

SCAN



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HAND DELIVERY
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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 SMP, Kolkata's
Fairley Warehouse
6, Fairley Place, Kolkata- 700 001.

REASONED ORDER NO. 14 DT 18.08.2022
PROCEEDINGS NO. 1754 OF 2019

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

**SYAMA PRASAD MOOKERJEE PORT, KOLKATA
(ERSTWHILE BOARD OF TRUSTEES OF THE PORT OF KOLKATA)**

-Vs-
M/s Jokhiram Baijnath (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**

CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
[Signature]
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

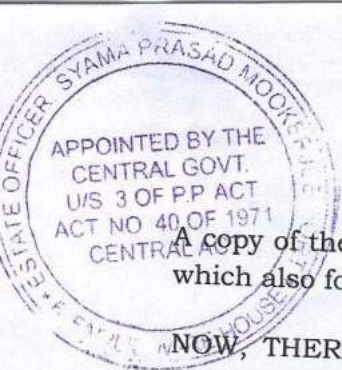
WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that **M/s Jokhiram Baijnath, Jain House, 8/1, Esplanade East, Kolkata-700069** And also of **1, Goragacha Road (At the Junction of Hide Road and Jainkunj) Kolkata-700043** is in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

- I. That O.P's contentions regarding non-maintainability of the proceedings on various grounds in view of O.P's applications dated 27.09.2021 have got no merit in the facts and circumstances of the case.
- II. That O.P has parted with possession of the subject premises to rank outsiders and changed the purpose of such lease in clear violation of the term of such tenancy without having any authority of law.
- III. That O.P. cannot take the plea of time barred claim by SMPK, taking the shield of Limitation Act.
- IV. That Land Manager(I/C), SMPK is authorized by the Board of Trustees of the Port of Kolkata(Now Syama Prasad Mookerjee Port, Kolkata) for service of ejection notice to O.P. and O.P's contention regarding incompetency of service of ejection notice by the Land Manager(I/C), SMPK has got no merit.
- V. That O.P. cannot take the plea of waiver of Quit Notice, taking the shield of acceptance of rent and subletting charges by SMPK.
- VI. That O.P. has failed to bear any witness or adduce any evidence in support of their occupation as "authorised occupation".
- VII. That O.P has lost its authority to occupy the public premises after expiry of the period as mentioned in the Notice to Quit dated 22.02.2007.
- VIII. The O.P's occupation has become unauthorised in view of Sec2(g) of the Act and O.P is liable to pay damages for wrongful use and enjoyment of the Port Property in question upto the date of handing over of the clear vacant and unencumbered possession to the Port Authority.

[Signature]

PLEASE SEE ON REVERSE



(2)

A copy of the reasoned order No. 14 dated 18.08.2022 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 Jokhiram Baijnath, Jain House, 8/1, Esplanade East, Kolkata-700069 And also of 1, Goragacha Road (At the Junction of Hide Road and Jainkunj) Kolkata-700043** 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 Jokhiram Baijnath, Jain House, 8/1, Esplanade East, Kolkata-700069 And also of 1, Goragacha Road (At the Junction of Hide Road and Jainkunj) Kolkata-700043** and all other persons concerned are liable to be evicted from the said premises, if need be, by the use of such force as may be necessary.

SCHEDULE

Plate No.D-281/5 & SF-97

The said piece or parcel of land msg. about 1600.53 sq.m or thereabouts is situate at Hide Road, P.S-South Port Police Station, District-24 Parganas(S), Registration Dist. Alipore. It is bounded on the **North** by the Trustees' land occupied by Jokhiram Baijnath, on the **East** by the Trustees' land occupied by Jokhiram Baijnath, on the **South** by the Trustees' land and Railway tracks and on the **West** by the Trustees' Hide Road. Trustees' means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata).

Dated: 23.08.2022

Signature & Seal of
Estate Officer.

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

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

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



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

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

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

OFFICE OF THE ESTATE OFFICER
6, Fairlie Place (1st FLOOR) KOLKATA-700001

Court Room at the 1st Floor
Of SMP, Kolkata's
Fairlie Warehouse
6, Fairlie Place, Kolkata- 700 001.

PROCEEDINGS NO.1754/D OF 2019
ORDER NO.14 DATED: 18.08.2022

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 Jokhiram Baijnath,
Jain House,
8/1, Esplanade East,
Kolkata-700069.
And also of
1, Goragacha Road
(At the Junction of Hide Road and Jainkunj)
Kolkata-700043.**

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
18/08/22
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

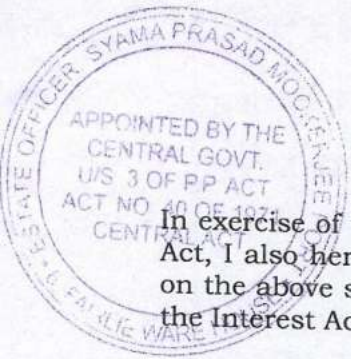
WHEREAS I, the undersigned, am satisfied that you are in unauthorised occupation of the public premises mentioned in the Schedule below:

AND WHEREAS by written notice dated 14.01.2021 you are called upon to show cause on or before 28.01.2021 why an order requiring you to pay damages of Rs.69,41,184.95 (Rupees Sixty nine Lakh forty one thousand one hundred eighty four and paise ninety five Only) for Plate No.D-281/5 and Rs. 3,77,672/- (Rupees Three Lakh seventy seven thousand six hundred seventy two only) for Plate No.SF-97 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 evidence produced before this Forum;

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.69,41,184.95 (Rupees Sixty nine Lakh forty one thousand one hundred eighty four and paise ninety five Only) for Plate No.D-281/5 and Rs. 3,77,672/- (Rupees Three Lakh seventy seven thousand six hundred seventy two only) for Plate No.SF-97 both for the period from 01.09.2007 to 31.01.2019(both days inclusive) assessed by me as damages on account of your unauthorised occupation of the premises to SMP, Kolkata by 01.09.2022

PLEASE SEE ON REVERSE



: 2 :

In exercise of the powers conferred by Sub-section (2A) of Section 7 of the said Act, I also hereby require you to pay compound interest @ 6.45 % per annum on the above sum till its final payment being the current rate of interest as per the Interest Act, 1978.

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 through the Collector.

SCHEDULE

Plate No.D-281/5 & SF-97

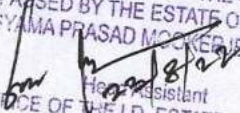
The said piece or parcel of land msg. about 1600.53 sq.m or thereabouts is situate at Hide Road, P.S-South Port Police Station, District-24 Parganas(S), Registration Dist. Alipore. It is bounded on the **North** by the Trustees' land occupied by Jokhiram Baijnath, on the **East** by the Trustees' land occupied by Jokhiram Baijnath, on the **South** by the Trustees' land and Railway tracks and on the **West** by the Trustees' Hide Road. Trustees' means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata).

Date 23.08.2022


Signature & Seal of the
Estate Officer.

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

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

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



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1754/1754/D Of 2019 Order Sheet No. 15

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S JOKHIRAM BAIJNATH.

19
18.08.2022

FINAL ORDER

The matter is taken up today for final disposal. The factual matrix involved in this matter is required to be put forward in a nutshell for clear understanding and to deal with the issues involved. It is the case of Syama Prasad Mookerjee Port Kolkata (Erstwhile Kolkata Port Trust), hereinafter referred to as SMPK, applicant herein, that land msg. about 1600.53 Sq.m.(under Plate No.D-281/5 & SF-97) situated at Hide Road, Thana- South Port Police Station, District-24 Parganas(S) was allotted to **M/s. Jokhiram Baijnath (O.P.)** on long term lease basis for a period of 30 years w.e.f 01.07.1996 under coverer of a lease executed by both the parties on certain terms and conditions and O.P. violated the conditions of tenancy as granted under such lease by way of unauthorised parting with possession to third parties. It is the case of SMPK that O.P. has not only parted with possession but also changed the purpose of such lease in violation of the term of such tenancy.

It is also the case of SMPK that in view of the aforesaid breaches committed by the O.P., SMPK had issued notice to quit being No. Lnd.3816/VIII/07/10536 dated 22.02.2007 asking the O.P. to hand over clear, vacant, peaceful and unencumbered possession of the property to SMPK on 01.09.2007. But O.P. has failed and neglected to vacate/ hand over the possession of such premises to SMPK after service of the said Notice to Quit. Now, it is argued by SMPK that O.P's occupation is unauthorised and O.P. is liable to pay damages for wrongful use and enjoyment of the Port Property in question.

Considering the submission advanced by SMPK and the documents on record, Notice/s to Show Cause under section 4 and 7 of the Public Premises (Eviction of Unauthorized Occupation) Act, 1971 all dated 14.01.2021 (vide Order No.03 dated 12.01.2021) were issued by this Forum to O.P. The Notice/s were issued in terms of the said provisions of the Act

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 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

Proceedings No. 1754A-1754/D Of 2019 Order Sheet No. 16

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S JOKHRAM BAIJADATH.

calling upon the O.P. to appear before this forum in person or through authorized representative capable of answering all material questions in connection with the matter along with the evidence which the opposite party intends to produce in support of their case.

The said notice/s were sent through Speed Post/hand delivery to the recorded addresses of O.P. at Jain House, 8/1, Esplanade East, Kolkata-700069 and to 1, Goragacha Road(At the junction of Hide Road and Jainkunj)Kolkata-700043.

The postal communication was not returned undelivered to the Forum however, the report of Process Server dated 20.01.2021 as submitted before this Forum reveals that said notice/s were served upon O.P personally and affixation was also done over the subject premises in question as per the mandate of the P.P Act.

On the Schedule date of appearance and filing of reply to the Show Cause i.e on 28.01.2021, neither O.P. nor any interested party appeared before the Forum to file their reply to the Show Cause. However, it appeared that a petition seeking adjournment dated 27.01.2021 was filed on behalf of O.P. Thereafter, on 11.03.2021 one Shri Sidhartha Sarawgi, expressing himself as a representative of O.P. appeared before the Forum in order to contest the instant matter. On 18.03.2021 Shri Sarawgi filed an application representing himself as the sole proprietor of the O.P. Firm along with his proof of identity. Thereafter, O.P. filed a number of applications, on various dates, praying for copies of certain documents filed by SMPK and the orders passed by this Forum. It is due to the then Covid restrictions, the hearings of the matter thereafter were taken up on virtual platform. However, O.P./Shri Sarawgi did not turn up to contest the instant matter. In order to provide further chances to O.P., the Orders dated 06.05.2021 & 02.09.2021 were again directed to be served upon O.P., but all efforts remained futile as the O.P/ Shri Sarawgi did

14
18-08-2022
By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
Read/Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1754 & 1754/D Of 2019 Order Sheet No. 17

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S JOKHIRAM BAIJNATH.

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18.08.2022

not appear before the Forum, despite of service of such order/s upon the O.P.

It appears that a number of communications viz. the communication dated 18.03.2021, 06.04.2021, 21.04.2021, 19.04.2021, 22.04.2021, 05.05.2021 and 08.09.2021 have been filed by O.P. seeking several extensions on different grounds, without filing the reply to the Show Cause, as per mandate of the Act. By then it was apparent that the conduct of O.P is nothing but a dilatory tactics to prolong the hearing of the instant matter. In view of the spirit laid down in the Public Premises Act, 1971 for speedy and summary disposal of cases and further considering event of non- submission/ non-filing of reply by the O.P. for over a period of more than 9 (nine) months, in spite of having a number of opportunities, this Forum was constrained not to keep the matter pending for a longer time and accordingly, concluded the hearing of the matter on 16.09.2021.

It appears that after such conclusion of the hearing, the O.P. preferred 2 sets of applications dated 27.09.2021, filed before this Forum on 27.09.2021. One application, inter alia, is for inspection of certain documents of SMPK and the other application enumerates certain grounds of maintainability, seeking dismissal of the instant proceeding.

I must mention here that as per the provisions of the Public Premises Act, 1971 it is the primary duty of O.P. to file the reply or deal with the grounds mentioned in the show Cause notice. It is obvious that the grounds as enumerated in the Show Cause is based on the case primarily established by SMPK through its original and additional applications, if any, submitted before this Forum. It appears from records that a copy of the Original Application of SMPK dated 01.02.2019 has already been handed over to the authorised representative of O.P., under his personal acknowledgement on 25.03.2021. Hence, it can be taken without

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

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Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1754 & 1754/D of 2019 Order Sheet No. 18

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S JOKHIRAM BAIJNATH

14 ~~13~~
18-08-2022

much hesitation that O.P. was aware of the basis of claim of SMPK on and from 25.03.2021. However, instead of filing the reply to show cause, O.P. has chosen to file an application seeking inspection of documents, after a period of more than 6 (six) months, after becoming cognisant of the case made out by SMPK, particularly at the juncture when the hearing of the matter has already been concluded. Hence, the conduct of O.P. somehow indicates their tactics for delaying the matter and eventually, deferring the administration of justice. Hence, I find very little merit in the application of O.P. seeking inspection of documents. The O.P was duty bound to file evidence/documents in support of their case, if any, against the Show Cause issued by this Forum and the P.P Act nowhere compels the O.P. for its personal appearance/attendance before this Forum. It appears from records that on numerous occasions, the O.P sought for adjournments on his personal grounds, although this Forum neither insisted the O.P. nor passed any direction for personal appearance. All that is needed is the Reply to Show Cause to be filed by O.P., within the statutory limit of 7 (seven) days with the supporting documents/evidence in support of the case and it is needless to mention that taking up adjournments, on one pretext or the other, frustrates the basic spirit of the Act. It is only when the hearing of the matter was concluded, the O.P. came up with the reply to show Cause and thereby depriving SMPK of their lawful right to counter/ oppose the contentions made by O.P. in the reply to Show Cause. The points taken by O.P. for non-maintainability of the present Proceeding could easily be taken by O.P. in their Reply to Show Cause and the P.P. Act does not contemplate to take the maintainability Proceeding as a standalone Proceeding.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

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

Be that as it may, following the principles of Natural Justice that no one should be condemned unheard, I proceed to consider the case made out by O.P. through its applications dated 27.09.2021. I have carefully read the said applications dated

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Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1754, 1754/D Of 2019 Order Sheet No. 19

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S JORHIRAM BAIJNATH

19 ~~18~~ 18-08-2022

By Order of :
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
18/08/22
Asst. Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

27.09.2021 filed by O.P. with all their imports and contents. After carefully considering the documents on record and the submission of the parties, I find that following issues have come up for my adjudication:

- 1) Whether the instant Proceeding against O.P. is maintainable or not;
- 2) Whether SMPK has traversed away the scope of Quit Notice dated 22.02.2007 by filing the eviction proceedings after a prolonged period or not;

Or

- Whether the eviction proceeding could be termed as invalid due to delay for initiation of eviction proceedings after service of ejection notice dated 22.02.2007 or not.
- 3) Whether the eviction proceedings could be termed as invalid due to delay in issuing the notice to Show Cause after filing of the instant proceeding on 1st February, 2019 or not;
 - 4) Whether Show Cause Notice u/s.4 & 7 of the P.P. Act issued to O .P., both dated 12.01.2021 suffers from any irregularity in view of the statutory provisions as envisaged under the Act or not;
 - 5) Whether the ejection notice dated 22.02.2007, demanding possession from O.P. issued by the Land Manager (In-Charge), SMPK is without authority or not;
 - 6) Whether the allegation of SMPK regarding using of the property other than the purpose for which it was actually allotted by SMPK has got any merit or not;
 - 7) Whether claim of SMPK against O.P. is barred by limitation or not;
 - 8) Whether O.P. has parted with possession of the subject public premises to third parties as alleged by SMPK or not;
 - 9) Whether the plea taken by O.P. about waiver of the notice to quit dated 22.02.2007 by the SMPK, has got any merit or not,

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. 1754, 1754/2 Of 2019 Order Sheet No. 20

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/s JOYHIRAM BAIJNATH

10) Whether the notice to quit as issued by the Port Authority to O.P. dated 22.02.2007 is valid and lawful or not.

11) Whether O.P is liable to pay damages for wrongful use and enjoyment of the Port property or not.

Regarding the **issue No.1**, I must say that the properties owned and controlled by the Port Authority has been declared as "public premises" by the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and 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 unauthorized along with the prayer for order of eviction 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:

By Order of :

THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

[Signature]

14
18-08-2022

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. 1754-1754/0 Of 2019 Order Sheet No. 21

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S - JOKHRAM BAIJNATH

14
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18-08-2022

"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".

In view of the discussions above, the issues 1 is decided against 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
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

Proceedings No. 1754.1754/D Of 2019 Order Sheet No. 22

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S JORHIRAM BAIJANATH

14/18/22
28.08.2022

Regarding **Issue No. 2**, no case has been made out by O.P. as to how the delay, if any, in proceeding with the matter on the basis of the ejection notice dated 22.02.2007 as served upon O.P. by the Port Authority could be considered as an embargo to proceed with the matter under the relevant provisions of the Act. It reveals from record that Application of SMPK before this Forum of Law was filed on 01.02.2019 and this Forum of Law formed its opinion to proceed against O.P. by issuing Show Cause Notice on 14.01.2021. Though Limitation Act has no application to the proceedings before this Forum of Law as it is not a Civil Court, I must mention that even Limitation Act prescribes a period of 12 years for institution of Suit for recovery of possession etc. by a Landlord after determination of lease. Hence, there is no legal bar to proceed against O.P. on the basis of the said ejection notice of the Port Authority dated 22.02.2007.

Regarding **Issue No. 3**, no case has been made out by O.P. as to how the delay, if any, in proceeding with the matter on the basis of the application dated 1.2.2019 as filed by the Port Authority could be considered as an embargo to proceed with the matter under the relevant provisions of the Act. It reveals from record that Application of SMPK before this Forum of Law was filed on 01.02.2019 and this Forum of Law formed its opinion to proceed against O.P. by issuing Show Cause Notice on 14.01.2021. As Limitation Act has no application to the proceedings before this Forum of Law as it is not a Civil Court, Hence, there is no legal bar to proceed against O.P. on the basis of the said application of the Port Authority dated 1.2.2019.

With regard to **Issue No.4**, I do not find any argument on behalf of O.P., save and except statement against issuance of notice u/s.4 & 7 of the Act. It is my considered view based on careful consideration of the materials brought before me that SMPK's case needs to be adjudicated by way of issuing Show Cause Notice/s for initiation of proceedings under the relevant provisions of the Act and Rules made thereunder. Port premises

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14/18/22
28.08.2022
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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(Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 1754.1754/D of 2019 Order Sheet No. 23

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S. JOKHIRAM BAIJNATH.



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H.S.C. Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

being public premises as defined under the Act, I have definite jurisdiction to entertain the matters relating to the prayer for order of eviction and recovery of arrear rental dues/damages etc. as per provision of the Act. No right has been taken away from O.P. by way of issuing Show Cause Notice/s. In fact, to start with the adjudication process as envisaged under the Act, issuance of Show Cause Notice/s is a sine-qua-non. One cannot go beyond the statutory mandate of an enactment (P. P. Act) which provides a complete code for adjudication of any matter before this Forum of Law. Formation of opinion to proceed against O.P. on the basis of the materials connected with the occupation of O.P. cannot be blamed without establishing irregularity, if any, under the statutory mandate. In such a situation, I do not find any merit to the submissions/statement on behalf of O.P. in this regard and as such, the issue is decided against O.P.

On the question of competency of Land Manager(I/C), SMPK in serving ejectment notice under **issue no. 5**, I have carefully considered the issue. In my view, the power of the Land Manager/Dy. Land Manager, SMPK as delegated by the Board of Trustees of the Port of Kolkata with the sanction of the Central Govt. in relation to Sec.34 of the Major Port Trusts Act read with Sec.21 of the said Act clearly leaves no room for doubt about the competency of the Land Manager/Dy. Land Manager, SMPK for execution of lease deed in respect of SMPK's property. It appears from the papers/documents as shown to me in course of hearing that SMPK's Resolution No.168 of 29.5.1981 regarding delegation of power to Land Manager/Dy. Land Manager, SMPK and other officers of SMPK as specified therein was sanctioned by the Govt. of India, Ministry of Shipping and Transport (Ports Wings) vide letter dated 27.8.1981 bearing No.PW/PGP/3/79.

Relying upon the delegation of power and judgment of the Hon'ble High Court, Calcutta in C.O.No.2423 of 2002 (unreported), it is my considered view that Land Manager/Dy.

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

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Land Manager, SMPK is competent to sign ejection notice. The heart of the controversy as it stands now, revolves round the question whether the ejection notice, demanding possession of the public premises from O.P. with the signature of Land Manager(I/C), SMPK is out of jurisdiction or not. As per delegation of power with the sanction of the Central Government u/s 21 of the Major Port Trusts Act, 1963 as communicated to the Chairman, SMPK vide Govt. of India, Ministry of Shipping & Transport (Port Wing) bearing No.PW/PGP/3/79 dated 27.8.1981 on the proposal contained in the Board of Trustees of the Port of Calcutta's Resolution No.168 dated 29th May, 1981, it is evident from item no.39 & 42 (in relation to Section 34 of the MPT Act), Land Manager./Dy. Land Manager, SMPK is competent to execute any contract on behalf of the Board. When the Land Manager/Dy. Land Manager, SMPK is competent to enter into any contract on behalf of the Board of Trustees of the Port of Calcutta which includes execution of lease deed or tenancy agreement pertaining to the Estate Department, SMPK with the sanction of the Board and with the sanction of the Central Government under MPT Act, it is very difficult to accept that the Land Manager(I/C), SMPK is not competent to issue notice, determining any lease, as in the instant case. A person competent to enter into any contract on behalf of the Board is very much competent to determine/terminate such contract like lease in the instant case. In my view the Land Manager(I/C), SMPK is very competent in determining any lease, acting as an agent of the Board of Trustees of the Port of Kolkata, particularly when the act of issuing such ejection notice is approved by the Chairman of the Board of 'Trustee' of the Port of Kolkata as in the instant case. In my view there is no authority under law to hold that the notice demanding possession from O.P. by the Land Manager/Dy. Land Manager, SMPK is invalid for the reason of lack of competency in serving such notice to O.P. I further hold that any agent of a lessor like Port Authority is competent to serve such notice, demanding possession from a lessee in such a

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Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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VS

JOKHRAM BAIJADATH.

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

situation. It may be recalled that in the instant case The Land Manager(I/C), SMPK being functional head of the Estate Department, SMPK had issued the notice demanding possession dated 22.02.2007 and under the provision of Major Port Trust's Act,1963 the Land Manager, SMPK is very much competent to enter into a contract for lease on behalf of the Board of Trustees of the Port of Kolkata.

Therefore, I am firm in holding that the plea taken by O.P. regarding non-maintainability of proceedings on the ground of lack of competency in serving ejection notice by the Land Manager(I/C), SMPK in question has got no merit. To take this view I am fortified by a unreported judgment of the Division Bench of Kolkata High Court delivered on 28.01.2013 by their Lordship Hon'ble Mr. Justice Grish Chandra Gupta and Hon'ble Mr. Justice Tarun Kumar Das in A.P.O. No. 108 of 2010 (Kolkata Port Trust -Vs- M/s Universal Autocrafts Pvt. Ltd. &Anr.) Accordingly, the issue is decided in favour of SMPK.

The **issue No. 6** with regard to using of the property for the purpose other than the purpose/s for which it was allotted to O.P. by the Port Authority, I have considered the matter with all its seriousness. It appears that the property under long term lease (D-281/5 & SF-97) was allotted to O.P. **for the purpose of covered storage of iron steel and other materials.** My attention is drawn to the SMPK's application bearing No. Lnd.3816/VII(Loose)/20/1032 dated 12.03.2020 wherein it has been stated that number of unauthorised entities such as Saraf Enterprise/ Homelate Tea, Tewari Commercial Co, Hindustan Lace Manufacturing Corpn Pvt Ltd, Kailash Kr. Bros, Bills Grafics Ltd, Tirupati Tea Blenders and Tewari Warehousing Co. Pvt Ltd are using such premises unauthorisedly for the purpose of packaging, blending and storage of tea and other purposes, in clear violation to the purpose for which the properties were allotted.

I have also carefully considered the statements/ contentions of O.P. as contained in their application dated 27.09.2021. It is

Signature

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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ACT NO. 40 OF 1971
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stated by O.P. that **SMPK's allegation is false and fraudulent, O.P. had never changed the mode of use of the relevant land.** I am not at all inspired by such submission of O.P. and in my view, O.P. has failed to make out any case in support of their contention. When any public premises remain under the unauthorised occupation of third parties in O.P's indulgence it will be presumed that it is the O.P. who is under constructive possession of such premises through such unauthorised subtenants. Therefore, it is my firm and considered view that by allowing third parties to trade upon from such premises, O.P. has violated the condition of allotment of the premises (violation of purpose clause) of such lease. Such violation without the permission of SMPK is not at all permitted or acceptable in all sense of law. As such, the issue is clearly decided against O.P.

As regards the **Issue No.7** i.e the question of application of Limitation Act in connection with "time barred claim" is required to be decided with all its seriousness.

The Limitation Act is applicable for Civil Courts to try suits unless barred by some other Act. Se.9 of the Civil Procedure Code reads as follows:

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

There are provisions for filing of suit in Civil Court with regard to territorial jurisdiction, pecuniary jurisdiction and jurisdiction with regard to subject matter of dispute. But in case of recovery of possession of public premises and recovery of arrear rental dues and damages etc. in respect of public premises, this Forum of Law is the only competent adjudicating authority and civil court has no jurisdiction U/s 15 of the P.P. Act to entertain any matter in respect of the public premises as defined under the P.P. Act.

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



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

JOKHRAM BAIJNATH.

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18.08.2022

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SYAMA PRASAD MOOKERJEE PORT

The Limitation Act has no application in the proceedings before the Estate Officer which is not a Civil Court, governed by the Civil Procedure Code. Sec. 15 of the Act puts a complete bar on entertaining any matter before the Civil Court in respect of Public Premises. As such, I am firm in holding that Limitation Act has no application in the instant case. The Division Bench judgment of Madhya Pradesh High Court reported in AIR 1980 MP 196 (D.B) (L.S. Nair -VS- Hindusthan Steel Ltd. & Ors.) has its applicability in all sense of law. In this connection I am fortified by a judgment of the Hon'ble High Court, Calcutta in S.N. BHALOTIS -VS- L.I.C.I. & Ors. reported in 2000(1) CHN 880 with reference to the most celebrated judgment reported in AIR 1972 Tripura 1 (Hemchandra Charkraborty -Vs- Union of India) wherein it was clearly held that proceedings initiated by an Estate Officer are not in the nature of suit nor the Estate Officer acts as a Court while deciding proceedings before him.

In order to appreciate the stands taken on behalf of the parties in dispute, it would be expedient to go into the statutory provisions of the Civil Procedure Code, Limitation Act and P.P. Act. It has been argued on behalf of SMPK that the Articles under Limitation Act are applicable to Suit only. To my understanding Civil Suits are tried by the Courts as per the Civil Procedure Code and proceedings before this Forum of Law are guided by the P.P. Act which provides a code for adjudication of matters relating to public premises. However, Civil Procedure Code has only a limited application to the proceedings before the Estate Officer in-as-much-as that an Estate Officer shall for the purpose of holding an enquiry under the P.P. Act, have the powers as are vested in a Civil Court under the Code of Civil Procedure while trying a suit in respect of summoning and enforcing attendance of any person and examining him on oath which requires the discovery and production of documents. Section 8 of P.P. Act makes it abundantly clear that an Estate Officer under P.P. Act enjoys a very restricted power of CPC in terms of the Order-XVI, Rules 1 to 21 of the Civil Procedure Code

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(CPC) and Order- XI, Rule 12 to 21. No doubt the Estate Officer has been given power as vested in a Civil Court under CPC for the limited purpose of holding enquiry under the P.P. Act. Yet it is not a court to be governed by the Civil Procedure Code. As per CPC, the courts shall have jurisdiction to try all suits of a civil nature, excepting suits for which their cognizance is either expressly or impliedly barred. In view of the discussion above, I am firm in holding that this Forum of Law is very much competent under law to adjudicate the claim of SMPK against O.P. and Limitation Act has its no application to the proceedings before the Estate Officer which is a quasi-judicial authority under P.P. Act and not a Civil Court to be governed by the Civil Procedure Code. Hence the issue is decided in favour of SMPK.

As regards the issue of unauthorised parting with possession as arises in **Issue No.8**, My attention is further drawn to SMPK's Letter/application dated 12.03.2020, wherefrom it appears that an inspection of the subject public premises was made by SMPK and from such inspection it was found that the entire plots under Plate Nos.D-281/5 in the present proceeding are lying vacant and unutilized however, as the Plate in question is a continuous portion of land held in one tenancy, the breach of unauthorized parting committed in other Plates can't be separately considered thus it can be presumed that such breach of unauthorized parting is also very much in existence in respect of the present case in hand. It was found that the entire plots under Plate Nos.D-284/4 had been occupied by number of entities such as i) Saraf Enterprise/ Homelate Tea, ii)Tewari Commercial Co iii) Hindustan Lace Manufacturing Corpn Pvt Ltd iv) Kailash Kr. Bros v) Bills Grafics Ltd vi) Tirupati Tea Blenders and vii) Tewari Warehousing Co. Pvt Ltd. 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. raising a plea of non-joinder of necessary parties tried to dispute the claim of SMPK however, it

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SMPK however, it appears that there was no privity of contract between third Parties and SMPK therefore, such claim of O.P has no basis and ultimately O.P. has accepted the claim of SMPK vide their application dated 27.09.2021. Further, SMPK has also produced some photographs in support of their allegation which in my view, are sufficient to prove such allegation against O.P. Moreover, induction of a third party without the approval of SMPK is also against the spirit of such tenancy. Thus considering all these factual aspect the issue is decided in favour of SMPK.

As regards the **Issue No.9**, O.P. vide their application dated 27.09.2021 submitted that *even after issuance of the purported notice of eviction dated 22.02.2007, SMPK has received monthly rent and the subletting charges from O.P. in relation to the relevant plot in question therefore, SMPK has waived the purported notice of eviction and consented to occupation of the relevant land by O.P. for unexpired tenure of lease* however, in my view, mere acceptance of rent or other charges during pendency of the eviction proceedings does not confer any better right to O.P. and it does not amount to waiver of notice to quit. As per law, in order to constitute a waiver of notice to quit, O.P. must have to prove that SMPK by accepting rent had intended to treat the lease as subsisting. In absence of any such intention on the part of SMPK being proved, mere acceptance of an amount tendered by O.P. during pendency of the proceedings can't be said to be a "waiver" on the part of SMPK. Moreover, as the land is still under the control of Opposite Party, SMPK did not make any mistake in receiving occupational charges from O.P.

In the present case in hand SMPK actively prosecuted the proceedings for ejection against O.P. and as such it cannot be an accepted proposition that the notice to quit is infructuous by any sense of law.

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SYAMA PRASAD MOOKERJEE PORT

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SYAMA PRASAD MOOKERJEE PORT
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SYAMA PRASAD MOOKERJEE PORT



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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In view of the discussion above the issue is decided in favour of SMPK.

Discussions against the foregoing issues must dominate the **Issues Nos. 10 and 11**, leading to the conclusion that the notice to quit dated 22.02.2007 as issued by the Port Authority, demanding possession from O.P. is very much valid, lawful and binding upon the parties. I have deeply gone into the submissions/ arguments made on behalf of the parties in course of hearing. The properties of the Port Trust (now SMPK) are coming under the purview of "public premises" as defined under the Act. Now the question arises as to how a person become unauthorized occupant into such public premises. As per Section 2 (g) of the Act the "unauthorized occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. The lease granted to O.P. was undoubtedly determined by the Port Authority by due service of notice to quit and institution of proceedings against O.P. by SMPK is a clear manifestation of Port Authority's intention to get back possession of the premises. In such a situation, I have no bar to accept SMPK's contentions regarding determination of lease by notice dated 22.02.2007, on evaluation of the facts and circumstances of the case. "Damages" are like "mesne profit" that is to say the profit arising out of wrongful use and occupation of the property in question. I have no hesitation in mind to say that after expiry of the period as mentioned in the said notice to Quit dated 22.02.2007, O.P. has lost its authority to occupy the public premises, on the evaluation of factual aspect involved into this matter and O.P. is liable to pay damages for such unauthorized use and occupation. To come into such conclusion, I am fortified by the decision/ observation

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S. JOKHIM BAIJADATH.

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SYAMA PRASAD MOOKERJEE PORT

of the Hon'ble Supreme Court in Civil Appeal No.7988 of 2004, decided on 10th December 2004, reported (2005)1 SCC 705, para-11 of the said judgment reads as follows.

Para:11-" under the general law, and in cases where the tenancy is governed only by the provisions of the Transfer of Property Act 1882, once the tenancy comes to an end by determination of lease u/s.111 of the Transfer of Property Act, the right of the tenant to continue in possession of the premises comes to an end and for 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.

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....."

In course of hearing, the representative of SMPK states and submits that Port Authority never consented in continuing O.P's occupation into the public premises and never expressed any intention to accept O.P as tenant. It is contended that SMPK's intention to get back possession is evident from the conduct of the Port Authority and O.P. cannot claim its occupation as "authorized" without receiving any rent demand note. The long term lease was doubtlessly determined by the landlord by notice, whose validity for the purpose of deciding the question of law cannot be questioned by O.P. Therefore, there cannot be any doubt that the O.P. was in unauthorized occupation of the premises, once the lease was determined. In my opinion, institution of this proceedings against O.P. is sufficient to express the intention of SMPK to obtain an order of eviction and declaration that SMPK is not in a position to recognize O.P. as tenant under 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

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

I am fortified by the Apex Court judgment reported in JT 2006 (4) Sc 277 (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 of damages upon the guiding principle as laid down by the Hon'ble Apex Court in the above case. In course of hearing, it is submitted on behalf of 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. In my view, such claim of charges for damages by SMPK is based on sound reasoning and should be acceptable by this Forum of Law. As per law, when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract to be likely to result from the breach of it. Moreover, as per law O.P. is bound to deliver up vacant and peaceful possession of the public premises to SMPK after expiry of the period as mentioned in the notice to Quit in its original condition. As such, the issues are decided in favour of SMPK. I have no hesitation to observe that O.P's act in continuing occupation is unauthorized and O.P. is liable to pay damages for unauthorized use and occupation of the Port property in question upto the date of delivering vacant, unencumbered and peaceful possession to SMPK. With this observation, I must reiterate that the ejection notice,

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demanding possession from O.P. as stated above has been validly served upon O.P. in the facts and circumstances of the case and such notice is valid, lawful and binding upon the parties. In view of the discussions above, the issues are decided in favour of SMPK.

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

- I. That O.P.'s contentions regarding non-maintainability of the proceedings on various grounds in view of O.P.'s applications dated 27.09.2021 have got no merit in the facts and circumstances of the case.
- II. That O.P has parted with possession of the subject premises to rank outsiders and changed the purpose of such lease in clear violation of the term of such tenancy without having any authority of law.
- III. That O.P. cannot take the plea of time barred claim by SMPK, taking the shield of Limitation Act.
- IV. That Land Manager(I/C), SMPK is authorized by the Board of Trustees of the Port of Kolkata(Now Syama Prasad Mookerjee Port, Kolkata) for service of ejection notice to O.P. and O.P's contention regarding incompetency of service of ejection notice by the Land Manager(I/C), SMPK has got no merit.
- V. That O.P. cannot take the plea of waiver of Quit Notice, taking the shield of acceptance of rent and subletting charges by SMPK.
- VI. That O.P. has failed to bear any witness or adduce any evidence in support of their occupation as "authorised occupation".
- VII. That O.P has lost its authority to occupy the public premises after expiry of the period as mentioned in the Notice to Quit dated 22.02.2007.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
22/8/22
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

APPOINTED BY THE
CENTRAL GOVT.
U/S 3 OF
ACT NO 40 OF 1971

Proceedings No. 1754, 1754/D Of 2019 Order Sheet No. 34

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S. JORHIRAM BAIS NATH.

14 ~~13~~ ~~12~~
18-08-2022

ACCORDINGLY, I sign the formal order of eviction u/s 5 of the Act as per Rule made there under, giving 15 days time to 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.

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]
Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

It is my considered view that a sum of Rs.69,41,184.95 (Rupees Sixty nine Lakh forty one thousand one hundred eighty four and paisa ninety five Only) for Plate No.D-281/5 and Rs.3,77,672/-(Rupees Three Lakh seventy seven thousand six hundred seventy two only) for Plate No.SF-97 both for the period from 01.09.2007 to 31.01.2019(both days inclusive)are due and recoverable from O.P. by the Port authority on account of damages and O.P. must have to pay such dues to SMPK on or before The said damages shall attract compound interest @ 6.45 % per annum, which is the current rate of interest as per the Interest Act, 1978 (as gathered by me from the official website of the State Bank of India) from the date of incurrance of liability, till the liquidation of the same, as per the adjustment of payments, if any made so far by O.P., in terms of SMPK's books of accounts. I sign the formal orders u/s 7 of the Act.

I make it clear that SMPK is entitled to claim further 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, and as such the liability of O.P. to pay damages extends beyond 31.01.2019 as well, till such time the possession of the premises

[Signature]



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1754, 1754/D Of 2019 Order Sheet No. 35

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S. JOKHRAM BAIJNATH

14/8/22
18-08-2022

continues to be under the unauthorised occupation with the O.P. SMPK is directed to submit a statement comprising details of its calculation of damages after 31.01.2019, indicating there-in, the details of the rate of such charges, and the period of the damages (i.e. till the date of taking over of possession) together with the basis on which such charges are claimed against O.P., for my consideration for the purpose of assessment of such damages as per Rule made under the Act.

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

GIVEN UNDER MY HAND AND SEAL

(A.K Das)

ESTATE OFFICER

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

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
18/08/22
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT