a clarification of the position of the plates a_nRTI was preferred by 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
24.05.2022
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

1888 & 1888R of 2021 Order Sheet No. 22

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S VIJAI SHREE PVT. LTD

13
23.05.2022

- 10) The figure of amount claimed by SMPK is arbitrary and without any basis and inconsistent with the claims made previously by SMPK;
- 11) As per order dated 30th July, 2019 a reconciliation of accounts of both the parties were done and accordingly there is no dues outstanding on the part of O.P.;
- 12) The pleadings made by SMPK was an attempt to mislead the Forum and SMPK itself misinterpreted the contents of letter dated 17th January, 2019;
- 13) SMPK itself admitted vide their letter dated 17th January, 2019 that there is no pending outstanding on the part of O.P. till time and there is regular inconsistency in SMPK's statements before every Forum;
- 14) As per the minutes of the meeting dated 1st August, 2019 and 7th August, 2019, the adjustment of TDS was to be done by SMPK which they have repeatedly failed to do till now;
- 15) SMPK had from time to time raised their demand upon O.P. for payment and accordingly, the O.P. obliged such demands on the assurance of grant of a Lease. However, due to SMPK's inaction, the O.P. had to prefer a Writ Petition being W.P. no. 533 of 2017 before the Hon'ble High Court at Calcutta, wherein, the Hon'ble Court was pleased to pass Order dated 06.03.2019 directing, inter alia, SMPK to execute a Lease in favour of O.P. within four weeks from date.
- 16) To frustrate the said Order dated 6th March, 2019 SMPK raised arrear bills for a period wherein there were no previous dues.
- 17) When the O.P. filed Contempt Petition before the Hon'ble High Court at Calcutta, SMPK issued a fresh series of unreasonable demands without any clarity or explanation.

By Order of :
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
23.05.2022
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

9



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. 1888 & 1888/R of 2021 Order Sheet No. 23

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S VIJAI SHREE PVT. LTD

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23.05.2022

18) The O.P. without being able to use the plates even for a single day, has paid every demands of SMPK either in terms of arrear or rent over a period of last 30 years, but SMPK being a Central Govt. Authority, extorted money from Opposite Party without granting any benefit at all.

Referring to the above contentions, the M/s. Vijai Shree Pvt Ltd/O.P. has prayed for dismissal of the instant proceedings in limini.

Now, while passing the Final Order, after carefully considered the documents on record and the submissions of the parties, I find that following issues have come up for my adjudication:

1. Whether the proceedings is maintainable against O.P. or not;
2. Whether O.P. has defaulted in making payment of rental dues to SMPK or not;
3. Whether SMPK's claim on account of Rent is on the basis of Schedule of Rent Charges (SoR) as published in the Calcutta Gazette have any force of law in determining the quantum of dues/charges as payable by O.P. to SMPK or not;
4. Whether at present O.P. is in a position to negotiate the grant of a Lease from SMPK authorities, by placing sole reliance on Order dated 06.03.2019 passed by the Hon'ble High Court, Calcutta or not;
5. Whether O.P. can claim for "grant of lease" in respect of the Public Premises in question as a matter of right or not;
6. Whether O.P. can dictate the terms and conditions for allotment of SMPK's property by the Port Authority or not;

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Head Asst. Est. Officer
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
24.05.2022

Q



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. 1888 & 1888/R of 2021 Order Sheet No. 24

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7. Whether the proceedings at the instance of SMPK against O.P. is barred by law of estoppels, waiver or not;
8. Whether the earlier proceedings no 1415 of 2013 initiated under Public Premises Act is at all relevant for the purpose of determining any question under the instant proceedings or not;
9. Whether there is any unauthorised construction erected at the subject premises or not;
10. Whether there is any encroachment upon SMPK's land or not;
11. Whether O.P's contention regarding non-maintainability of the Proceedings in view of Government Guideline vide Notification dated 08.06.2002 has got any merit or not;
12. Whether the notice to quit, as issued by the Port Authority to O.P. dated 17.09.2021 is valid and lawful in the present facts and circumstances of the case or not.

With regard to **Issue No. 1**, I must say that the properties owned and controlled by the Port Authority/ SMPK have been declared as "public premises" by the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and Section-15 of the Act puts a complete bar on Court's jurisdiction to entertain any matter relating to eviction of unauthorized occupants from the public premises and recovery of rental dues and/or damages, etc. SMPK has come up with an application for declaration of O.P's status as an unauthorized occupant into the public premises with the prayer for order of eviction, recovery of rental dues against the O.P., on the plea of termination of authority to occupy the premises as earlier granted to O.P. in respect of the premises in question. So long the property of the Port Authority/ SMPK is coming under the purview of "public premises" as defined under the Act, the adjudication process by serving Show Cause Notice/s u/s 4 & 7 of the Act is very much maintainable and there cannot be

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OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
24.05.2022

2



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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any question about the maintainability of proceedings before this Forum of Law.

