

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

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

(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)
Public Premises (Eviction of Unauthorized Occupant) Act 1971
OFFICE OF THE ESTATE OFFICER
6, Fairley Place (1st Floor)
KOLKATA - 700 001

Court Room at the 1st Floor
of SMPK's
Fairley Warehouse
6, Fairley Place, Kolkata- 700 001.

REASONED ORDER NO. 51 DT 02.09.2022
PROCEEDINGS NO. 1259 OF 2011

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

Estate Tribeni Devi, represented by her legal heirs (O.P)

F O R M - "B"

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

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that **Estate Tribeni Devi, represented by her legal heirs, 33, Tollygunge Circular Road, Kolkata-700053 AND ALSO AT 145, Foreshore Road, Ramkrishnapur, Howrah-1** is in unauthorized occupation of the Public Premises specified in the Schedule below:

R E A S O N S

1. That O.P's contentions regarding non-maintainability of the proceedings on various grounds in view of O.P's applications dated 26.09.2019 have got no merit in the facts and circumstances of the case.
2. The O.P or any other person/occupant has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation".
3. That the O.P has parted with Possession of the subject premises to third party in violation of the condition of such lease.
4. That O.P. cannot take the plea of res judicata to defeat the claim of SMPK.
5. That the instant Proceeding is not barred by the doctrine of Estoppel, waiver and acquiescence.
6. That the instant proceeding is not barred by the provision of Limitation Act
7. That the notice to quit dated 21.09.1982 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties and O.P.'s occupation and that of any other occupant of the premises has become unauthorised in view of Sec.2 (g) of the P.P. Act.
8. That O.P. is liable to pay damages for wrongful use and occupation of the public premises up to the date of handing over the clear, vacant and unencumbered possession to the port authority.

9

PLEASE SEE ON REVERSE

(2)

A copy of the reasoned order No. 51 dated 02.09.2022 is attached hereto which also forms a part of the reasons.


NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said **Estate Tribeni Devi, represented by her legal heirs, 33, Tollygunge Circular Road, Kolkata-700053 AND ALSO AT 145, Foreshore Road, Ramkrishopur, Howrah-1** and all persons who may be in occupation of the said premises or any part thereof to vacate the said premises within 15 days of the date of publication of this order. In the event of refusal or failure to comply with this order within the period specified above the said **Estate Tribeni Devi, represented by her legal heirs, 33, Tollygunge Circular Road, Kolkata-700053 AND ALSO AT 145, Foreshore Road, Ramkrishopur, Howrah-1** and all other persons concerned are liable to be evicted from the said premises, if need be, by the use of such force as may be necessary.

SCHEDULE

Plate No: HL-172 & HL-172/1

The said piece or parcel of land msg.646.698 Sq.m. or thereabouts is situate at Ramkrishopur, Howrah, Thana-Howrah, Dist & Registration District-Howrah. It is bounded on the **North** by the Trustees' land leased to Gajendra Nath De, on the **East** partly by the Trustees' land leased to Indra Kumar Karnani and partly by Chintamony Dey Bathing ghat Road, on the **South** by the Chintamony Dey Bathing Ghat Road and on the **West** by the Trustees' open land alongside the Railway Line. Trustee's means the Syama Prasad Mookerjee Port, Kolkata (Erstwhile the Board of Trustees for the Port of Kolkata).

Dated: 05.09.2022 .


Signature & Seal of
Estate Officer.

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



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

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

PROCEEDINGS NO.1259/D OF 2011
ORDER NO.51 DATED: 02.09.2022

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

**Estate Tribeni Devi, represented by her legal heirs,
33, Tollygunge Circular Road,
Kolkata-700053.**

**AND ALSO AT
145, Foreshore Road, Ramkristopur,
Howrah-1.**

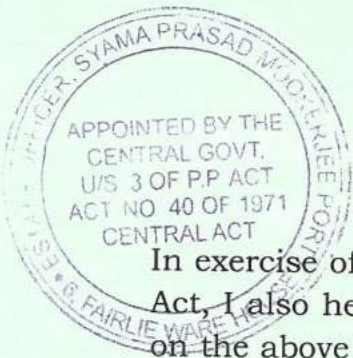
WHEREAS I, the undersigned, am satisfied that you are in unauthorised occupation of the public premises mentioned in the Schedule below:

AND WHEREAS by written notice dated 13.11.2017 you are called upon to show cause on or before 11.12.2017 why an order requiring you to pay damages of Rs.31,83,437.69 (Rupees Thirty one Lakh eighty three thousand four hundred thirty seven and paise sixty nine only) for Plate No.HL-172 and Rs.784/-(Rupees Seven hundred eighty four only) for Plate No.HL-172/1 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.31,83,437.69 (Rupees Thirty one Lakh eighty three thousand four hundred thirty seven and paise sixty nine only) for Plate No.HL-172 and Rs.784/-(Rupees Seven hundred eighty four only) for Plate No.HL-172/1 assessed by me as damages on account of your unauthorised occupation of the premises both for the period from 01.11.1982 to 30.06.2017 (both days inclusive) to SMPK by 19.09.2022.

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: HL-172 & HL-172/1

The said piece or parcel of land msg.646.698 Sq.m. or thereabouts is situate at Ramkristopur, Howrah, Thana-Howrah, Dist & Registration District-Howrah. It is bounded on the **North** by the Trustees' land leased to Gajendra Nath De, on the **East** partly by the Trustees' land leased to Indra Kumar Karnani and partly by Chintamony Dey Bathing ghat Road, on the **South** by the Chintamony Dey Bathing Ghat Road and on the **West** by the Trustees' open land alongside the Railway Line. Trustee's means the Syama Prasad Mookerjee Port, Kolkata (Erstwhile the Board of Trustees for the Port of Kolkata).

Date 05.09.2022 .

Signature & Seal of the
Estate Officer.

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



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1259, 1259/D of 2011 Order Sheet No. 43

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

ESTATE TRIBENI DEVI

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02.09.2022

FINAL ORDER

The instant Proceedings No.1259, 1259/D of 2011 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 646.698 Sq.m.(under Plate No.HL-172 & HL-172/1) situated at Ramkristopur, Howrah, Thana- Shibpur Police Station, District-Howrah was allotted to **Estate Tribeni Devi**, represented by her legal heirs (**O.P.**) on short term lease basis 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 in view of such aforementioned breach committed by O.P., SMPK made a request to the O.P. to quit, vacate and deliver up the peaceful possession of the subject premises on 01.11.1982 in terms of the notice to quit dated 21.09.1982. As the O.P. did not vacate the premises even after issuance of the notice, the instant proceeding bearing no 1259, 1259/D of 2011 was initiated before the Forum for the eviction of the alleged unauthorized occupant, seeking other reliefs. It is also the case of SMPK that as the O.P. has failed to deliver back possession after expiry of the period mentioned in the notice to quit dated 21.09.1982. It is strongly argued that the O.P. continued unauthorized enjoyment of the premises without paying the requisite charges for occupation militates against the well laid provisions of the Public Policy and as such is highly objectionable.

It appears that the original application was filed by SMPK against 'Smt. Tribeni Debi.' However, the death Certificate and the Affidavit filed by the Ld' Advocate of O.P. has

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

2



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1259, 1259/D of 2011 Order Sheet No. 44

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reflected that the name of O.P. is 'Tribeni Devi'. It appears that a good number of hearings have taken place before passing of this Order and nobody has ever pointed out such discrepancies before this Forum. Now, the Cause title of the instant proceeding has also been amended vide a specific order of the Forum dated 11.05.2018 where the Forum has directed the continuation of the Proceeding in the name of **Estate Tribeni Devi** represented by her legal heir and the answering O.P. has acknowledged their liability towards the subject occupation throughout the entire proceedings. Hence, it appears to me that such discrepancy in the name of O.P., as mentioned in the original application of SMPK dated 24.08.2011, might be a typographical one and did not prejudice the rights and liabilities of the parties to the present proceeding. In view of the above, it is therefore, directed that henceforth the name of O.P should be read as Estate Tribeni Devi represented by her legal heir for all the material purposes of this proceeding.

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

This Forum of Law formed its opinion to proceed against O.P. under the relevant provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and issued show Cause Notices u/s 4 of the Act (for adjudication of the prayer for eviction) and u/s 7 of the Act (for adjudication of the prayer for realization of damage etc.) as per the Rules made under the Act, both dated 13.11.2017 (vide order no. 12 dated 13.11.2017).

The answering O.P. of the instant proceedings appeared before this Forum through their Ld. Advocate and contested the case and filed several applications/ objections. It reveals from record that answering O.P. has filed their reply to the Show Cause Notice on 26.09.2019 and their Written Notes of Arguments on 10.12.2019. SMPK on the other hand, filed their comments dated 26.11.2019 in response to the reply to Show cause filed by O.P.



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

- 1) The instant Proceeding is not maintainable in its facts as well as law.
- 2) The instant Proceeding is based on some concocted story and as such the same is false, frivolous and harassing one.
- 3) The instant Proceeding is barred by the law of limitation.
- 4) The instant Proceeding is barred by the principles of resjudicata.
- 5) The instant Proceeding is also barred by the principles of waiver acquiescence and estoppels.
- 6) SMPK authority filed the instant Proceeding against the predecessor of the answering Opposite Party who was the original lessee in respect of subject premises in question since 1949 to till her demise and thereafter the answering O.P is enjoying the right of said tenancy as per the law of inheritance.
- 7) Answering O.P is not holding any documents and/or has no knowledge about any documents relating to the said proceedings.
- 8) The Answering O.P came to know about the instant Proceeding only after receipt of the Show Cause notices dated 13.11.2017 and prior to that she has no knowledge relating to any proceedings in respect of the said premises.
- 9) The Answering O.P was never involved with the business of her mother till her demise and she has no knowledge relating to any notice to quit and/or notice of eviction as alleged by SMPK.
- 10) SMPK, in their main petition, has stated that a Suit bearing Title Suit No.48 of 1985 had been filed in the Howrah Court for eviction of the

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OFFICE OF THE I.D. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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Proceedings No. 1259, 1259/D of 2011 Order Sheet No. 46

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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predecessor of the answering O.P. and the same was decreed ex-parte on 19.04.1988 but no where it was mentioned in the said petition that the said decree was set aside.

- 11) The instant Proceeding before the Estate Officer is barred by the principles of res judicata because the notice of eviction dated 21.09.1982 which is creating the cause of action of said decreed suit and the notice of eviction creating the cause of action of the instant Proceeding are same.
- 12) The answering O.P has filed an application of resjudicata without prejudice to her right and contention in said proceeding and/or issue thereof but SMPK inspite of having ample opportunity did not file any reply and/or objection against the said application therefore SMPK has waived their opportunity against the said application thus principles of estoppel would attract.
- 13) The claim as raised by SMPK in the their main petition as well as through the notice u/s 7 of the P.P Act is bad in law and also barred by provision of Limitation Act.
- 14) SMPK did not serve any Statement of Accounts as well as documents and deed of lease in respect of the suit premises to answering Opposite Party.
- 15) Answering O.P has never parted with possession of the subject premises to any third parties. Merely on the basis of letters dated 31.01.2003 and 27.03.2003 parted with possession of the suit property cannot be decided as any third party for his personal gain can claim the right over any other persons property.

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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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Referring to the contentions, the Estate Trebeni Debi/O.P. has prayed for dismissal of the instant proceeding in limini.

SMPK, the Petitioner, argued that O.P. is unauthorisedly occupying the subject premises since the termination of the lease with effect from 01.11.1982 without paying any occupational charges to SMPK and also by way of unauthorised parting with possession to rank outsiders with whom SMPK never had any legal/jural relationship. Statements made by O.P in their reply to the Show cause are entirely misconceived, baseless and irrelevant in the instant proceedings. The instant Matter is very much maintainable in the eye of law and not hit by any legal dictum/ principles whatsoever. O.P. since deceased, Smt. Priyanka Kejriwal as claimed to be the daughter of Late Tribeni Devi(original O.P) is contesting through her constituted Attorney and these persons are enjoying the public premises without paying any occupational charges. Further O.P's contention regarding unauthorized parting with possession and nonpayment of occupational charges are also not viable Such assertion are all false and made deliberately with a view to jeopardize the lawful contention of SMPK.

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

- I) Whether the instant proceeding is maintainable or not;
- II) Whether the instant proceeding is barred by the principles of res judicata or not;
- III) Whether the instant proceeding is hit by the principles of waiver, estoppel, acquiescence and suppression of material facts or not;

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



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

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- IV) Whether O.P. can take the shield of Limitation Act to contradict the eviction proceedings against O.P. and claim of SMPK on account of dues while in possession and enjoyment of the Port Property in question or not;
- V) Whether O.P. has parted with possession of the subject Public Premises unauthorisedly to third parties or not.
- VI) Whether the Notice to Quit as issued by SMPK to O.P dated 21.09.1982 is valid and lawful or not;
- VII) Whether O.P's occupation has become unauthorised in terms of Sec.2(g) of the P.P. Act and whether O.P. is liable to pay damages for wrongful occupation and enjoyment of the Port Property to SMPK or not;

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

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



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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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:

"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

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Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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Proceedings No. 1259, 1259/D of 2011 Order Sheet No. 50

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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, I must say that the proceeding is very much maintainable and the Show Cause Notice issued by SMPK is very much valid and lawful therefore, the issue is decided in favour of SMPK.

With regard to **Issue No.II**, I must say that question of maintainability of this proceedings on the ground of "Res-judicata" is very much fallacious as the facts and circumstances of the instant proceedings is very much away to consider the matter of Res-judicata under Civil Procedure Code (CPC). As per CPC, Res-judicata applies in cases where no court shall try any suit or issue in which the matter directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been substantially raised, and has been heard and finally decided by such court. None of the ingredients to constitute "Res-judicata" has any manner of application in the instant proceedings. Moreover, there is no decision by any competent court of law in respect of the subject matter of dispute before this Forum of Law. As

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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. 1259, 1259D of 2011

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02.03.2020

such, I can unhesitatingly come to the conclusion for rejection of O.P's plea on the ground of Res-judicata as O.P's contentions are not at all supported by law.

As regards the **issue No. III**, I must say that according to law the question of estoppels arise when one person has, by his declaration, act or omission, **intentionally** caused or **permitted** another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceedings between himself and such person or his representative, to deny the truth of that thing. In other words to constitute an estoppel there must be an intention or permission to believe certain thing. There is no material in O.P's objection by which it can be proved that there was any intention or permission on the part of SMPK about O.P's occupation in the said public premises in question or SMPK has knowingly acquiesced the infringement of their right. Further 'Waiver' of a right gets its essence from estoppel and thus, there will be no waiver where there is no estoppel in place. In this instant matter as there is no plea of estoppels sustains other statutory plea like waiver or acquiescence also cannot sustain in the present fact and circumstances. Thus the issue is decided in favour of SMPK.

As regards the **issue No. IV**, It is my considered view that O.P. cannot escape their liability towards payment of 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 contractual period of lease.

The core submissions regarding non-applicability of the Limitation Act in proceedings before this Forum is based on various decisions of the Hon'ble Apex Court of India and Calcutta High Court, wherein it has been decided that

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



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Limitation Act has no application before quasi-judicial authorities like this Forum of Law which is not a civil court to be governed by the Civil Procedure Code.

The judgment of the Hon'ble Apex Court of India reported in New India Assurance Case - 2008 (3) SCC 279 = AIR 2008 SC 876 is very much relevant in deciding the question whether this Forum is a court or not. It was decided by the Supreme Court that Civil Procedure Code and Indian Evidence Act are not applicable for proceedings before the Estate Officer under P.P. Act which provided a complete code. The Limitation Act applies to "suits" to be governed by CPC and Indian Evidence Act. When the basic elements for adjudication of a "suit" are totally absent for proceedings under P.P. Act, 1971, it is futile to advance any argument for its application. The judgments of different High Courts including that of Delhi High Court could be accepted as a guiding principle. In this connection, I am fortified by a judgment of the Hon'ble High Court, Calcutta in S.N. BHALOTIS -vs- L.I.C.I. & Ors. reported in 2000(1) CHN 880 with reference to the judgment reported in AIR 1972 Tripura 1 (Hemchandra Charkraborty -vs- Union of India) wherein, it was clearly held that proceedings initiated by an Estate Officer are not in the nature of suit nor the Estate Officer acts as a Court while deciding proceedings before him.

It is worthy to record that there is no prescribed period of limitation in the Limitation Act itself for recovery of "damages". It would not be out of scope to mention that Limitation Act bars the remedy by way of "suit" but not the entitlement. In my view, there is a clear distinction between 'rent' and 'damages'. So long both the parties admit their relationship as landlord and tenant, the question of paying damages does not arise. In other words, if the tenant is asked to pay rent by the landlord, the element of authorized occupation could be inferred but in case of demand for

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Head & Senior
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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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. In holding so, I have also relied on the judgment delivered by the Hon'ble Supreme Court of India on 23.4.2015 in Civil Appeal No. 4367 of 2004 (M.P. Steel Corporation -vs- Commissioner of Central Excise) reported in (2015) 7 SCC 58. I have also taken a note of Sec.29 of The Limitation Act, 1963 read with Sec. 25 of the Indian Contract Act, 1872. It is my well considered view that even if for the sake of argument, Limitation Act is taken to apply to the proceedings before the Estate Officer (not admitting), Sec.25 of the Indian Contract Act will definitely come into play against O.P.'s plea for "time barred" claim under Limitation Act. I am of the view that O.P. acknowledged its relationship as debtor and Sec. 25 of the Contract Act debars O.P. to take the plea of "barred by limitation", in the facts and circumstances of the case. The Issue is thus decided accordingly.

With regard to the **issue No.V** i.e on the issue of unauthorized parting with possession made by O.P. to rank outsider, which are reportedly in use and occupation of the premises, it is the case of SMPK that one 'Joy Hari Tara Motors.' was found to be operating on the premises. I find mention of such name 'Joy Hari Tara Motors' in the reply to show cause filed by the O.P. It has been submitted by the O.P. that she is running the business of the said original

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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
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tenant from the schedule premises and she does not know any concern and/or any company in the name of 'Joy Hari Tara Motors' and no one in the name of said concern is doing business from the said premises. Now, the question arises as to the precise authority under which the entity viz. 'Joy Hari Tara Motors.' has been functioning at the premises. During the course of the proceedings, though ample opportunities have been provided to the parties to file documents/ evidence in support of their contentions, not a single piece of paper, establishing the connection of O.P. with the said above-named company has been filed by the O.P. till date. As per the established tenets of law, a mere and perfunctory denial by O.P., of the charge of a breach brought against it by SMPK, without evidentiary support, does not stand the test of legal Scrutiny. No piece of evidence has been produced by the O.P. to contradict or rebut the evidence produced by SMPK. I cannot appreciate the state of affairs prevailing in the public premises in question. I am of the view that the public premises is being used only for the purpose of making unlawful gains by depriving the statutory authority vis-à-vis the exchequer. In my view, the ground of unauthorised parting with possession is proved against O.P. and it cannot escape the consequences of such unauthorised acts on its part.

Issues no VI and VII are taken up together, as the issues are related with each other. I must say that a lessee like O.P. cannot claim any legal right to hold the property after expiry of the period as mentioned in the Notice to Quit. O.P has failed to satisfy this Forum about any consent on the part of SMPK in occupying the public premises. Rather it is a case of SMPK that by notice dated 21.09.1982, O.P. was directed to hand over possession of the premises to SMPK. A letter/notice issued in official course of business has definitely got an evidentiary value unless there is material, sufficient to contradict the case of SMPK on the basis of

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



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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VS
ESTATE TRIBENI DEYI

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02.09.2022

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SYAMA PRASAD MOOKERJEE PORT
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SYAMA PRASAD MOOKERJEE PORT

such letter. Further, I am consciously of the view that SMPK never recognized O.P., as a lawful user/tenant in respect of the property in question after expiry of the period mentioned in the Notice to Quit dated 21.09.1982. As per Section 2 (g) of the P. P. Act the "unauthorized occupation", in relation to any Public Premises, means the occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. Further, as per the Transfer of Property Act, a lease of immovable property determines either by efflux of time limited thereby or by implied surrender or on expiration of notice to determine the lease or to quit or of intention to quit, the property leased, duly given by one party to another. It is a settled question of law that O.P. cannot claim any legal right to hold the property after expiry of the period mentioned in the Notice to Quit dated 21.09.1982, without any valid grant or allotment from SMPK's side. This issue is also decided in favour of SMPK. In the instant case, the landlord i.e. SMPK claims to have issued a Notice to O.P. dated 21.09.1982 asking for vacation of the premises on 01.11.1982 as O.P. was duty bound to hand over possession to SMPK and it had failed to do, SMPK's claim by filing Application dated 24.08.2011 is very much justifiable. O.P. failed to substantiate as to how its 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 dated 21.09.1982, demanding possession from O.P. I have no hesitation to observe that O.P.'s act in continuing occupation after expiry and determination of the lease is unauthorized and O.P. is liable to pay damages for unauthorized use and occupation



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of the Port property in question upto the date of delivering vacant, unencumbered and peaceful possession to SMPK. The Issues VI and VII are thus decided in favour of SMPK. Now, the 'Damages'/ 'Compensation Charges' 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 of lease, 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/ Compensation Charges for such unauthorized use and occupation.

To come into such conclusion, I am fortified by the decision/observation of the Hon'ble Supreme Court in Civil Appeal No.7988 of 2004, decided on 10th December 2004, reported (2005)1 SCC 705, para-11 of the said judgment reads as follows.

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

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.

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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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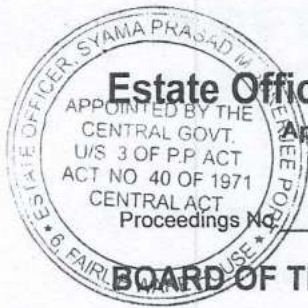
BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
ESTATE TRIBENI DEVI

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02.09.2022

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SYAMA PRASAD MOOKERJEE PORT

cannot claim continuance of its occupation without making payment of requisite charges as mentioned in the Schedule of Rent Charges. 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. I have no hesitation to observe that O.P's act in continuing occupation is unauthorized and the 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. Public Premises Act.1971 provides for a speedy summary procedure for eviction of unauthorized occupant from the Public Premises. It appears that the Notice to quit was issued by SMPK on 21.09.1982 and thereafter SMPK made serious attempt to restore possession of the Land/Public Premises in question through series of litigations before the Ld. District Court at Howrah. It appears that almost 40 years have been elapsed in conducting the legal battle with a person who's authority to occupy the SMPK's premises has been terminated in terms of the said notice to quit dated 21.09.1982. SMPK has its revenue involved in the Public Premises in question and in terms of the discussion as above SMPK is losing revenue due to non-payment of O.P. causing severe effect to the Public exchequer. Considering the situation, this Forum is constrained to consider the authority of the person to occupy the Public Premises in question in terms of the provisions laid down in the Public Premises Act. According to Sec.2(g) of the Act, "unauthorized occupation", in relation to any Public



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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. SMPK has reported in terms of its application dated 26.11.2019 that they are not in a position to proceed any further with the matter as the records pertaining to T.S. No.48 of 1985 pending before the 1st Civil Judge Senior Division is not traceable for more than 10 years till date. Law does not expect a man to sit quiet for such a lengthy period of time when his rights are severely jeopardize due to unauthorized/unlawful actions on behalf of somebody else. It appears that a huge land of 646.698 Sq.m in a Prime location at Ramkristopore, Howrah was allotted to O.P., whose authority was subsequently terminated by SMPK 40 years back and since then he has been enjoying possession of the Prime piece of land under the shield of a restored Title Suit being No. T.S. 48 of 1985 preferred by him before Ld. Dist. Court at Howrah. Being empowered under the provision of the P.P. Act, I do not find any constraint to adjudicate the matter filed by SMPK, especially in a situation when severe loss has already been occurred to Public exchequer due to default of O.P. for a long period of time and chances of any fruitful decision with regard to the Title Suit (T.S. 48 of 1985) being very remote at this stage.

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

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H. and Assistant
THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

2



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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1. That O.P's contentions regarding non-maintainability of the proceedings on various grounds in view of O.P's applications dated 26.09.2019 have got no merit in the facts and circumstances of the case.
2. The O.P or any other person/occupant has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation".
3. That the O.P has parted with Possession of the subject premises to third party in violation of the condition of such lease.
4. That O.P. cannot take the plea of res judicata to defeat the claim of SMPK.
5. That the instant Proceeding is not barred by the doctrine of Estoppel, waiver and acquiescence.
6. That the instant proceeding is not barred by the provision of Limitation Act.
7. That the notice to quit dated 21.09.1982 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties and O.P.'s occupation and that of any other occupant of the premises has become unauthorised in view of Sec.2 (g) of the P.P. Act.
8. That O.P. is liable to pay damages for wrongful use and occupation of the public premises up to the date of handing over the clear, vacant and unencumbered possession to the port authority.

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

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



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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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.

It is my considered view that a sum of Rs.31,83,437.69 (for Plate No.HL-172) and Rs.784/- (for Plate No.HL-172/1) both for the period 01.11.1982 to 30.06.2017 (both day inclusive) are due and recoverable from O.P. by the Port authority on account of damages/compensation for unauthorized occupation and O.P. must have to pay such dues to SMPK on or before 19.09.2022. It is clarified that such dues will 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 incurrence of liability, till the liquidation of the same, as per the adjustment of payments, if any made so far by O.P., in terms of SMPK's books of accounts. I sign the formal order 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 30.06.2017 as well, till such time the possession of the premises 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 30.06.2017, 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

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Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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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

(Satyabrata Sinha)
ESTATE OFFICER

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

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