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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 1<sup>st</sup> Floor  
of Kolkata Port Trust's  
Fairley Warehouse  
6, Fairley Place, Kolkata- 700 001.

REASONED ORDER NO. 11 DT 21.06.2022  
PROCEEDINGS NO. 1865 OF 2021

**Syama Prasad Mookerjee Port, Kolkata  
(ERSTWHILE BOARD OF TRUSTEES OF THE PORT OF KOLKATA)**

-Vs-

**Howrah Mills Co. Ltd. (O.P)**

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

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

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that **Howrah Mills Co. Ltd, 4, Clive Row, Kolkata-700001 And ALSO AT Howrah House, 135, Foreshore Road, Howrah-711102** 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 dues/damages etc. as prayed for on behalf of SMPK.
2. That the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 are very much applicable in the instant Proceeding.
3. That the long term lease granted to O.P. had undoubtedly expired on 31.03.1988 with no scope for renewal/extension.
4. That O.P's plea of "Holding Over" has got no merit in the facts and circumstances of the case.
5. That the O.P has parted with Possession of the subject premises to rank outsiders in violation of the condition of such lease.
6. That O.P.'s contention regarding applicability of the provisions of West Bengal Premises Tenancy Act, 1997 has also got no merit in the present facts and circumstances of the case.
7. That O.P. has failed to bear any witness or adduce any evidence in support of their contention regarding "authorised occupation" and O.P's occupation has become unauthorized in view of Sec. 2(g) of the P.P. Act, 1971.
8. That right from the date of expiry of the lease, O.P. has lost its authority to occupy the Public Premises and O.P. is liable to pay 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.

**PLEASE SEE ON REVERSE**

(2)

A copy of the reasoned order No. 11 dated 21.06.2022 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 **Howrah Mills Co. Ltd, 4, Clive Row, Kolkata-700001 And ALSO AT Howrah House, 135, Foreshore Road, Howrah-711102** 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 **Howrah Mills Co. Ltd, 4, Clive Row, Kolkata-700001 And ALSO AT Howrah House, 135, Foreshore Road, Howrah-711102** 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

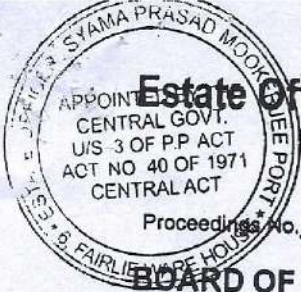
**Plate No - HL-285**

The said piece or parcel of land msg.1243.04 Sq.mts. or thereabouts is situated at Ramkristopur, Howrah, P.S-Howrah, District and Registration District-Howrah. It is bounded on the North by the Trustees' open land then Trustees' land occupied by Soorajmull Baijnath, on the South by Southern Spur, on the East by Trustees' land occupied by Howrah Mills Co. Ltd. and on the West by Foreshore Road. Trustees' means the Syama Prasad Mookerjee Port, Kolkata (Erstwhile the Board of Trustees for the Port of Kolkata).

Dated: 22.06.2022

  
Signature & Seal of  
Estate Officer.

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



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### FINAL ORDER

The matter is taken up today for final disposal. The factual aspect involved in this matter is required to be put forward in a nutshell in order to link-up the chain of events leading to this proceeding. It is the case of Syama Prasad Mookerjee Port, Kolkata (Erstwhile Kolkata Port Trust), hereinafter referred to as SMPK, Applicant herein, that a public premises being land msg. about 1243.04sq.m. situated at Ramkristopur, Howrah, comprised under Plate Nos. HL-285 was allotted to **Howrah Mills Co. Ltd (O.P)**, on long term lease basis w.e.f 01.04.1978 for a period of 10 years without any option of renewal for the purpose of building, factory and storage of materials. It was submitted by SMPK that the Lease of the subject premises in question was about to expire on 31.03.1988. However, on the ground of non-payment of outstanding dues/charges of SMPK, unauthorised parting with possession of said premises to the outsiders and for making unauthorised construction, the said lease was determined by SMPK w.e.f from 01.12.1985. Now such long term lease has already been expired by efflux of time but O.P continued their possession over the subject premises in question even after determination and expiry of such lease therefore, O.P. was further asked to vacate the land vide SMPK's letter dated 05.01.2018. It is stated by SMPK that that during the course of inspection on 13.12.2019, O.P. along with certain other unlawful entities such as i) M/s. Anjani Knit(India) Pvt. Ltd ii) Two closed godown beside Anjani Knit iii)Howrah Land & Holding Pvt. Ltd were found on the entire plot of land. Now it is argued on behalf of SMPK that O.P. has no authority under law to occupy such Public Premises and O.P is liable to pay damages for unauthorised use and enjoyment of the Port property in question.

This Forum formed its opinion to proceed against O.P under the relevant provisions of the Act and issued Show Cause Notice U/S 4 of the Act (for adjudication of the prayer for order of eviction etc.) and Show Cause Notice U/S-7(for adjudication of the prayer for recovery of arrear damages etc.) both dated 14.09.2021 (vide Order No. 02 dated 14.09.2021) as per rule made under the Act.

The record depicts that such Notice/s had been sent to O.P both by hand and Speed Post as per address available on record. However, the Postal Services to the recorded address of O.P returned undelivered to the Forum but it

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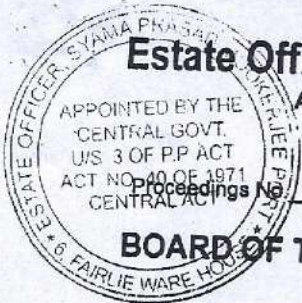
reveals from the report of the Process Server dated 14.09.2021 that the Show Cause Notice/s u/s 4 & 7 were served on O.P. personally and affixation was also made on the subject premises on the very same day at about 03: 16 P.M. as per the mandate of the P.P Act.

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/written objection to the Show Cause Notice/s on 11.11.2021 and also filed their Additional reply/written objection to the Show Cause Notice/s on 27.01.2022.SMPK on the other hand filed their comments/rejoinder dated 05.01.2022 in response to the reply to the Show Cause filed by O.P.

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

- 1) The subject land originally belonged to Howrah Mills Co. Ltd., then a joint Stock Company; sometime in 1883 for construction of Foreshore Road, Howrah.
- 2) With regard to the acquisition of land, dispute and differences arose between the Kolkata Port Trust and O.P. and the matter went to the Ld' District Judge, Hooghly. In terms of the order of the District Judge it was decided that Port Trust had certain duties to comply and to give lease of excess land to O.P. Company.
- 3) Since 1893, the Company is in possession of the surplus land which was at the hands of the then Kolkata Port Trust out of such acquisition.
- 4) The said lease concerning Plate No.HL-285 has never been determined by SMPK. SMPK is called upon to produce notice before the forum, Showing proper service upon the O.P.
- 5) It is also not correct that SMPK has issued any notice for determination of such lease.
- 6) The Letter dated 05.01.2018 has not been received by O.P. therefore, such Letter annexed with the petition does not contain any acknowledgement receipt of O.P.
- 7) Any premises to become public premises the relevant date will be the 16<sup>th</sup> September, 1958 and all tenants occupying the premises prior to that date will not come under the ambit of 1971 Act and cannot

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therefore, be said to be persons in 'unauthorised occupation'.

- 8) In the instant case, the O.P. admittedly is in possession of the subject premises prior to 16<sup>th</sup> September, 1958 thus the said Act of 1971 has got no manner of application in the instant case and this tenant needs to be dealt with either under West Bengal Premises Tenancy Act or under the Transfer of Property Act, 1882 and eviction could only be made by filing civil suit. The instant Proceeding, therefore, is not maintainable.
- 9) It is clear that the Company is a tenant and/or a deemed tenant under the existing West Bengal Premises Tenancy Act.
- 10) The Company is well protected under the State Rent Act and it has a vested right under the existing West Bengal Premises Tenancy Act prevailing in the State.
- 11) When the premises is not a public premises and the O.P. do not come within the purview of the public premises (Eviction of Unauthorised Occupants) Act, 1971, in view of the judgement of the Apex Court, reported in (2014) 4 SCC657(supra), this Ld' Forum has no jurisdiction in this instant matter and the dispute should be adjudicated by a Civil Court.
- 12) By accepting rent from O.P. after purported determination of tenancy SMPK has assented the continuation of tenancy by O.P. therefore, O.P. has right as 'tenant holding over'. Further it is also settled that the Government cannot act as a private land lord.
- 13) The assent of the land lord to the continuance of possession after determination of the tenancy creates a new tenancy.
- 14) So far as the alleged claim of arrear dues is concerned, there is a gulf of difference between the plaint and the rejoinder filed by SMPK. It will also be evident from the ledger of SMPK that GST has been calculated treating the O.P. as a tenant which will be evident from GST Code mentioned by SMPK therefore SMPK's allegation as regards the unauthorised occupation of O.P. is not correct. SMPK has accepted the O.P. as a tenant under them, otherwise the question of using 'tenant Code being 997212' for GST in the ledger does not and cannot arise.
- 15) The Plate in question is a vacant land and there is no construction over the said land and therefore, the

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question of unauthorised construction over the said vacant land/Plate is an afterthought, and does not and cannot arise. Further SMPK has not produced any evidence either of the construction or of the tenancy, the allegations in that regard are void ab initio and justice would be subserved by filing civil suit only.

- 16) SMPK, by accepting rent from O.P. till 2014, has in fact accepted the O.P. as a tenant and O.P. is admittedly, a tenant holding over.
- 17) The allegation of termination of tenancy and sending the same to O.P. as mentioned in plaint, is also required to be proved by evidence therefore civil suit is the only appropriate remedy where this could be asserted by taking oral evidences.

Referring to the contentions, the M/s. Howrah Mills Co Ltd/O.P. has prayed for dismissal of the instant proceeding in limini.

SMPK, the Petitioner, argued that O.P. is unauthorisedly occupying the subject premises since the termination of the lease with effect from 01.12.1985 with breaches of non payment, unauthorised parting to rank outsiders and illegal erection of unauthorised construction. The original lease had also been expired by efflux of time. Since the termination and even after expiration of such lease, the O.P. remain in possession of the subject premises unauthorisedly without having any valid authority of law. It was further submitted on behalf of SMPK that the letter dated 05.01.2018 which the O.P had received, was requested to vacate the premises and to pay off outstanding dues but O.P. had deliberately refused and neglected to vacate the premises in question for continuing their wrongful occupation and never tendered any amount towards the liquidation of their outstanding dues. O.P had also inducted some rank outsiders viz, Anjani Knit(India) Pvt. Ltd, Howrah Land Holding Pvt Ltd in contravention to the terms of such lease deed. The documents relied upon by O.P. are not authentic and genuine therefore, irrelevant to contradict the allegation of SMPK and regarding the said dispute except this Forum of Estate Officer, no Court has jurisdiction to deal with the matter of eviction and recovery of dues. O.P. had erected unauthorised construction on the subject premises without having any prior permission from Port Authority and also wrongfully parted with possession of the subject premises to rank outsiders with whom SMPK

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never had any legal/jural relation. The proposed concept of legal notions of O.P. herein are entirely abstract and erroneous, the O.P. had failed to estimate the basic features of P.P. Act in contemplation with the provision of Transfer of Property Act-1882. Further, O.P.'s contention regarding the payment of dues are also not viable in the eye of law because whimsical payment made by O.P. has already been adjusted on account of arrear occupational charges and O.P. is liable to pay their entire outstanding dues together with accrued interest.

Now, while passing the Final Order, after carefully considering the documents on record and the submissions of the parties, the following issues have come up for my adjudication/decision:

- I) Whether the instant proceeding against O.P. is maintainable or not;
- II) Whether the lease granted to O.P. had expired on 31.03.1988, or not;
- III) Whether non-issuance of any Notice to Quit by SMPK, prior to institution of this proceedings, has any bearing in the matter, or not;
- IV) Whether the plea taken by O.P. that the Provisions of Public Premises(Eviction of Unauthorised Occupants)Act-1971 are not applicable in the facts and circumstances of the case has got any merit in the eye of law or not;
- V) Whether the plea taken by O.P. about non-receipt of vacation notice dated 05.01.2018 issued by the SMPK, has got any merit or not,
- VI) Whether the claim of SMPK for continuous use and occupation of O.P. in the public premises is required to be adjudicated under the provisions of the West Bengal Premises Tenancy Act, 1997 or not;
- VII) Whether the claim of O.P. as "Tenant Holding Over" in terms of Sec.116 of The Transfer of Property Act has got any merit or not;
- VIII) Whether the O.P. has made unauthorised construction on the subject premises or not;
- IX) Whether the O.P has parted with possession of said public premises to third parties or not;



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- X) Whether O.P. is in default of making payment of dues/charges to SMPK or not;
- XI) Whether O.P's occupation has become unauthorised in terms of Sec.2(g) of the P.P. Act and whether O.P. is liable to pay damages for wrongful occupation and enjoyment of the Port Property to SMPK or not;

As regards **Issue No. I**, I must say that the properties owned and controlled by the Port Authority has been declared as "public premises" by the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and Section-15 of the Act puts a complete bar on Court's jurisdiction to entertain any matter relating to eviction of unauthorized occupants from the public premises and recovery of rental dues and/or damages, etc. SMPK has come up with an application for declaration of representatives of O.P's status as unauthorized occupant in to the public premises with the prayer for order of eviction, recovery of compensation etc. against O.P. on the ground of termination of authority to occupy the premises as earlier granted to O.P. in respect of the premises in question. So long the property of the Port Authority is coming under the purview of "public premises" as defined under the Act, adjudication process by serving Show Cause Notice/s u/s 4 & 7 of the Act is very much maintainable and there cannot be any question about the maintainability of proceedings before this Forum of Law. In fact, proceedings before this Forum of Law is not statutorily barred unless there is any specific order of stay of such proceedings by any competent court of law.

To take this view, I am fortified by an unreported judgment of the Hon'ble High Court, Calcutta delivered by Hon'ble Mr. Justice Jyotirmay Bhattacharya on 11.03.2010 in Civil Revisional Jurisdiction (Appellate Side) being C.O. No. 3690 of 2009 ( M/s Reform Flour Mills Pvt. Ltd. -Vs- Board of Trustees' of the Port of Calcutta) wherein it has been observed specifically that the Estate Officer shall have jurisdiction to proceed with the matter on merit even there is an interim order of status-quo of any nature in respect of possession of any public premises in favour of anybody by the Writ Court. Relevant portion of the said order is reproduced below:

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

Hon'ble Division Bench of Calcutta High Court had the occasion to decide the jurisdiction of the Estate Officer under P.P. Act in Civil Appellate Jurisdiction being MAT No.2847 of 2007 (The Board of Trustees of the Port of Kolkata and Anr -vs- Vijay Kumar Arya &Ors.) reported in Calcutta Weekly Note 2009 CWN (Vol.113)-P188 The relevant portion of the judgment (Para-24) reads as follows:-

*"The legal issue that has arisen is as to the extent of Estate Officer's authority under the said Act of 1971. While it is an attractive argument that it is only upon an occupier at any public premises being found as an unauthorized occupant would he be subject to the Estate Officer's jurisdiction for the purpose of eviction, the intent and purport of the said Act and 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 Issue is thus decided accordingly in favour of SMPK.

**Issues II and III** are taken up together as the issues are related to each other. During course of proceedings, O.P. has produced a copy of the executed deed between the parties. Upon careful perusal, I find that the lease was valid upto 31.03.1988 and there were no clauses for "renewal" in the said deed. There is a clause which mentions that at the expiration or sooner determination of the said term, quietly and peacefully yield up vacant possession of the demised land as a whole unto the Trustees, with all buildings, erections and other structures, if any, erected thereon that



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shall not have been previously removed by the Lessees. I have also come across a provision which mentions that any building, structures and fixtures not so removed (after expiration or determination of the lease) become the absolute property of the Trustees without payment to the Lessees of any compensation thereof whatsoever. As such, it is crystal clear that the intention of the parties was that the relationship was to come to an end on 31.03.1988 and in no circumstances the same was intended to be continued any further.

As per law, on the expiration of a lease, the lessee is bound to put the lessor in clear, vacant and unencumbered possession of the land. Sec. 108 (q) of the Transfer of Property Act, 1882 casts a duty upon the lessee to put the lessor into possession of the property. Under such circumstances, I must hold that the lease has expired on 31.03.1988 in all sense of law and O.P. must have to justify how it is authorised to hold and enjoy possession, after expiry of the lease. A defence has been taken by O.P. that no Notice to Quit was served on the O.P. and hence O.P. is not liable to vacate the public premises. However, as per law, service of notice determining the relationship (i.e. Notice to Quit or ejection notice, as the case may be) is not at all mandatory where the relationship has determined by efflux of time. I am fortified by the decision dated 09.09.2014 of the Hon'ble High Court, Calcutta in C.O. 3655 of 2013 (Sri Om Prakash Saxena v. The Board of Trustees' for the Port of Calcutta) where it was held that issuance of such a notice is completely unnecessary in the case of a person continuing in occupation of the public premises after the expiry of the period of grant or invitation. Thus, I am unable to allow the defence taken by the O.P. on this count as non-issuance of any such notice does not seem to have prejudiced the O.P. in any manner whatsoever.

As regards **issue No IV** i.e on the question of applicability of P.P Act in the instant proceedings, efforts has also been made on the part of O.P to challenge the jurisdiction of this Forum to deal with the instant proceeding, however, I must say that the public premises in question, belongs to SMPK, a Statutory authority of the Central Government, the land owned by whom always satisfied the definition of "Public Premises", be it prior to 1958 or not. There is nothing in the P.P Act which debars the Estate Officer from adjudicating over lease/license entered into prior to 16.09.1958, in

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respect of such categories of public premises. In my view, the case in hand is clearly distinguishable from the one forming the subject matter before the Hon'ble Supreme Court in Suhas H. Pophale vs. Oriental Insurance Co. Ltd and such distinction has also been recognised by Hon'ble Justice Dipankar Datta of Hon'ble High Court, Calcutta in Judgement dated 16.09.2014 in WP no.15067 (W) of 2014, M/s B.C Shaw & Sons Vs. The Union of India &Ors. Thus I find no scope to accede to the submission of O.P.

As regards the **Issue No.V**, O.P. vide their reply to the Show Cause notice/s claimed that the letter dated 05.01.2018 has not been received and such letter does not contain any acknowledgement receipt of O.P., I have considered the matter with all its seriousness, it appears that although such letter does not contain any acknowledgement of O.P. however, it bears a 'despatch Number 00810' which usually allotted on a letter/notice at the time of its despatching through post and this number sufficiently depicts that such letter/notice was validly issued by the Port Authority through post. Further, a notice served in regular course of official business of a Statutory Authority like SMPK must have some probative value of the substance unless it appears that such notice was wrongly addressed. The presumption of law will certainly support the case of SMPK regarding service of notice to O.P. thus the issue is also decided against O.P.

As regards the **Issue No.VI**, I must say that O.P's claim in their reply that the said Act of 1971 is not applicable in the instant case is not at all tenable in the eye of law because the erstwhile Commissioners for the Port of Kolkata (now known as Syama Prasad Mookerjee Port) is the owner of landed property beside River Hooghly in an around Kolkata. The landed property of the Port Authority is exempted from the purview of The West Bengal Premises Tenancy Act being a Local Authority as defined under the General Clauses Act -1897 and The West Bengal General Clauses Act -1899. When statute by its own wisdom exempted the Port Properties from the purview of the Premises Tenancy Act-1997, it is futile to assert tenancy right without any grant in respect of the property in favour of O.P or other interested Party.

As regards the **Issue No. VII** i.e on the claim of holding over, I must say that O.P's plea is not acceptable because

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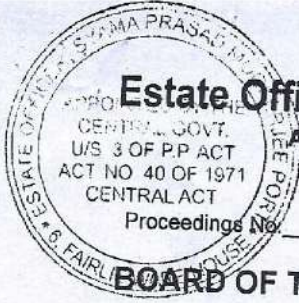
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for the sake of argument, if it is accepted (not admitted) that there is "Holding Over", the conduct of O.P. is of paramount importance. It is not the case of O.P. that they have all along paid the rental dues per month to SMPK as per their demand or at the rates specified in the SMPK's Schedule of Rent Charges in accordance with SMPK's Lease Form (which was sent to O.P. for execution etc. from SMPK's end) in question. Though the Lease Deed specifically provides a liability upon a lessee to pay the rental dues, whether demanded or not, to the lessor, there is no material to show that O.P. has tendered such amount of rental dues at least, to the Port Authority. "Holding Over" means continuance of occupation with the same terms and conditions as it was granted to O.P. at the time of handing over of possession to O.P. by SMPK. Evaluation of factual aspect and the papers/documents brought before me in course of hearing leaves no room for doubt that the SMPK never consented in O.P's occupation into the public premises after expiry of the period of lease. The essential element of "consent" for constituting the matter of holding over is absent and the O.P. has failed to adduce any evidence or bear any witness in support of its contention regarding "holding over". To take this view I have borrowed my support from the Apex Court judgment reported in Judgment Today 2006 (4) SC Page- 277 wherein it was observed by the Hon'ble Supreme Court as follows:

"A somewhat similar situation arose in the case of Santi Prasad Devi and Anr. -vs- Shankar Mahato & Ors. That was a case where the landlord accepted rent even on expiry of the period of lease. A submission was argued on behalf of the tenant in that case that Section 116 of the Transfer of Property Act was attracted and there was a deemed renewal of the lease. Negating the contention, the Court observed that mere acceptance of rent for subsequent months in which the lessee continued to occupy the premises even after the expiry of the period of lease, cannot be said to be a conduct signifying his assent to the continuing of the lease even after expiry of the lease period. Their Lordship noticed the conditions incorporated in the Agreement itself, which provided for renewal of the lease and held those conditions having not been fulfilled, the mere acceptance of rent after expiry of the period of lease did not signify assent to the continuance of the lease."

In the instance case there was no consent on the part of the Port Authority either by way of accepting rent from O.P. or

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by any other mode expressing the assent for continuance in such occupation after expiry of the period of such lease. In view of the ratio of judgment of the Hon'ble Supreme Court of India, I do not find any scope to consider the matter of "Holding Over" as advocated by O.P. in the facts and circumstances of the case.

No evidence has been laid on behalf of O.P. by way of producing any Receipt for acceptance of any payment wherefrom it could at least be inferred that the Port Authority has any intention to the continuance in occupation by accepting any amount as rent for such occupation. The Port Authority has a definite legitimate claim to get its revenue involved into this matter as per SMPK's Schedule of Rent Charges for the relevant period.

The judgment of the Hon'ble Apex Court reported in JT 2006 (4) SC 277 (Sarup Singh -Vs- S. Jagdish Singh &Ors.) is very much instrumental in dealing with such issues and can be accepted as a guiding principle for deciding such matter. The relevant portion of the judgement reads as follows:

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

In our view, mere acceptance of rent did not by itself constitute an act of the nature envisaged by sec.113 Transfer of Property Act showing an intention to treat the lease as subsisting. The fact remains that **even after accepting the rent tendered, the landlord did file a suit for eviction and even while prosecuting the suit accepted rent which was being paid to him by the tenant, it cannot, therefore, be said that by accepting rent, he intended to waive the notice to quit and to treat the lease as subsisting** .....

It cannot, therefore, be said that mere acceptance of rent amounts to waiver of notice to quit unless there be any other evidence to prove or establish that the landlord so intended. In the instant case, we find no other fact or circumstances to support the plea of waiver. On the contrary, the filing of a prosecution of the eviction proceedings by the landlord suggests otherwise." In the case in hand, there is no case of accepting of rent from O.Ps by SMPK rather the Port Authority prefers to institute instant proceedings against O.Ps for order of eviction against O.Ps under the P. P. Act which is the only remedy



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available to SMPK in respect of the property, being the public premises in question as defined under the P.P. Act. This clearly indicates the intention of the Port Authority to proceed against O.Ps for recovery of possession on the basis of expiry of lease demanding possession and SMPK's act cannot be considered as waiver of notice to quit as served against O.P. Hence the issue is decided against O.P.

**Issue no VIII and IX** are taken up together, as the issues are related with each other. It is made clear that I have not gone into the merit of SMPK's allegations against O.P. regarding carrying out of unauthorized construction as in my view, expiry of the period of lease in question is sufficient for considering O.P's occupation as "unauthorized occupation" in the context of Sec. 2(g) of the P.P. Act. However, as regards the issue of unauthorised parting with possession, it is seen from the rejoinder/comment of SMPK dated 05.01.2022 that an inspection of the subject public premises was held on 13.12.2019 and from such inspection it was found that the entire plots under Plate Nos.H.L-285 had been occupied by number of entities along with the O.P. such as i) M/s Anjani Knit(India) Pvt. Ltd(T. Shirt Knitting purpose)Ltd, ii) two closed godown beside Anjani Knit and iii) Howrah Land & Holding Pvt. Ltd. Therefore, in my view, existence of such numerous Companies in the subject occupation of O.P. is nothing but an unauthorised parting and such parting with possession was made by O.P. without the permission of Port Authority. Although O.P. adducing a copy of tenancy information dated 26.07.2020 tried to prove that there are no subtenants on the subject premises in question, however, I am not convinced by such submission of O.P. because all those are occupying such premises are not the lawful subtenants of O.P. they are all rank outsiders therefore, their names are not reflected in the Tenancy Information. The photographic evidences produced by O.P. also do not clearly disclose that the land is in vacant condition. As such it is very difficult to accept the claim of O.P which is bereft of any cogent reason. Moreover, induction of a third party without the approval of SMPK is also against the spirit of tenancy.

As regards the **Issue No.X**, SMPK's allegation of non-payment of dues /charges by the O.P. does appear to have merit. The paper/documents produced on behalf of O.P.,

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are not sufficient to contradict/dispute the claim of SMPK. In course of hearing, SMPK not only confirmed their claim on account of damages but also asserted their right to claim interest for delayed payment. The O.P. on the other hand merely disputed the claim of the Port Authority without coming out with any material particulars. The O.P. did not bother to pay the said amounts as well. In my view, the conduct of the O.P. does not inspire any confidence and I am not at all inclined to protect the occupation of the O.P. even for the sake of natural justice. In my considered view, the Port Authority has a definite legitimate claim to get its revenue involved into the Port Property in question as per 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 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(now Major Port Authorities Act-2021).

In the aforementioned circumstances, being satisfied as above, I have no hesitation to uphold the claim of the Port Authority.

Further O.P has also denied the SMPK's claim on account of interest. Therefore, it required to be adjudicated seriously as the issue involves mixed question of fact and law as well. It is my considered view that payment of interest is a natural fall out and one must have to pay interest in case of default in making payment of the principal amount due to be payable. For occupation and enjoyment of Port property, the charges leviable upon the tenants/occupiers are based on the Schedule of Rent Charges as applicable for a tenant/occupier in respect of respective zone as indicated in such Schedule of Rent Charges. Here in this instant matter O.P cannot deny such liability of payment of interest also as he has failed to pay the principal amount due to be payable by him. Moreso, this forum has no power in the matter of waiver of interest for which O.P has to pray before proper Authority of SMPK. As such, I have no hesitation to decide the issue in favour of SMPK and I have no bar to accept the claim of SMPK on account of Interest accrued for delayed payment.

Regarding **Issue No.XI**, i.e on the issue of determination of tenancy by way of a quit notice, O.P. vide their reply to the



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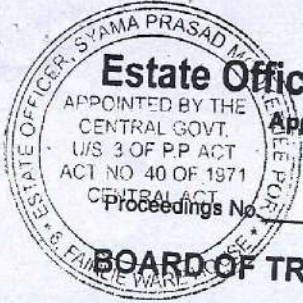
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Show Cause notice/s dated 11.11.2021 alleged that the said lease has never been determined by serving appropriate notice upon O.P. and SMPK has not approached this Forum with a clean hand. I have considered such allegation of O.P with all its seriousness and the fact of determination of such tenancy with effect from 01.12.1985 has also received my due attention. It appears that SMPK has neither mentioned any date of Quit Notice in their original application nor in their subsequent rejoinder, it has only mentioned the date from which determination of such tenancy was effected. Being dissatisfied, the Forum made a query vide its order dated 11.08.2021 but no satisfactory document effecting termination of such lease w.e.f 1.12.1985 was produced by SMPK, Such being the case, I am unable to consider the issue of determination of such lease w.e.f 01.12.1985 as raised by SMPK, however, as per settle proposition of law, I must say that a lessee like O.P. cannot claim any legal right to hold the property after expiry of the period of lease i.e on & from 31.03.1988. O.P has failed to satisfy this Forum about any consent on the part of SMPK in occupying the public premises. I am consciously of the view that SMPK never recognized O.P. as a lawful user/tenant in respect of the property in question after expiry of the period of such long term lease. As per Section 2 (g) of the P. P. Act the "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. Further, as per the Transfer of Property Act, a lease of immovable property determines either by efflux of time limited thereby or by implied surrender or on expiration of notice to determine the lease or to quit or of intention to quit, the property leased, duly given by one party to another. It is also a settled question of law that O.P, occupier cannot claim any legal right to hold the property after expiry of the lease, without any valid grant or allotment from SMPK's side. Moreover, as per the Transfer of Property Act, 1882, a lessee is under legal obligation to hand over possession of the property to its landlord/lessor in its original condition after expiration of tenancy under lease. In this instant case, the tenancy of the O.P. automatically stands terminated

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upon expiry of the lease-hold period therefore, no additional Notice is required in the eye of law on the part of the landlord to ask the O.P. to vacate the premises. In the instant case, the landlord i.e. SMPK has adopted such a course thus such Notice has been received by O.P. or not is quite immaterial inasmuch as O.P. was duty bound to hand over possession to SMPK after expiry of such lease which it had failed to do. Therefore, O.P's occupation is unauthorised and O.P is liable to pay compensation. The lease granted to O.P. was undoubtedly expired by efflux of time 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 expiration of lease, 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 leasehold period, 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 unauthorised use and occupation. To come into such conclusion, I am fortified by the decision/observation of the Hon'ble Supreme Court in Civil Appeal No.7988 of 2004, decided on 10<sup>th</sup> December 2004, reported (2005)1 SCC 705, para-11 of the said judgment reads as follows.

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

In course of hearing, the representative of 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.



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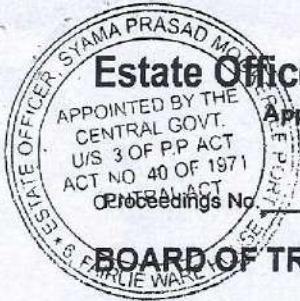
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cannot claim its occupation as "authorized" without receiving any rent demand note, post expiry of the lease. Therefore, there cannot be any doubt that the O.P. was in unauthorized occupation of the premises, once the lease expired. In my opinion, 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 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.

It has been held by the Hon'ble Apex Court of India that a person continuing in occupation of such premises after expiry of lease is liable to pay compensation or damages for their use and occupation. I am fortified by the Apex Court judgment reported in JT 2006 (4) Sc 277 (Sarup Singh Gupta -Vs- Jagdish Singh &Ors.) wherein it has been clearly observed that in the event of termination of lease the practice followed by Courts is to permit landlord to receive each month by way of compensation for use and occupation of the premises, an amount equal to the monthly rent payable by the tenant. In my view, the case in hand is very much relevant for the purpose of determination damages upon the guiding principle as laid down by the Hon'ble Apex Court in the above two cases. 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(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



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up vacant and peaceful possession of the public premises to SMPK after expiry of the lease-hold period in its original condition. As such, the issue is 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.

In view of the discussions above, the issues are decided firmly in favour of SMPK. I find that this is a fit case for passing order of eviction against O.P or other interested Party whoever in occupation, and hence, being satisfied as above I hereby, pass Order of eviction under Section 5 of the Act on following grounds:

1. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear dues/damages etc. as prayed for on behalf of SMPK.
2. That the provisions of Public Premises(Eviction of Unauthorised Occupants) Act,1971 are very much applicable in the instant Proceeding.
3. That the long term lease granted to O.P. had undoubtedly expired on 31.03.1988 with no scope for renewal/extension.
4. That O.P's plea of "Holding Over" has got no merit in the facts and circumstances of the case.
5. That the O.P has parted with Possession of the subject premises to rank outsiders in violation of the condition of such lease.
6. That O.P.'s contention regarding applicability of the provisions of West Bengal Premises Tenancy Act, 1997 has also got no merit in the present facts and circumstances of the case.
7. That O.P. has failed to bear any witness or adduce any evidence in support of their contention regarding "authorised occupation" and O.P's occupation has become unauthorized in view of Sec. 2(g) of the P.P. Act, 1971.
8. That right from the date of expiry of the lease, O.P. has lost its authority to occupy the Public Premises and O.P. is liable to pay 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.

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ACCORDINGLY, I sign the formal order of eviction u/s 5 of the Act as per Rule made there under, giving 15 days time to O.P. and any person/s whoever may be in occupation to vacate the premises. I make it clear that all person/s whoever may be in occupation are liable to be evicted by this order and the Port Authority is entitled to claim damages for unauthorized use and enjoyment of the property against O.P. in accordance with Law up to the date of recovery of possession of the same. 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.

I make it clear that I am not inclined to assess the damages at this stage as the Notice u/s 7(2) was issued only for a particular period and it requires to be calculated afresh in the light of the changed circumstances as discussed above in the **issue no.XI** therefore, SMPK is directed to submit a report regarding its claim on account of damages against O.P., indicating there-in, the details of the computation of such damages with the rate of charges so claimed for the respective periods from 31.03.1988 i.e the expiry of such lease till the date of taking over of possession, for my consideration in order to assess the damages as per the Act and the Rules made thereunder.

I make it clear that in the event of failure on the part of O.P. or sitting occupant/s to hand over possession of the public premises to SMPK as aforesaid, Port Authority is entitled to proceed further for recovery of possession in accordance with law.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL

  
(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 \*\*\*