To take this view, I am fortified by an unreported judgment of the Hon'ble High Court, Calcutta delivered by Hon'ble Justice Jyotirmay Bhattacharya J. 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 Public Premises Act in Civil Appellate Jurisdiction being MAT No.2847 of 2007 (The Board of Trustees of the Port of Kolkata and Anr -vs- Vijay Kumar Arya & Ors.) reported in Calcutta Weekly Note 2009 CWN (Vol.113)-P188 The relevant portion of the judgment (Para-24) reads as follows:-

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SYAMA PRASAD MOOKERJEE PORT

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Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

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"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 be subject to the Estate Officer's jurisdiction for the purpose of eviction, the intent and purport of the said Act and the weight of legal authority that already bears on the subject would require such argument to be repelled. Though the state in any capacity cannot be arbitrary and its decisions have always to be tested against Article 14 of the Constitution, it is generally subjected to substantive law in the same manner as a private party would be in a similar circumstances. That is to say, just because the state is a Landlord or the state is a creditor, it is not burdened with any onerous covenants unless the Constitution or a particular statute so ordains"

The judgment and order passed by the Hon'ble Division Bench of Calcutta High Court, particularly to the paragraphs 28 and 29 regarding the duty cast upon the Estate Officer under P.P. Act, in dealing with the scope for adjudication process is very instrumental in deciding the point at issue. The relevant portion of the judgment is reproduced below :-

Para -28 "After the Ashoka Marketing case the question that is posed here should scarcely have arisen. Any further doubt is now settled by the Nusli Neville Wadia judgment. Though an Estate Officer under the said Act is not required to be versed in law, he has sufficient powers to decide the question as to whether a noticee u/s 4 of the said Act is an unauthorised occupant and it is adjudication of such score against the noticee that will permit him to proceed to evict the occupant adjudged to be unauthorised. Just as in the case of any Land Lord governed by the Transfer of Property Act such land lord would have to justify his decision to determine the lease or terminate the authority of the occupier to remain in possession in a Civil suit instituted either by the Land Lord for eviction or by the

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SYAMA PRASAD MOOKERJEE PORT

2



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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Lessee or occupier to challenge the notice, so is it with a statutory authority land lord under the said Act of 1971. The said Act merely removes the authority of the Civil Court to adjudicate such issue and places it before an Estate Officer under the said Act to decide the matter in summery proceedings. The estate officer has to look into all materials before him and, in fit cases, receive oral evidence before he can arrive at a conclusion as to whether the noticee u/s 4 of the said Act is in unauthorised occupation of the Public Premises. If he holds that the noticee is, indeed, an unauthorised occupant he proceeds to remove the noticee and his belongings from the Public Premises; if he finds that the noticee is entitled to continue in possession, the matter is over. It is only the entire scope of adjudication on such issues that it removed from a Civil Court and is placed before the estate officer; the substantive law under the Transfer of the Property Act may still be cited before the estate officer and taken into account by him for the purpose of his adjudication. The usual process under the Civil Procedure Code is merely substituted by a summery procedure before the estate officer. The only difference is that the lessee or occupier of any Public Premises may not bring a matter before the estate officer of his own accord, such lessee or occupier only defend his position as respondent if the estate officer is moved by the statutory authority landlord"

Para-29 "

..... As in a Civil suit that a landlord would be required to institute if the lessee or occupier did not pay heed to a notice to quit, so would a statutory authority landlord be liable to justify, before the estate officer, its decision to determine the lease or revoke the occupier's authority to remain possession of the Public Premises. It is not an Anamallai Club situation where a notice to quit is issued the previous moment and bulldozers immediately follow".

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OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
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2



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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Further, I am fortified by the Judgment dated 04.04.2022 passed by Hon'ble High Court, Calcutta delivered by Hon'ble Justice Sabyasachi Bhattacharyya, J. in connection with IA No GA/4/2021 in W.P.O./533/2017 (Vijay Shree Private Limited- Vs- Board of Trustees of the Port of Kolkata & Ors), IA NO GA/2/2019 (Old No GA/1714/2019) in WPO No 533 of 2017 ((Vijay Shree Private Limited- Vs- Board of Trustees of the Port of Kolkata & Ors) read with WPO No 1281 of 2021 (Vijay Shree Private Limited- Vs- Board of Trustees of the Port of Kolkata & Ors). I have gone through the Judgment dated 04.04.2022 passed by Hon'ble Court and understood the content thereof. I find that the Hon'ble Court in its wisdom was pleased to direct the Forum, inter alia, the following:

"..... In such view of the matter, WPO No.533 of 2017 along with IA No. GA 2 of 2019 (Old No.GA 1714 of 2019) and IA No. GA 4 of 2021 and WPO No.1281 of 2021 are dismissed on contest, with the observation that it will be open for both the parties to urge all their contentions, as taken in the present writ petition, on all questions, before the Estate Officer in the proceedings under Sections 5 and 7 of the 1971 Act. The petitioner shall participate in such proceedings by filing a reply to the show-cause notices of the KoPT. It is further clarified that the merits of the said proceedings have not been entered into by this Court and it will be open to the Estate Officer and, subsequently the Appellate Authority, if any appeal is preferred from the order of the Estate Officer, to decide such questions in accordance with law without being influenced in any manner by any of the observations made herein....."

Thus the issue is decided accordingly.

The **issues No. 2 and 3** are most vital for deciding the question of O.P.'s authority to occupy the premises and as such a conjoint dealing with these issues is found convenient. It is clear that the possession of the subject premises was

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OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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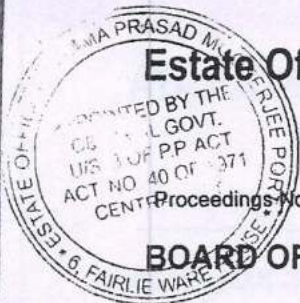
granted to O.P. by SMPK on monthly lease basis. The nature of allotment/ grant of the Public Premises under "monthly lease" was never under challenge in the present proceedings. No case has been made out on behalf of O.P. as to how they can escape from the conditions for grant of monthly lease and that too after accepting possession of the premises and paying monthly rents for fairly a long period. Now, as per law, a monthly lease tenancy like the one granted to O.P., continues only on the basis of timely payment of rent bill/s and non-payment of the same, even for a small period, is enough to vitiate the contract.

Now, it is the case of SMPK that O.P. has defaulted in payment of rental dues as has been charged in terms of the provisions laid down in Major Port Trust Act, 1963 and now the Major Port Authorities Act, 2021 and on the other hand, it is the case of O.P. that O.P. was not in default in payment of rent, taxes and rather, has been making payments as and when any demand was raised by SMPK and upon the assurance of grant of a long term lease by SMPK. It is the case of O.P. that the figures claimed by SMPK as arrear Rent is arbitrary and inconsistent with the previous claims of SMPK. It appears from the claim of SMPK that SMPK started raising bills for Compensation/ Damage charges on the ground of unauthorised occupation of the O.P. at three times the normal rate of rent (3 x SoR).

The writ petition being WPO No.533 of 2017 was filed by O.P. before the Hon'ble High Court, Calcutta, inter alia, for a declaration that all bills raised by the SMPK, treating the O.P. as unauthorised occupant, are bad, illegal and is required to be quashed and for other ancillary reliefs. On 13.09.2017, the Hon'ble Court was pleased to pass an interim order in WPO No.533 of 2017, permitting the O.P. to pay rent at the "single rate" to the SMPK Authorities and to deposit a sum of Rs. 18,00,000/- (Rupees Eighteen Lakhs only) with the SMPK.

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2



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

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The O.P. was thereafter permitted to continue to pay the single rate of rent. It was further ordered that, in the event of failure of payment of any rent as directed, SMPK would be at liberty to initiate appropriate proceedings for eviction of O.P. The entire directions of payment and deposit was without the prejudice to the rights and contentions of the parties. Thereafter, on 06.03.2019, WPO No.533 of 2017 was disposed of by the Hon'ble High Court by recording the consensus of parties for a grant of such FRoR for a 30 years' lease to O.P. and laying down a timeline for grant of such lease. Thereafter, a contempt petition was preferred by the O.P. for alleged non-compliance of the Order dated 06.03.2019 by SMPK Authorities, who filed an application, bearing GA No.1714 of 2019, thereby seeking a modification of the Order dated 06.03.2019 and for a direction upon the O.P. to pay Rs.69,92,790.97 to SMPK. Further, SMPK prayed for extension of the time for initiation of the tender-cum-auction process till the O.P. pays off the outstanding dues for enabling SMPK to start the process of lease. Thereafter, on 29.07.2019, the Expression of Interest (EOI) was published by the SMPK in respect of the subject property, containing the said FRoR as a rider. In the meantime, on 12.02.2021, an inspection of the premises was carried out by the SMPK's officials, when it was observed that there was a RCC Beam with low height pillar under construction without permission from SMPK on the subject plots and that 47 sq. mt. of land forming part of the Plate No. HL-202 was encroached by way of boundary wall constructed by the adjoining owner. It was observed that there was unauthorised construction, allegedly of 15.16 sq. mt., on Plate No. HL-201. Thereafter, on 23.03.2021, GA No.1714 of 2019 was disposed of by the Hon'ble Court by recalling the Order dated 06.03.2019. However, while recalling of the said Order dated 06.03.2019, the Hon'ble Court neither re-imposed the interim order dated 13.09.2017 nor recalled the same particularly.

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2



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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However, the Hon'ble Court was pleased to deal with the aspect in terms of the said Judgment dated 04.04.2022 and was pleased to observe as follows:

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

35. Insofar as the order dated September 13, 2017 passed by the learned Single Judge in WPO No.533 of 2017 is concerned, it is clearly mentioned in the said order itself that the same was passed by way of an interim measure directing the petitioner to deposit a sum of Rs. 18,00,000/- (Rupees Eighteen Lakh) with the KoPT-authorities within September 18, 2017 and to continue to pay the single rate of rent to the KoPT-authorities within seven days of the date of raising of the bill.

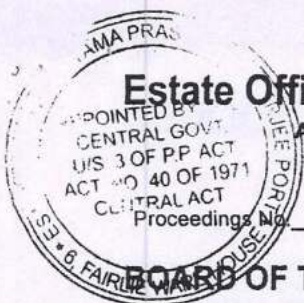
36. Subsequently, the said order merged into the final order dated March 6, 2019 passed in WPO No.533 of 2017 (with GA No.3068 of 2018) whereby the said writ petition was disposed of by directing the parties to enter into a suitable registered deed of lease containing the terms and conditions as enumerated in the writing dated June 15, 2015, purportedly of the first petitioner, with liberty to the KoPT-authorities to undertake tender-cum-auction process where the petitioner would have the right of first refusal, as contained purportedly in the writing dated June 15, 2015. The deed of lease was to be executed within four weeks from the date of the order.

37. However, vide order dated March 23, 2021 passed in WPO No.533 of 2017 (with IA No: GA No.2 of 2019), the same learned Single Judge was pleased to recall His order dated March 6, 2019, on the grounds as mentioned in the order dated March 23, 2021.

38. It is relevant to note that the order dated September 13, 2017, which was merely an interim measure which merged into the final order disposing of the writ petition, that is WPO No.533 of 2017, dated March 6, 2019 and, thus, spent its force

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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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VS
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with the disposal of WPO No.533 of 2017 by the final order dated March 6, 2019 and could not be said to subsist thereafter.

39. However, when the recall application of the KoPT was allowed and the order dated March 6, 2019 recalled vide order dated March 23, 2021, the previous interim order was never re-imposed, nor was any fresh 14 interim order passed by the learned Single Judge. As such, in the absence of any specific revival of the interim order and/or imposition of a fresh interim measure, it cannot be deemed that the previous interim order dated September 13, 2017, which had already expired, would be revived automatically.

40. In the absence of any such interim order upon the order dated March 6, 2019 being recalled on March 23, 2021, the claim of the KoPT with regard to three times the occupation charges for occupation of the petitioner which, in the perception of the KoPT had been rendered unauthorised in view of the breach of the agreement between the parties, was justified.....”

Now, it appears from records that the Hon'ble High Court, Calcutta in terms of the Order dated 30.07.2019 was also pleased to direct the parties for reconciliation of accounts and to permit a competent officer of O.P. to meet the Estate Manager, SMPK for such process. The Hon'ble Court has directed that such exercise should be undertaken on 01.08.2019 at the office of Estate Manager, SMPK and would continue on day to day basis, if required. It appears from records that such reconciliation of accounts took place on 01.08.2019 and 07.08.2019, when both the representatives of SMPK and O.P. were present. It appears that the representatives have placed their respective signatures on such minutes. It is seen that the constituted attorney of O.P. not only signed the said joint minutes dated 01.08.2019 and 07.08.2019 but also received copies of the same and has

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2



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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placed reliance on such Minutes in the written notes of arguments dated 21.04.2022.

Now, the outcome of such meetings is very much pivotal in order to understand and determine the quantum of dues payable by O.P. to SMPK in the facts and circumstances of the case.

Upon taking into consideration of the said joint minutes dated 01.08.2019 and 07.08.2019, I find that an elaborate exercise for reconciliation of accounts was undertaken by both the parties to their satisfaction, when huge amount was found due on the part of O.P. It is quite clear that through the reconciliation of accounts, both the parties have arrived to a conclusion with regard to the actual outstanding on account of rent in August, 2019. I find a specific mention in the said minutes that Rs.40,94,859.50 is the outstanding demand of SMPK against the O.P. and not Rs.69,92,790.97 as had been claim by SMPK in terms of the letter dated 24.07.2019. It has also been agreed between the parties that SMPK would continue to raise bills upon the O.P. on regular basis as per its usual practice for such time the O.P. would continue to be in occupation of the premises in question. Further, in terms of the reconciliation of accounts dated 07.08.2019, the details of the bills adjusted against the payment of Rs. 18 lacs tendered by O.P. has been provided by SMPK to O.P.

Thus, I may take that the minutes of meeting dated 01.08.2019 and 07.08.2019 are clear admissions of dues on the part of the O.P. back in the year 2019, when the issues such as the basis for charging rent, the period of claim, the rate etc. have been discussed in detail. Further, it is settled Law that the O.P. is under obligation to pay to rental dues/charges for occupation, whether demanded by SMPK or not and payments required to be made to SMPK on account of such rental dues/charges so long the possession being enjoyed by O.P. and as such O.P. is liable to pay interest for

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2



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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delayed payment. I find that statement of accounts as prepared and maintained by SMPK was handed over to O.P. during the course of the meeting dated 01.08.2019.

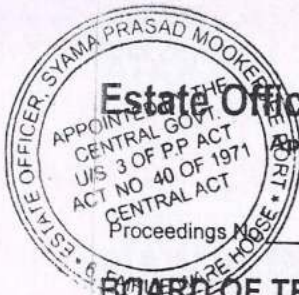
Now, as per law, when a contract is broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which parties knew, when they made the contract to be likely to result from the breach of it. The rights and liabilities of the parties in dispute cannot be the same during the currency of lease tenure and sequel to termination of the contractual lease in question. I find from the Notification of the Tariff Authority for Major Ports (TAMP) dated 31.05.2017, as has been filed by SMPK under the cover of application dated 12.04.2022, that there is a provision for charging "compensation" in the event of expiration/ termination/ determination of lease/ licence and despite receiving a notice thereof etc., if the lessee/licencee continues to occupy the premises unauthorisedly, the lessee/ licencee shall be liable to pay compensation charges for wrongful use and occupation of the premises at three (3) times the annual rent/ licence fees based on the latest SoR, till the vacant possession is obtained by the Port.

As regards the such three times rate of Compensation/ Damage charges in respect of unauthorised occupation, the Order dated 03.09.2012 passed by Hon'ble Justice Dipankar Datta in WP no. 748 of 2012 (M/s Chowdhury Industries Corporation Pvt. Ltd. versus Union of India & others) is very relevant. The said Order reads as follows:

".....
It is undisputed that there has been no renewal of the lease prior to its expiry or even thereafter. There is also no fresh grant of lease. The petitioner has been occupying the property of the Port Trust unauthorisedly and, therefore, the Port Trust is well

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21.05.2022
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SYAMA PRASAD MOOKERJEE PORT

Q



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

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within its right to claim rent at three times the normal rent in terms of the decision of the TAMP, which has not been challenged in this writ petition.

Furthermore, enhancement to the extent of three times the normal rent for persons in unauthorised occupation of Port Trust property does not appear to be utterly unreasonable and arbitrary warranting interference of the Writ Court.

.....
.....

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. It requires mention here that SMPK is the successor in interest of the erstwhile Commissioners for the Port of Kolkata which is a 'Local Authority' as defined under the General Clauses Act, 1897 (Section 3) and West Bengal General Clauses Act, 1899 (Section 3(23)). On the application of The Major Port Trusts Act, 1963, all properties, assets and funds etc. vested in the Central Government or as the case may be, any other Authority (Commissioners for the Port of Calcutta constituted under the Bengal Act) for the purpose of Port immediately vested in the Board (KoPT Board under Section 29 of the MPT Act). The Port Trust Authority from time to time by issuance of notification in the Official Gazette, fixed the scale of rates on which lands and structures belonging to Port Authority are to be let out. In terms of the power granted U/s 52 of the Major Port Trusts Act, 1963, the Central Government was to approve such rates before it was made applicable. In 1997, Sec. 52 was repealed and an alternate mechanism was evolved by which power to fix rent was assigned to the Tariff Authority of the Major Ports. Sec. 49 of

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M.P.T Act was also amended by the Port Laws (Amendment) Act 1997 with effect from 09.01.1997 and thereafter by the Major Port Authorities Act, 2021. The validity of these provisions of the MPT Act was upheld by the Hon'ble Supreme Court in the case of Luga Bay Shipping Corporation -Vs- Board of Trustees of the Port of Cochin and Ors. Reported in AIR 1997 SC 544 = 1997(1) SCC 631. In course of hearing, I find that the charges claimed by SMPK is on the basis of the said 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 the notified rates of charges under provisions of the Major Port Trusts Act 1963 and Major Port Authorities Act, 2021.

Hence, I am convinced that O.P. violated the condition of tenancy under lease by way of default in making payment of rental dues. Mere claim that the actions of SMPK are arbitrary and whimsical is not sufficient to defend the interest of the O.P. and the cause of action of SMPK regarding non-payment of rental dues is very much sustainable. In my view, such claim of charges for Rent by SMPK is based on sound reasoning and should be acceptable by this Forum of Law.

Thus the issues are decided in favour of SMPK.

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With regard to **Issue No. 4**, I have carefully studied the Order dated 06.03.2019 passed by the Hon'ble High Court at Calcutta. I find that it has been the submissions of the Ld. Advocate for SMPK that the proposed lease would be on the basis of the terms and conditions of the letter of SMPK dated 15.06.2015 and SMPK was required to be permitted to proceed with the Tender-cum- Auction process, if not already initiated. Upon taking into consideration the then agreement reached between the parties (i.e. SMPK and O.P.), the Hon'ble Court was pleased to direct the parties to enter into suitable registered deed of lease. In other words, the Hon'ble Court was

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pleased to approve the consensus then reached between the parties. As it appears from records that it has been the subsequent submissions of SMPK authorities before the Hon'ble Court that they were not aware of the issue of "encroachment" in two plates, viz. plot no 201 and 202 at the time of the passing of the Order dated 06.03.2019 and the fact has been brought before the Hon'ble Court subsequently, through a recalling application of the Order dated 06.03.2019. The said issue of "encroachment" has been brought before the Hon'ble Court at a much later stage during the course of hearing on 23.03.2021 and prior thereto the Hon'ble Court had no occasion to take into consideration the issue of "encroachment", at the time of passing of the said Order dated 06.03.2019. It was on 23.03.2021, the Hon'ble Court had the occasion to deal with the issue of alleged "encroachment", upon preferring of a recalling application of the Order dated 06.03.2019 by SMPK and finally vide Order dated 23.03.2021 the said Order dated 06.03.2019 was recalled by the Hon'ble Court, while disposing of the said contempt petition with the following directions:

"..... there is substance in the allegation of the writ petition that, the issue as to whether there is any encroachment or not with regard to the plates are concerned should be considered. This Court presently does not have the jurisdiction to hear and determine the main writ petition. The Court is concerned with the application for recalling.

In such circumstances, the KoPT authorities, being the applicant, having made out a case for recalling the Order dated March 6, 2019, the same is recalled....."

As per Law, when an Order is recalled, it stands obliterated. Thus, at present, the status of O.P. is no way changed or improved by the Order dated 06.03.2019, which has

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eventually been recalled by the Hon'ble Court in terms of the Order dated 23.03.2021. The Order dated 06.03.2019 was passed by the Hon'ble Court when the issues of "encroachment" did not actually surface in the matter. The possession in favour of O.P. with regard to the public premises in question was protected by the Order dated 06.03.2019 of the Hon'ble Court. Now, Port Authority has made O.P. known with sufficient precision that due exercise for grant of a long term lease could not be undertaken successfully by SMPK in view of the unauthorised "encroachment" on the subject premises, as alleged. The Hon'ble High Court was cognizant of the subsequent development of the matter while passing the Order dated 23.03.2021.

Hence the issue is decided against O.P.

Evaluation of factual aspect will certainly dominate the decision with regard to the **Issue No. 5, 6 and 7**. The statements made on behalf of O.P. in their Reply to Show Cause filed on 08.01.2022 and the Written Notes of Arguments filed on 12.05.2022 are very much relevant for the purpose of determination of the point at issue.

I find that SMPK offered to grant 99 years' lease to the O.P. with effect from 01.10.2003, as was communicated through SMPK's letter dated 26.03.2004, subject to certain conditions. Subsequently, the O.P. had accepted such offer in terms of the letter dated 28.06.2004. Subsequently, O.P. renewed its prayer for grant of such long term lease. SMPK demanded Rs. 70,74,845/- as outstanding rent. On 18.12.2015, the SMPK agreed in writing to grant O.P. the First Right of Refusal (FRoR) for 30 years' lease in case the O.P. cleared all outstanding amounts. The O.P. cleared the amount.

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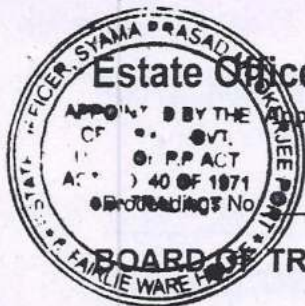
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Thus, the contentions of O.P. regarding grant of a long term lease is on the basis of *assurance* and *conduct* of SMPK. Now, the question arises how far the statements made by O.P. for formation of a Contract is true on the basis of materials on record. To constitute a contract, enforceable under law, there must be valid terms of offer on the part of one party and an absolute, unqualified acceptance on the part of other. Further, such terms of offer and acceptance must be concluded between the parties to come under the definition of "contract". It is very much evident from the exchange of correspondences by and between the parties that there cannot be any "concluded contract" for grant of lease in favour of O.P. In this regard, I have taken into consideration the various correspondences issued by SMPK to O.P. dated 16.08.2002, 03.12.2002, 26.03.2004, 20.05.2004, 18.12.2005 etc. and on the other hand, the correspondences of O.P. dated 11.12.2002, 27.04.2004, 20.05.2004, 28.06.2004, 15.06.2015, 25.01.2016 etc. issued to SMPK on the issue of proposed lease in favour of O.P. I find that all along the SMPK authorities made it clear to the O.P. that in case the O.P. was agreeable to the financial terms etc., the proposal for grant of Lease would be placed before the appropriate authority of SMPK for its due consideration and sanction. In my view, only exchange of letters between the parties cannot constitute any sort of assurance on the part of the SMPK to grant of a long term lease to O.P. There is no material to prove any permission on the part of SMPK to consider/accept O.P's status into the Public Premises as "lessee" and to withdraw/cancel the notice to quit dated 17.09.2021. No material has been produced before this Forum of Law regarding O.P's occupation as 'authorized' after termination of the Lease granted to O.P. It is also the case of SMPK that SMPK do not recognize O.P. as their tenant under Lease after service of ejection notice as the case may be in question.

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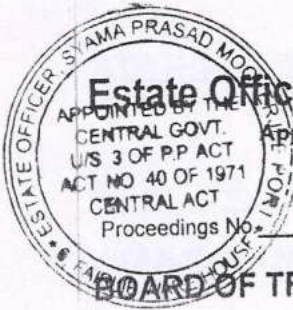
Thus, it is my considered view that the question of 'estoppel' as raised on behalf of O.P. does not arise at all in view of the facts and circumstances of the case. The conduct of the Port Authority, as it emerges from the exchange of letters between the parties, is not at all indicative of any "concluded contract" between parties. Further, it is my firm and considered view that O.P. as a former lessee cannot dictate the terms and conditions for grant of lease by the Port Authority and SMPK as landlord of the premises has every authority under law to impose terms and conditions for grant of lease in terms of their estate management policy. As such, the statement made on behalf of O.P. regarding their authority to obtain a long term lease from SMPK deserves no merit in the eye of Law. Therefore, the pleas taken on behalf of O.P. regarding estoppel, waiver etc. are rejected.

Thus, the issues are decided against the O.P.

With regard to **issue no 8**, I must say that O.P. is under legal obligation to demolish the grounds as stated in the present Show Cause Notices u/s 4 and 7 of the Act both dated 25.11.2021 (for present proceedings no. 1888 & 1888/R of 2021). It is evident from the papers as brought before me in course of hearing that the proceeding no 1415 of 2013 was initiated before my predecessor Estate Officer, way back in the year 2013, on the basis of the notices dated 09.01.1990 and 13.02.1990 of SMPK asking the O.P. to vacate the premises. It is noted that in the said proceedings my predecessor Estate Officer, in terms of the Order dated 29.05.2015, came to the conclusion that Vijay Shree Ltd/ O.P. being the legal transferee as per grant of SMPK could not be insisted upon a declaration of their status as "unauthorised occupant" on the strength of the said ejection notices, which have lost its force for the purpose of determining the tenancy of Vijay Shree Ltd./ O.P. at that stage. Thus, it clear that the

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proceeding no 1415 of 2013 in questions was initiated on different grounds from that of the grounds as mentioned in present the Show Cause Notices dated 25.11.2021. As such, the earlier proceedings of the Act being proceeding no 1415 of 2013 is not relevant here.

Hence the issue is decided accordingly.

On **issue No. 9**, regarding carrying out of "unauthorised" construction by O.P., it was submitted by the Port authority under cover of SMPK's application dated 08.10.2021 that during inspection of the premises it was found that O.P. has erected asbestos shed (ASBR) measuring about 15.16 sqm under Plate no HL- 201, unauthorised construction RCC Beam with some low height pillars under plate no HL- 202. SMPK has submitted the Report of Inspection of the premises held on 12.02.2021, in support of such contentions. It was submitted that such constructions have been erected by O.P., unauthorisedly, without taking due permissions from SMPK.

During the course of instant proceedings, no contradictory, substantial piece of evidence to SMPK's allegation has been furnished from O.P's end. The O.P. did not produce any such approval from any SMPKs office, deemed, as per agreement, to be required for making of structures in the SMPK's leased premises. I find from record that the SMPK had been writing to the O.P. with the request to remove the unauthorised construction but no such confirmation/assurance as to affirmative action taken by O.P. has been submitted before this Forum. In my view, it is clearly corroborative of O.P. having carried out such activities during the continuance of the tenancy, at some point of time or the other. As such, I am not inclined to accept the submission of O.P. that it is not guilty of the breaches of unauthorised construction. As such,

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I hold that the O.P. has carried out unauthorised construction without having any authority under law.

Hence the issue is decided against O.P.

With Regard to **issue No 10**, consequence to the inspection held by SMPK and report submitted thereafter, a specific instance of unauthorised encroachment committed by O.P. and marked as a major breach of the terms of tenancy etc. was brought to the notice of the Forum.

As per established tenets of law, a mere and perfunctory denial of charge of breach brought by SMPK against the O.P. without evidentiary support does not stand the test of Legal Scrutiny.

Hence, I am of the view that O.P. has carried out unauthorised encroachment without having any authority under law.

Hence the issue is decided against O.P.

With regard to **issue No 11**, I have to go into the question of any effect by "guideline" issued by the Central Government Central Government over the position of law as stated hereinbefore. It is the case of O.P. that the action of the Port Authority clearly violates the guideline issued by the Govt. of India as published in the Gazette of India dated 8th June 2002.

In this regard, I am of the view that the guideline issued by the Govt. of India cannot override the specific provision of law. The judgment of the Hon'ble Supreme Court of India reported in (2008) 3 Supreme Court Cases 279 (New India Assurance Co. Ltd. -vs- Nusli Neville Wadia & Anr.) is instrumental in deciding the question of acceptability of such "guideline". In deciding the question of acceptability of such "guideline" the Hon'ble Supreme Court of India observed that issuance of

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such guideline is not controlled by statutory provision and the effect thereof is advisory in character being no legal right is conferred upon a tenant. Thus, when the adjudication process before this Forum of Law has been started with service of requisite notice for Showing Cause and ample opportunity is being given to O.P. to establish its authority to occupy the public premises, demolishing the grounds for proposed eviction etc. as mentioned in the Show Cause Notice u/s.4 of the Act. In the process of adjudication, I have to consider as to how O.P. could be termed as "genuine tenant" when the Notice of Ejectment, determining O.P's tenancy under monthly lease has been served by the Port Authority and a considerable sum is due to SMPK for non-payment of rental dues as admitted by O.P. As such, the "Govt. Guideline" is not acceptable in all sense of law.

Hence, the issue is decided accordingly.

With regard to **Issue No 12**, I must say that during the course of hearing a forceful argument / submission has been made from the end of the Port Authority/ SMPK to get back the possession of the premises after issuance of the notice to quit dated 17.09.2021. It has been submitted by SMPK that the occupation of O.P. was protected by the Order dated 06.03.2019 passed by the Hon'ble Court and only after the said Order dated 06.03.2019 has been recalled by the Hon'ble Court in terms of the Order dated 23.03.2021, the notice to quit dated 17.09.2021 was eventually issued by SMPK. It is pleaded that Port Authority is lawfully entitled to protect their legal right as Lessor/ Landlord, so that nobody can take the plea of 'consented occupation'/ 'holding over' and this entailed the Port Authority to require the O.P. to hand over possession in terms of the notice to quit dated 17.09.2021, which under law cannot be curtailed:

I find no element of consent on the part of the SMPK Authority expressing its assent for continuance in such occupation by

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29.05.2022

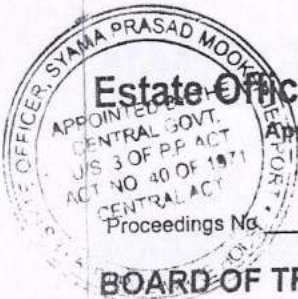
O.P. after expiry of the period mentioned in the notice to quit dated 17.09.2021. As such, the notice to quit dated 17.09.2021 was required under law for a lawful determination of the relationship of the Landlord (SMPK) with its tenant (O.P.). With this observation, I must say that the ejection notice, 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.

Thus the issue is decided accordingly.

NOW THEREFORE, in view of the above, I am left with no other alternative but to issue order of eviction u/s 5 of the Act against O.P. for the following reasons/grounds :

1. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of rental dues etc. as prayed for on behalf of SMPK.
2. That the O.P. has defaulted in making payment of SMPK's rental dues, which has been computed on the basis of Notifications published in the Kolkata Gazette having the statutory force in determining the quantum of dues/charges as payable by O.P. to SMPK.
3. That Port Authority/ SMPK is well within its jurisdiction to demand for rental dues and/or charges for occupation into the Public Premises in question in terms of Schedule of Rent Charges (SoR) notified in the Official Gazette in terms of the provisions of the Major Port Trusts Act, 1963 and the Major Port Authorities Act, 2021.
4. That the O.P. has failed to take the shield of the Order dated 29.05.2015 passed by my predecessor Estate Officer in connection with the proceeding no 1415 of 2013, in order to contradict the present case of SMPK.

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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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5. That the O.P. is not in position to negotiate the terms for grant of a Lease or to deny/ repudiate their liability for payment to the Port Authority by placing reliance on the Order dated 06.03.2019, which has subsequently been recalled by the Hon'ble High Court, Calcutta in terms of the Order dated 23.03.2021.
6. That the O.P. has failed to establish its claim for "grant of lease" in respect of the Public Premises in question as a matter of right and is in no way empowered to dictate SMPK the terms and conditions for allotment of SMPK's property.
7. That the proceedings at the instance of SMPK against O.P. is not barred by the laws of estoppels, waiver etc.
8. That the O.P. has failed to produce any evidence or document so as to defend the allegations by SMPK of unauthorized construction and encroachment into the Trustees' land.
9. That the O.P's contentions regarding non-maintainability of the Proceedings in view of Government Guideline vide Notification dated 08.06.2002 has no any merit in the eye of Law.
10. That the ejection notice dated 17.09.2021 as served upon O.P. is valid, lawful and binding upon the parties and O.P. is liable to pay damages for wrongful use and enjoyment of Port Property in question upto the date of handing over of clear vacant and unencumbered possession to the Port Authority.
11. That no case has been made out on behalf of O.P. as to how its occupation in the Public Premises could be termed as "authorised occupation" after issuance of notice dated 17.09.2021, demanding possession by the Port Authority and occupation of O.P. has become unauthorized in view of Sec.2(g) of the P.P. Act, 1971

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Accordingly, I sign the formal order of eviction under Sec. 5 of the Act as per Rules made thereunder, giving 15 days time to O.P. 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 as their occupation into the Public Premises is/are unauthorised in view of sec. 2(g) of the Act.

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 could be taken for execution of the order of eviction u/s. 5 of the Act as per Rule made under the Act.

Be it mentioned here that after conclusion of the hearing, the O.P., through their written notes of arguments, has expressed their willingness to surrender to SMPK the occupations in question, as a consequence of alleged "constant harassment" by SMPK authorities. Needless to mention that O.P. was at liberty to exercise the option of surrender of premises in clear, vacant and unencumbered condition, upon due Notice to SMPK in accordance of Law. It is, however, extremely intriguing and ironic that only after the completion of the due process of hearing that the expression of a willingness to surrender has been preferred by the O.P. It is nonetheless clear that in view of rather indefensible act of commission / omission by O.P, as evident from the facts and circumstances of the case, it could have exercised the option of surrender of the premises in vacant, clear and unencumbered condition, right after the service of due notice, rather it has chosen to exercise the option at the final stage, curiously citing the "constant harassment" by SMPK authorities, as is rather lame trigger for their decision. The O.P. attempted to exercise such option, after the hearing was concluded, on the alleged reason

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OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
28.05.2022

9



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. 1888 & 1888/R of 2021 Order Sheet No. 47

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S VIJAI SHREE PVT. LTD.

13
23.05.2022

of "harassment" by SMPK, at a stage when comments of SMPK with regard to proposed surrender could not be procured by this Forum. However, upon going into the merits of the case and as per the discussions to the foregoing, I have no hesitation to hold that the O.P.'s occupation is "unauthorised" in terms of Section 2(g) of the Public Premises Act and as such, deserves no protection in the eye of Law. Hence, it has become the duty of O.P. to deliver up vacant, peaceful and unencumbered possession of the public premises to SMPK as per the above directions.

In view of the discussions made above, it is my considered view that a sum of Rs.42,128.71 (Rupees Forty Two Thousand one hundred twenty eight and paise seventy one only) for Plate No.HL-201 for the period from 31.03.1990 to 02.10.2021(both days inclusive), Rs.11,19,318.44(Rupees Eleven Lakh nineteen thousand three hundred eighteen and paise forty four only) for Plate No. HL-202 for the period from 30.04.1990 to 02.10.2021(both days inclusive), Rs.5,79,129.34(Rupees Five Lakh seventy nine thousand one hundred twenty nine and paise thirty four only) for Plate No.HL-223 for the period from 31.03.1990 to 02.10.2021(both days inclusive) and Rs.32,646.72 (Rupees Thirty two thousand six hundred forty six and paise seventy two only) for Plate No.HL-224 for the period from 30.04.1990 to 02.10.2021 (both days inclusive) are due and recoverable from O.P. by the Port authority on account of Rental Dues.

Further, with regard to the T.D.S Certificates issues as has been raised by O.P., I find that there is specific recording in the said Minutes of meeting dated 07.08.2019 that "as per KoPT/ SMPK ledger provided vide e-mail on 01.08.2019 to Vijay Shree Pvt. Ltd. it was evident that T.D.S Certificate of Rs 12,43,458/- is due from Vijay Shree Pvt. Ltd....". Hence, the

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
MADE BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
24.05.2022
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Q



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

1888 & 1888/R of 2021 Order Sheet No. 48

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S VIJAI SHREE PVT. LTD.

19
23.05.2022

submission of T.D.S. Certificate remained due from O.P. at the time of signing of the said Minutes dated 07.08.2019. In my view, such issue, being procedural in nature, does not call for a direct interference by this Forum at this stage, through its exercise of powers under the provisions of the Public Premises Act and could effectively be resolved by the parties. Hence, the O.P. is directed to file the T.D.S. certificate for the relevant period to SMPK, if not already filed and intimate the Forum accordingly.

The O.P. must have to pay such dues to SMPK on or before 03.06.2022.

Such dues attracts-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 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 SMPK's books of accounts.

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

I make it clear that SMPK is entitled to claim compensation/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, 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, indicating therein, the details of the rate of such charges, and the period of the damages together with the basis on which such charges are claimed against O.P., for my consideration for the purpose

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 Assis ant
24.05.2022
ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

9



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

1888 & 1888/R of 2021 Order Sheet No. 49

TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S VIJAI SHREE PVT. LTD.

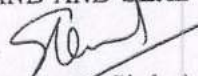
13
29.05.2022

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 pay the dues/charges as aforesaid; SMPK is at liberty to recover the dues etc. in accordance with law.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL


(Satyabrata Sinha)
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
I have issued a copy of the order
to the Estate Officer
Mookerjee Port
24.05.2022
OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT