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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
of Kolkata Port Trust's
Fairley Warehouse
Fairley Place, Kolkata- 700 001.

REASONED ORDER NO. 58 DT 23.6.2022
PROCEEDINGS NO. 857/D of 2007

Form "G"

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

To
M/s United Liner Agencies of (I) Pvt. Ltd.
Mookerjee House,
17, Brabourne Road,
Kolkata- 700 001

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
23.6.2022
Hd. Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

And whereas by written notice dated 23.09.2021 (Vide Order No 51 dated
17.09.2021) you were called upon to show- cause on/or before 04.10.2021 why an
order requiring you to pay a sum of Rs 12,97,077.86 (Rupees twelve lakhs ninety
seven thousand seventy seven and paise eighty six only) being damages payable
together with compound interest for unauthorised use and occupation of the said
premises, should not be made.

And whereas I have considered your objections and/ or the evidence produced
by you;

Now, therefore, in exercise of the powers conferred on me by Sub-section (2) of
Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971, I
hereby order you to pay the sum of Rs 12,97,077.86 (Rupees twelve lakhs ninety
seven thousand seventy seven and paise eighty six only) for the period from
01.10.2016 to 12.08.2018 assessed by me as damages on account of your
unauthorised occupation of the premises to Kolkata Port Trust, by
11.7.2022

In exercise of the powers conferred by Sub-section (2A) of Section 7 of the said
Act, I also hereby require you to pay compound interest @ 6.30 % per annum, which is

Please see on reverse

:2:

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

A copy of the reasoned order no. S8 dated 23.6.2022 is attached hereto.

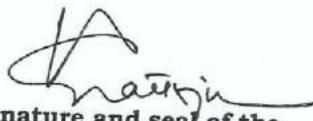
In the event of your refusal or failure to pay the damages within the said period or in the manner aforesaid, the amount will be recovered as an arrear of land revenue.

SCHEDULE

Plate no - CG 139/1

The said Compartment msg. 88.537 sqm. or thereabout is situated at the Southern half of Compartment No. 4 at KoPT's Fairlie Warehouse on the west side of Strand Road under the North Port Police Station within the Presidency Town of Kolkata

Dated: 24.6.2022


Signature and seal of the
Estate Officer.

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



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

Assistant
ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 857/D of 2007 Order Sheet No. 77

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/s United Liner Agencies of (I) Pvt. Ltd.

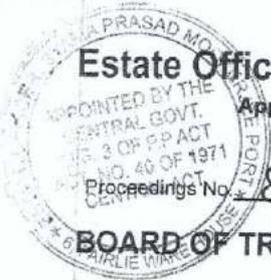
58
23.6.2022

FINAL ORDER

The instant proceedings No. 857/D of 2007 is based on the applications bearing Nos. Lnd.12/5/20/1811 and Lnd.12/5/21/352 dated 10.09.2020 and 25.01.2021, respectively filed by the **Syama Prasad Mookerjee Port, Kolkata** [erstwhile Kolkata Port Trust/ KoPT], hereinafter referred to as '**SMPK**', the applicant herein, praying for Order for recovery of dues on account of Compensation/ Damages, along with accrued interest thereon, in respect of the subject premises, being a Public Premises, against **United Liner Agencies of India Pvt. Ltd.** (now known as **International Cargo Terminals And Infrastructure Private Limited**, in terms of the certificate of incorporation dated 19.05.2015), hereinafter referred to as **O.P.**, under the relevant provisions of **Public Premises (Eviction of Unauthorized Occupants) Act, 1971** (hereinafter referred to as '**the Act**').

The fact of the case in a nutshell, as revealed from records, is that the O.P. came into occupation of the port property of a Compartment measuring 88.537 sqm or thereabouts, situated at the Southern Half of Compartment No. 4 at SMPK's Fairlie Warehouse, Kolkata as a short term (monthly) lessee, on certain terms and conditions. The O.P. violated the conditions of tenancy under monthly lease and consequently, a notice to quit dated 28.10.1992 was issued by SMPK to O.P. As the O.P. failed and neglected to hand over the possession of the premises after the period mentioned in the said ejection notice, a proceeding was initiated before this Forum by SMPK. The said proceeding was contested by the O.P. and after due deliberation by this Forum, resulted in an Order of Eviction of O.P. passed u/s 5 of the Act dated 03.07.2018, by holding, inter alia, that right from the period mentioned in the said notice to quit dated 28.10.1992, O.P. has lost its authority to occupy the premises and is liable to pay compensation charges/ damages with interest there-on for wrongful use and enjoyment of the public

By Order of:
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SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
23.6.2022
Head Assistant
OFFICE OF THE 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

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M/S United Lines Agencies of (I) Pvt. Ltd. ^{VS}

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23.6.2022

premises upto the date of handing over of clear, vacant and unencumbered possession of the same to SMPK. Thereafter, the possession of the premises was taken over by the Authorised Officer, appointed by this Forum, on 13.08.2018 and the same was handed over to SMPK.

Now, in terms of the said applications of SMPK dated 10.09.2020 and 25.01.2021, it is the case of SMPK that huge amount is due and recoverable from the O.P., on account of Compensation charges/ Damages, for O.P.'s use and enjoyment of the port property in question till 12.08.2018.

After considering the claim of SMPK, this Forum formed its opinion to proceed against the O.P. and issued Show Cause Notice dated 23.09.2021 (vide Order no. 51 dated 17.09.2021), u/s 7 of the Public Premises (Eviction of Unauthorized Occupation) Act, 1971. The Notice was issued, calling upon the O.P., to show cause as to why an order requiring payment of compensation charges/ damages, together with interest charges, would not be issued against the O.P.

The said Notice was sent through 'Speed Post' to the recorded address of O.P., who appeared before the Forum through its Ld. Advocate and filed several applications/ objections viz. the one dated 10.11.2021, inter alia, against the order of eviction passed under Sec.5, objection dated 22.11.2021 against the notice issued under Sec.7, written notes of argument dated 20.12.2021 etc.

Now, while passing this Order, after carefully considering the documents on record and the submissions made by the parties, it is apparent that most of the contentions of O.P. have already been decided upon, vide the Order of eviction passed u/s 5 of the Act dated 03.07.2018. It is also apparent that after a period of more than 3 (three) years of the passing of the said order, O.P.

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THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
23.6.2022
Assistant
ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 857/D Of 2007 Order Sheet No. -79-

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/s United Liner Agencies of (I) Pvt. Ltd. ^{VS}

has been attempting to re-open the issues, which have already been settled in terms of the said Order of eviction dated 03.07.2018. However, it goes beyond the jurisdiction of this Forum to consider any objection against the order of eviction passed under Sec.5 of the Act, at a stage when the same has already been put into execution. More so, in terms of Section 10 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 there is no provision in the Act itself, which enjoins the Forum to allow or entertain any such application after a proceeding under this Act has reached its finality and come into force. It is quite surprising and beats our ordinary senses that even upon appreciation of the fact and specific reference of it made in paragraph no 2 of O.P.'s application dated 10.11.2021, to the effect that "the proceeding as aforesaid has already attained its finality as early as on 03.07.2018", the O.P. re-agitated several issues, which stood already adjudicated in terms of the said Order dated 03.07.2018. It is clear that the O.P. has failed to take note of the fact that no assessment of dues has been made in terms of the Order dated 03.07.2018, nor was it supposed to make, as the possession of the subject premises was with O.P. at the relevant point of time; as the order dated 03.07.2018 was ostensibly issued for eviction of the O.P. from the premises only at the first place.

On a plain reading of the said Order dated 03.07.2018, it is fairly comprehensible that at the time of passing of the Order dated 03.07.2018, this Forum was satisfied with the "arguable claim" of SMPK, which was found to be based on sound reasoning. It was also made clear in terms of the Order dated 03.07.2018 that SMPK is entitled to claim damages/ compensation against the O.P. for its unauthorised use and occupation of the premises right upto the date of recovery of clear, vacant and unencumbered possession of the same in accordance with law. Hence, I find that the interpretation of O.P. of the Order dated 03.07.2018 is totally misconstrued, as it purportedly overlooked

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CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
23.6.2022
Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

58
23.6.2022



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/s ^{VS} United Liner Agencies of (I) Pvt. Ltd.

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23.6.2022

the concurrent findings of this Forum with regard to the claim of damages/ compensations of SMPK.

The most obvious and logical way in which the O.P. might have proceeded, in case of their possible misgivings arising out of the decision taken by this Forum through the Order of Eviction dated 03.07.2018, is through the right of Appeal, before a Higher Court of Law. It is vital and an inviolable part of the principles of natural justice that the right of Appeal exists as it ensures that if a Forum does make an error of law or fact, there are alternative means in existence to correct it. As per established canons of Law, the issues which are the subject matter of an Appeal, Reference or Revision, are exempted from the jurisdiction of the Forum, which passes the initial order, against which such Appeal, Reference or Revision can be preferred.

Furthermore, the question about the proper period, for which the damages/ compensation is required to be adjudicated, has already been decided at the time of passing the Order dated 03.07.2018, and the O.P. was indeed in a position to know the exact period for which damages/compensation required adjudication. There is no doubt that the Public Premises had been granted to O.P. on monthly term lease basis. It is the admitted position in the case that O.P. was a short term monthly lessee and this forum has had no evidence to consider it otherwise. Hence, the Forum is painfully constrained to comprehend the statement of O.P. that it had been granted a lease for a "particular period", u/s 105 of Transfer of property Act. It is also the submission of O.P. that until and unless the O.P. is designated as an 'unauthorized occupant', the present proceeding has 'no legs to stand upon'. It is obvious that O.P. has misconstrued the findings, deliberately or otherwise, as in terms of the said order dated 03.07.2018, (which, the O.P., in his avowed wisdom has, inter alia, stated vide its reply dated 11.10.2021 and additional reply dated 22.11.2021, to have

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

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/s United Lines ^{VS} Agencies of (I) Pvt. Ltd.

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23.6.2022

attained the stage of finality,) the O.P. has already been declared to be in "unauthorized occupation" after due initiation of procedure in terms of issuance of notice dated 28.10.1992, demanding possession by the Port Authority and by dint of the provision of Sec. 2(g) of the P.P. Act. Further, the issue raised by O.P., that it had agreed to hand over possession of the said premise only in case the former was restored to O.P., after development of the area by SMPK, is patently extraneous and has no bearing with the facts and circumstances of the case, as it has already been decided vide order dated 03.07.2018 that O.P. is not at all in a position to set up a condition before surrendering possession of the Public Premises in terms of such statutory notice dated 28.10.1992. There was no opinion by this forum of law that O.P. is not liable to pay interest for such delayed payment of compensation as alleged by O.P. in terms of said application dated 11.10.2021 and 22.11.2021. Rather, it is my considered view that payment of interest is a natural fallout of delayed payment of legitimate dues and one must have to pay interest in case of default in making payment of the principal amount due to be paid. An apparently specious submission has been made by O.P. in terms of their application dard 22.11.2021 that they are liable to pay 'simple interest' instead of 'compound interest' as has been mentioned in terms of the notice to Show Cause dated 23.09.2021. In this regard, the definition of rent as per Public Premises Act is very much vital which is as follows:

"Rent" in relation to any public premises, means consideration payable periodically for authorized occupation of the premises and includes ;

- (i) Any charge for electricity, water or any other services in connection with the occupation of the premises,
- (ii) Any tax (by whatever name called) payable in respect of the premises, where such charges or tax is payable by the Central Govt. or the Corporate authority.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
23.6.2022
Assistant
OFFICE OF THE 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

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M/s United Leasing Agencies of (I) Pvt. Ltd.

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In 2015, the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 2015 received the assent of the President, wherein several provisions of the Act were amended. The said Amendment Act was published by the Ministry of Law and Justice vide Gazette Notification dated 14th March 2015. The Section 7 of the P.P. Act gives power to this Forum to order payment of rent, damages in respect of public premises. Under the said Notification, the said Section 7 was amended. The relevant portion of the amended Section 7 of the PP Act is reproduced below:-

"Section 7 - Power to require payment of rent or damages in respect of public premises

(2A) While making an order under sub-section (1) or sub-section (2), the estate officer may direct that the arrears of rent or, as the case may be, damages shall be payable together with compound interest at such rate as may be prescribed, not being a rate exceeding the current rate of interest within the meaning of the interest Act, 1978."

It may be noted that the words "compound interest" in the sub-section (2A) above were substituted by the said Notification, in lieu of the original words "simple interest". Thus, it is obligatory on the part of this Forum, being constituted and exercising its powers under the provisions of P.P. Act, to direct that the damages would be payable with compound interest, instead of simple interest. The expression "compound interest" would basically mean that the accrued interest would be added to the principal amount and further interest would be calculated on such total amount. It is also important to note that the object behind introducing compound interest in the Amendment Act is to provide a firm deterrence to defaulters and to discourage them from delaying the outstanding dues.

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

Handwritten signature

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

APPOINTED BY THE
CENTRAL GOVT.
PROCEEDINGS No. 171
CENTRAL ACT
& FAIR USE NOTICE

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/s United Liners ^{VS} Agencies of (I) Pvt. Ltd.

It is abundantly clear from a plain reading of the order dated 03.07.2018 that the order of eviction was passed on the ground of "unauthorized occupation" of O.P. and it can be said that the order 03.07.2018 was passed on the ground of "reasonable requirement" of the premises by SMPK. The submission of O.P. regarding non-receipt of notice to quit dated 28.10.1992 has no legs to stand upon at present since the issue has squarely been dealt upon in terms of the earlier order of eviction dated 03.07.2018.

However, a patently fatuous argument has been advanced by the O.P. that SMPK is bound to restore the possession of the land to O.P. after fulfilling its "reasonable requirement" and as such the issues fall under the domain of a higher Forum and this Forum has no authority to deal with and decide such issues. In this regard, 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 as well as compensation dues against the O.P., on the plea of surcease of the authority to occupy the premises as earlier granted to O.P. in respect of the premises in question. So long as the property of the Port Authority/ SMPK falls under the purview of "public premises" as defined under the Act, the adjudication process, by due service of Show Cause Notice/s u/s 4 & 7 of the Act, is very much maintainable and therefore any question raised about the maintainability of proceedings before this Forum of Law is extraneous and fit to be rejected.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
23.6.2022
Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

58
23.6.2022



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No.

857/A

Of

2007

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M/s United Lines Agencies of (I) Pvt. Ltd. ^{VS}

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23.6.2022.

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:-

"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

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CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
23.6.2022
Assistant
OFFICE OF THE 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

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/s United Lines Agencies of (I) Pvt Ltd. ^{VS}

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 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

By Order of :
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
23.6.2022
Head Assistant
OFFICE OF THE I.D. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

58
23.6.2022



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 857/D of 2007 Order Sheet No. -86-

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/s United Liners Agencies of (I) Pvt. Ltd.

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23.6.2022.

under the said Act to decide the matter in summary 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 summary 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".

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

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
[Signature] 23.6.2022
Head Assistant
OFFICE OF THE J.D. 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

APPOINTED BY THE
CENTRAL GOVT.
UNDER SECTION 3 OF THE
PUBLIC PREMISES ACT,
ACT NO. 40 OF 1971
GENERAL ACT

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/s United Lines ^{VS} Agencies of (I) Pvt. Ltd.

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23.6.2022

It appears from the statements of account dated 05.10.2021 that haphazard payments have been made by the O.P., as per their own whims and fancies and certainly not as per the terms of the Contract. In my view, such statements maintained by a statutory authority/ SMPK in its usual course of business, has a definite evidentiary value, unless challenged by a contesting person/entity with fortified documents/evidences etc, ready to bear the test of legal scrutiny. During the course of hearing, I am given to understand by SMPK that the rent as well as compensation/ damages/mesne profit, charged from time to time is based on the rates notified by the Tariff Authority for Major Ports (TAMP) in the Official Gazette, which is binding on all users of the port property. Non-payment of the actual dues by O.P. is very much prominent and established, as per records submitted by SMPK, discussed above. Hence, I have no bar to accept the claim of SMPK on account of rent as well as damages/compensation/ mesne profit. I have nothing to disbelieve in respect of SMPK's claim against O.P. as per the statements of account maintained regularly in SMPK's office, in discharge of its regular course of business and office transactions as a statutory authority.

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

Now the question survives whether O.P can take the plea of time barred claim under Limitation Act, while in possession and

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THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
23.6.2022
The Assistant
OFFICE OF THE 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

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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enjoyment of the property. It is my considered view that O.P. cannot escape their liability towards payment of rental dues on the plea of "limitation" as per Sec. 25 of the Indian Contract Act, while acknowledging the jural relationship as debtor. No attempt has been made on behalf of O.P. as to how O.P.'s occupation could be termed as "authorised" in view of Sec. 2(g) of the P.P. Act, after expiry of the period as mentioned in the SMPK's notice to quit dated 28.10.1992, demanding possession from O.P.

My view is based on various decisions of the Hon'ble Apex Court of India and Hon'ble Calcutta High Court, wherein it has been decided that Limitation Act has no application before Forum of Law which is not a civil court to be governed by the Civil Procedure Code. The judgment of the Hon'ble Apex Court of India reported in New India Assurance Case - 2008 (3) SCC 279 = AIR 2008 SC 876 is very much relevant in deciding the question whether this Forum is a court or not. It was decided by the Supreme Court that Civil Procedure Code and Indian Evidence Act are not applicable for proceedings before the Estate Officer under P.P. Act which provided a complete code. The Limitation Act applies to "suits" to be governed by CPC and Indian Evidence Act. When the basic elements for adjudication of a "suit" are totally absent for proceedings under P.P. Act, 1971, it is futile to advance any argument for its application. The judgments of different High Courts including that of Delhi High Court could be accepted as a guiding principle. In this connection, I am fortified by a judgment of the Hon'ble High Court, Calcutta in S.N. BHALOTIS -vs- L.I.C.I. & Ors. reported in 2000(1) CHN 880 with reference to the judgment reported in AIR 1972 Tripura 1 (Hemchandra Charkraborty -vs- Union of India) wherein, it was clearly held that proceedings initiated by an Estate Officer are not in the nature of suit nor the Estate Officer acts as a Court while deciding proceedings before him.

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SYAMA PRASAD MOOKERJEE PORT
23.6.2022
Hd Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

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It is worthy to record that there is no prescribed period of limitation in the Limitation Act itself for recovery of "damages". It would not be out of scope to mention that Limitation Act bars the remedy by way of "suit" but not the entitlement. In my view, there is a clear distinction between 'rent' and 'damages'. So long both the parties admit their relationship as landlord and tenant, the question of paying damages does not arise. In other words, if the tenant is asked to pay rent by the landlord, the element of authorized occupation could be inferred but in case of demand for damages, there is element of unauthorized use and enjoyment of the property (1996) 5 SCC 54 (Shangrila Food Products Ltd. & Anr vs Life Insurance Corporation of India & Another).

In view of the discussion above, I am of the view that this Forum of Law is very much competent under law to adjudicate the claim of SMPK against O.P. and Limitation Act has no application to the proceedings before the Estate Officer which is a quasi-judicial authority under P.P. Act and is neither a Civil Court to be governed by the Civil Procedure Code nor a "court" within the scheme of the Indian Limitation Act.

Thus, it is my considered view that a sum of Rs 12,97,077.86 (Rupees Twelve Lakhs Ninety Seven Thousand Seventy Seven and paise Eighty Six only) for the period from 01.10.2016 to 12.08.2018 is due and recoverable from O.P. by the Port authority on account of compensation/ mesne profit/ damage charges.

The O.P. must have to pay such dues to SMPK on or before 11.7.2022.

Such dues attract Compound Interest @ 6.30 % per annum, which is the current rate of interest as per the Interest Act, 1978 (as gathered from the official website of the State Bank of India) from the date of incurrence of liability, till the full and final

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23.6.2022
Head Assistant
OFFICE OF THE 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
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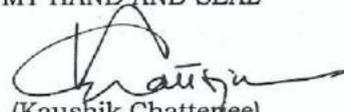
liquidation of the same, as per the adjustment of payments, if any made so far by O.P., in terms of SMPK's books of accounts.

The formal Orders u/s 7 of the Act are signed accordingly.

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


(Kaushik Chatterjee)
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
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PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
f 23.6.2022
Joint Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT