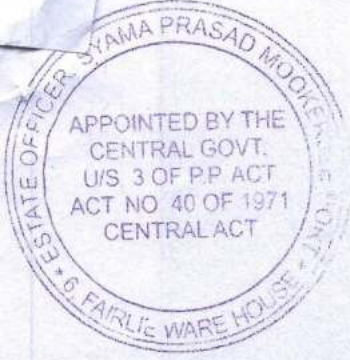


SCAN

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.46 DT 09.09.2022
PROCEEDINGS NO. 1064 OF 2010

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

-Vs-

M/s. K.K. Enterprise (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 **M/s. K.K. Enterprise, Suit No.2, 2nd Floor, 7, Waterloo Street, Kolkata-700001** is in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

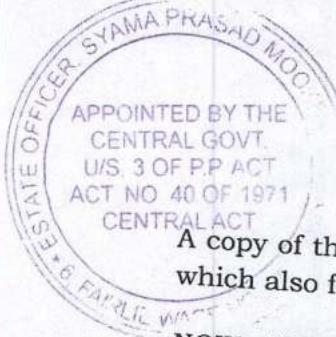
1. That this Forum of Law is very much competent to adjudicate upon the rights and liabilities of the parties in respect of the public premises in question.
2. That O.P's contention regarding vacating of the premises is not supported by law.
3. That O.P. was in default in making payment of rental dues to SMPK at the time of issuing ejectment notice dated 24.01.2008.
4. That O.P. has unauthorisedly parted with possession of the subject Public Premises to third parties and failed to vacate the premises upon determination of the period as mentioned in the notice to quit dated 24.01.2008 as issued by the Port Authority.
5. That the contentions of O.P. with regard to non-maintainability of proceedings on the plea of "Estoppel" has got no merit in the facts and circumstances of the case.
6. That O.P's plea with regard to non-maintainability of proceedings in view of "ambiguity of schedule" of the Public Premises has got no merit on evaluation of the facts and circumstances of the case.
7. That O.P. has failed to bear any witness or adduce any evidence in support of their contentions regarding authorized occupation.
8. That O.P's occupation has become unauthorised in view of Sec.2(g) of the P.P. Act.
9. That the notice to quit dated 24.01.2008 as issued by Port Authority, demanding possession from O.P. is valid, lawful and binding upon the parties and O.P. is liable to pay damages for unauthorised/ wrongful use and enjoyment of the Port Property in question upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

Head of Office
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

PLEASE SEE ON REVERSE



(2)

A copy of the reasoned order No. 46 dated 09.09.2022 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 **M/s. K.K. Enterprise, Suit No.2, 2nd Floor, 7, Waterloo Street, Kolkata-700001** 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. K.K. Enterprise, Suit No.2, 2nd Floor, 7, Waterloo Street, Kolkata-700001** 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

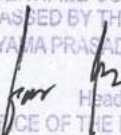
Plate No. GR-114

Kolkata Port Trust's Land measuring 579.900 Sq.m. situated at Durgapur Siding and it is bounded on the North by Durgapur Canal, on the South by the Trustees' vacant land, on the East by the Trustees' leased out land and on the West by the plot occupied by the O.P. Trustees' means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata).

Dated: 12.09.2022


Signature & Seal of
Estate Officer.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

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

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



**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, Fairlie Place (1st Floor)
KOLKATA - 700 001

Court Room At the 1st Floor
6, Fairlie Place Warehouse
Kolkata-700001.

Form "E"

PROCEEDINGS NO.1064/R OF 2010
ORDER NO. 46 DATED: 09.09.2022

Form of order under Sub-section (1) and (2A) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

To
**M/s. K.K. Enterprise,
Suit No.2, 2nd Floor,
7, Waterloo Street,
Kolkata-700001.**

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

AND WHEREAS, by written notice dated 08.10.2010 you are called upon to show cause on or before 18.11.2010 why an order requiring you to pay a sum of Rs.25,15,384/- (Rupees Twenty five lakh fifteen thousand three hundred eighty four only) being the rent payable together with compound interest in respect of the said premises should not be made;

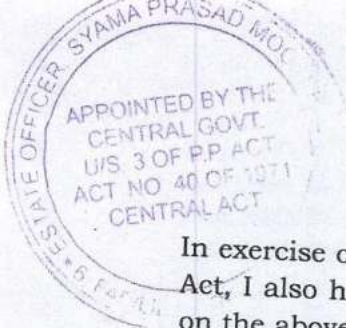
AND WHEREAS, I have considered your objections and/or the evidence produced by you;

NOW, THEREFORE, in exercise of the powers conferred by sub-section (1) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971, I hereby require you to pay the sum of Rs.25,15,384/- (Rupees Twenty five lakh fifteen thousand three hundred eighty four only) for the period from 1st day of March, 1990 to 7th day of February, 2008 (both days inclusive) to SMPK by 23.09.2022

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

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 case the said sum is not paid within the said period or in the said manner, it will be recovered as arrears of land revenue through the Collector.

SCHEDULE

Plate No. GR-114

Kolkata Port Trust's Land measuring 579.900 Sq.m. situated at Durgapur Siding and it is bounded on the North by Durgapur Canal, on the South by the Trustees' vacant land, on the East by the Trustees' leased out land and on the West by the plot occupied by the O.P. Trustees' means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata).

Dated: 12.09.2022

Signature and seal of the
Estate Officer

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
12/9/22
Deputy Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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



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 SMPK's
Fairlie Warehouse
6, Fairlie Place, Kolkata- 700 001.

PROCEEDINGS NO.1064/D OF 2010
ORDER NO. 46 DATED: 09.09.2022

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

**M/s. K.K. Enterprise,
Suit No.2, 2nd Floor,
7, Waterloo Street,
Kolkata-700001.**

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 08.10.2010 you are called upon to show cause on or before 18.11.2010 why an order requiring you to pay damages of Rs. 38,894/- (Rupees Thirty eight thousand eight hundred ninety four only) together with [compound interest] for unauthorised use and occupation of the said premises, should not be made;

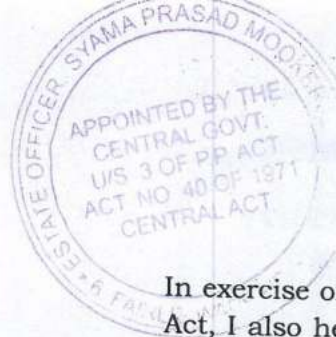
AND WHEREAS, I have considered your objections and/or the evidence produced by you;

NOW, THEREFORE, in exercise of the powers conferred on me by Sub-section (2) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971, I hereby order you to pay the sum of Rs. 38,894/- (Rupees Thirty eight thousand eight hundred ninety four only) assessed by me as damages on account of your unauthorised occupation of the premises for the period from 08.02.2008 to 31.03.2008 (both days inclusive) to SMPK by 23.09.2022

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

PLEASE SEE ON REVERSE

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



: 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. GR-114

Kolkata Port Trust's Land measuring 579.900 Sq.m. situated at Durgapur Siding and it is bounded on the North by Durgapur Canal, on the South by the Trustees' vacant land, on the East by the Trustees' leased out land and on the West by the plot occupied by the O.P. Trustees' means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata).

Date 12.09.2022

Signature & Seal of the Estate Officer.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
12/09/22
Head Asst
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

COPY FORWARDED TO THE ESTATE MANAGER, SYAMA PRASAD MOOKERJEE PORT, 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. 1064.1064/A-D Of 2010 Order Sheet No. 42

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/s - K.K. ENTERPRISE

46

09.09.2022

FINAL ORDER

The instant matter is taken up today for final disposal. It is the case of Syama Prasad Mookerjee Port, Kolkata [erstwhile Kolkata Port Trust/KoPT], hereinafter referred to as SMPK, Applicant herein, that a short term lease was granted to **M/s. K.K. Enterprise (O.P)**, on certain terms and conditions, in respect of land measuring about 579.900 Sq.m situated at Durgapur Siding, Thana- S.P.P.S, District- Kolkata, comprised under Plate No.(GR-114) and O.P violated the condition of such tenancy by way of defaulting in payment of monthly rent and taxes and unauthorisedly inducting a number of subtenants within the said premises. It is argued on behalf of SMPK that O.P has no authority under law to occupy the public premises after expiry of the period as mentioned in the notice to quit dated 24.01.2008 and O.P is liable to pay damages for unauthorised use and enjoyment of the Port property in question.

This Forum formed its opinion to proceed against O.P under the relevant provisions of the Act and issued Show Cause Notice U/S 4 of the Act (for adjudication of the prayer for order of eviction etc.) and Show Cause Notice U/S-7(for adjudication of the prayer for recovery of arrear rental dues & damages etc.) both dated 08.10.2010 (vide Order No. 5 dated 02.09.2010) as per rule made under the Act.

The record depicts that such Notice/s had been sent to O.P both by hand and Speed Post as per address available on record and the Postal Service to the recorded address of O.P. was not returned back to the Forum however, it reveals from the report of the Process Server dated 28.10.2010 that the Show Cause Notice/s u/s 4 & 7 were served on O.P. personally and one Umesh Ch. Das has received the same on behalf of O.P and affixation was also made on the

By Order of :
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
12/9/22
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

Proceedings No. 1064, 1064/R-D of 2010 Order Sheet No. 43

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/s. K.K. ENTERPRISE

46

09.09.2022

By Order of :
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

Head Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

subject premises on the very same day at about 2:30 P.M. as per the mandate of the P.P Act.

It appears that two Writ Petitions being C.O.18381(W) of 1992 and C.O.18382(W) of 1992 were moved by O.P. before the Hon'ble High Court, Calcutta, which was directed against SMPK's enhancement of rent and SMPK's letter/notice dated Dec 11, 1991, demanding possession from O.P. etc. Both the Writ Petitions were heard together and the Hon'ble High Court vide its interim Order dated 23rd November 1992 directed both the parties to maintain status quo along with a direction to O.P. for making regular payment of rent.

It also appears that another Writ Petition being W.P. No.12998(W) of 1998 was further moved by O.P. before the Hon'ble High Court, Calcutta challenging the validity of SMPK's rent bill. However, by an order dated August 26, 2005, the said writ petition was allowed by the Hon'ble High Court, Calcutta, holding that the liability of the opposite Party to pay rent will continue till mid-week of January 1993 and thereafter the Opposite Party shall have no liability to pay any further rent. It was also directed that the SMPK would be at liberty to take steps for recovery of damages from the persons who are in wrongful possession. Such Order of the Hon'ble High Court is reproduced below:
"Under such circumstances I hold that the petitioners' liability to pay as per demand will continue till midweek of January 1993 viz: till subsistence of the interim order. Thereafter the writ Petitioners' have no liability to meet demand for rents. The lessee in my view was prevented from exercising his right of surrender who has a statutory right. Therefore, when the writ petitioners have expressed their intention to quit, lessor/Port Trust Authority Can't compel them to remain in possession. Accordingly Board also could not make any demand for payment of rent in connection with



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. 1064, 1064/R-D Of 2010 Order Sheet No. 44

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

MIB. K.K. ENTERPRISE

46

09.09.2022

the lease from the petitioners after expiry of mid week of January 1993. It is contended that the writ petitioners and some other persons are in physical possession and occupation in view the interim order. If anybody is in possession whether the writ petitioners or some other person, and if they are in wrongful possession by this time, it will be opened for the Board to take steps for recovery of the damages from the present person or persons who are said to have been in wrongful possession and also their eviction....."

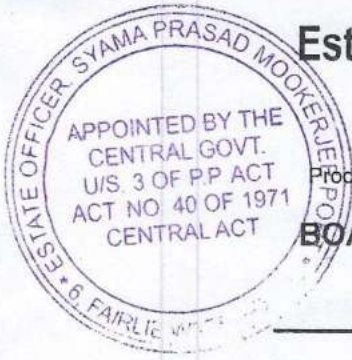
It is pertinent to mentioned that being aggrieved by the said order dated 26.08.2005, SMPK thereafter preferred an appeal (being No.FMA899 of 2012). By an order dated 29.06.2018 said appeal was disposed of by the Division Bench of Hon'ble High Court, Calcutta, holding inter alia that "since the proceeding under the Act of 1971 have already been instituted and such proceedings are independent and stand-alone proceedings, nothing in the order impugned will curtail the rights of the appellants herein to obtain damages or occupation charges from the respondent-writ petitioners in accordance with law..."

I have duly considered this order dated 29.06.2018 as passed by the Division Bench of Hon'ble High Court, Calcutta in connection with FMA 899 of 2012 for my guidance. It is seen that the Hon'ble High Court while disposing of the Writ Petition was very much aware of the pendency of the P.P. Act proceedings and had no intention to disturb or restrain any way the proceedings in hand. I am very much apprised by such order of the Hon'ble High Court, Calcutta. In my view, this Forum as per such observation has ample power to adjudicate the matter therefore, this Forum has proceeded with the instant matter.

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

[Handwritten mark]



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. 1064.1064/R.D Of 2010 Order Sheet No. 45

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

MR. K.K. ENTERPRISE

46

09.09.2022

O.P. appeared before the Forum through their Ld' Advocate and contested the case and filed several applications/objections. It reveals from record that O.P. filed initial reply (to the show cause notice) on 18.11.2010 signed by the Partner of O.P. Thereafter the Ld' Advocate of O.P. filed 3nos. of additional reply to the Show Cause on 14.02.2019 & affidavit of evidence on 11.07.2019. Finally, the O.P. also filed their written notes of arguments on 10.12.2019. SMPK on the other hand, filed their rejoinder dated 21/22.12.2010 in response to the reply to the Show Cause filed by O.P. and also their Comment on 02.04.2019 and 14.11.2019.

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

- 1) This instant proceeding is not maintainable and should be summarily rejected.
- 2) The notice to quit dated January 24, 2008 is also without jurisdiction, misconceived, of no effect and should be quashed.
- 3) There is no notification for appointment of the Estate Officer and as such this Ld' Tribunal is a quorum non judice.
- 4) It appears from the order dated 05.08.2010 as passed by this instant Forum that the schedule of the property was not clearly mentioned and as such in absence of the same the proceeding must fail.
- 5) It is settled law that where the tenant declares his intention to surrender the tenancy it is unnecessary for the landlord to pursue eviction proceedings against such tenant.
- 6) Once the tenant expresses the desire to surrender the tenancy, there is no need for termination of the lease by the landlord under Section 106 of T.P 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]
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

[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. 1064, 1064/R-D Of 2010 Order Sheet No. 46

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/R - K.K. ENTERPRISE

46

09.09.2022

- 7) By a letter dated November 25, 1992 the Opposite Party has informed the SMPK/ landlord through their Advocate for taking possession of the said two plots on or before the expiry of 15 days from the date of such notice. It was also intimated vide their letter dated November 25, 1992 that if the SMPK has failed to take possession of such land as per their requirement O.P. shall vacate the said two plots on 16th December, 1992.
- 8) By a further letter dated December 17, 1992, the Opposite Party intimated that they have surrendered the said two plots w.e.f December 16, 1992.
- 9) None of the aforesaid letters were replied by SMPK.
- 10) The SMPK had a duty to speak but remaining silent for more than 9(nine) years, SMPK in fact, acquiesced the surrender of such tenancy on behalf of O.P.
- 11) The silence and/or inaction on the part of SMPK either to take possession or to dispute the same constitute representation.
- 12) SMPK is estopped and precluded from alleging that the opposite Party has not surrendered the lease or taking steps to issue notice to quit or to initiate or prosecute any eviction proceedings.
- 13) In view of O.P's surrender, the purported Quit Notice dated 24.01.2008 or the Petition for eviction dated April 1st, 2008 or the impugned Show Cause Notice u/s-4 dated 02.09.2010 are all without jurisdiction, ineffective, invalid and not binding upon the Opposite Parties therefore, liable to be set aside and/or quashed.
- 14) The said plot was vacant land. The Opposite Party surrendered their tenancy in respect of the said

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

[Handwritten signature]



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1064.1064/R-D Of 2010 Order Sheet No. 47

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/R. K. K. ENTERPRISE

46

09.09.2022

plot on December 16, 1992 and SMPK has not taken over possession till date with their ulterior motive and in dereliction of their statutory duties.

- 15) O.P. has never failed or neglected to pay any rental dues to SMPK as alleged. The Hon'ble High Court at Calcutta by it's order dated 26.08.2005 directed the Opposite Party to pay rent upto mid week of January 1993 which was paid by the Opposite Party by a covering latter dated September 8, 2005, which was accepted by SMPK in full and final settlement therefore, the claim of SMPK that Opposite Party has failed to pay any rental dues has no basis.
- 16) O.P. has also not parted with possession of the aforementioned plots to any third parties. The Opposite Party had issued notice of surrender dated 25.11.1992 which was accepted by SMPK without any demur and the tenancy was determined mutually. The question of parting does not and Can't arise the said allegations are afterthought.
- 17) The allegations made in the eviction petition are incorrect, contrary to records and contrary to orders passed by the Hon'ble High Court at Calcutta. This purported eviction petition dated 01.04.2008 suffers from suppression of material facts and on the ground of suppression alone, the said petition is liable to be dismissed with exemplary cost.
- 18) O.P is also not liable to pay any compensation charges/mesneprofit as alleged or otherwise.

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

[Signature]

SMPK, the Petitioner, argues that mere intention to transfer the tenancy does not amount to surrender. As per the Section 108 Clause (m) & (q) of the Transfer of Property Act, 1882 it is crystal clear that the lessee is bound to hand



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. 1064, 1064/R-D Of 2010 Order Sheet No. 48

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

MIR - K-K. ENTERPRISE

46
09.09.2022

By Order of :
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

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

over the possession of the property in question as it was taken over on execution of the lease meaning thereby that the lessee has to be put back in possession in the meaningful manner but in this instant case the vacant land that was given to O.P., was not in a vacant position when the O.P. has allegedly intended to hand over the possession. It was further submitted by SMPK that O.P. suddenly took the decision of surrendering the tenancy, during the pendency of a Writ petition wherein there was an order of the Hon'ble High Court, Calcutta to maintain status quo by both the parties. It would not be out of place to mention that no steps were taken by O.P. to hand over the possession of such land to SMPK in vacant condition. Further O.P. and the subtenants inducted by O.P. is still occupying the plots and using those for their own purpose. Hence, O.P.'s contention that they have surrendered their possession does have no basis. The statement made by O.P. in para 6 regarding judgement dated 26.08.2005 of Hon'ble High Court, Calcutta is half baked as the impugned order was challenged by SMPK in FMA 899 of 2012 where Hon'ble High Court was pleased to pass an order in favour of SMPK. Further O.P.'s allegation regarding the schedule has no basis because the description of the property as mentioned in such schedule is sufficient to identify the property. It was also argued by SMPK that the purported notice of surrender dated 25.11.1992 served upon SMPK by the O.P did not mentioned any time as to when the possession would be handed over to SMPK and it is also not clear to whom such possession was handed over. Therefore O.P.'s contentions are all false and fictitious the detailed factual aspects and the observations of Hon'ble High Court leads to believe that O.P. was in possession even after the lapse of the relevant time in question i.e expiry of the interim order of status quo and still in possession therefore liable to pay

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compensation charges at three times of the current schedule of rent as per prevailing policy of SMPK.

Heard the rival arguments from both the sides and considered all the documents placed before me including SMPK's quit notice dated 24.01.2008, petition dated 01.04.2008, SMPK's Statement of Accounts dated 21.12.2010 & 14.11.2019, O.P.'s reply to show cause notice filed on 18.11.2010, SMPK's rejoinder dated 21/22.12.2010, Affidavit in reply filed by O.P. dated 13.01.2011, Effective reply to the Show Cause(u/s-4, 7(1) & 7(2) of the P.P Act, filed by O.P all dated 14.02.2019, Affidavit of Evidence filed by O.P dated 11.07.2019, Comments filed by SMPK dated 02.04.2019 & 14.11.2019, O.P.'s written notes of argument dated 10.12.2019.

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 this Forum of Law has jurisdiction to entertain/adjudicate the matter with regard to SMPK's prayer for order of eviction against O.P., etc. in the facts and circumstances of the case or not;
- II) Whether O.P. can claim surrender of possession of the Public Premises in question without offering SMPK the clear, vacant and unencumbered possession of such premises or not;
- III) Whether O.P. can disown their liability towards payment of dues/damages on the plea that they have vacated the premises or not;
- IV) Whether O.P. is liable to pay any rental dues to SMPK or not;
- V) Whether O.P. has parted with possession of the Public Premises unauthorisedly or not;

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- VI) Whether the question of non-maintainability of proceedings as raised by O.P. in connection with "ambiguity of schedule" of the public premises has got any merit or not.
 - VII) Whether the proceedings at the instance of SMPK against O.P. is barred by law of estoppel or not;
 - VIII) Whether ejectment notice/s dated 24.01.2008 as issued upon O.P. by SMPK is/are enforceable at law or not.
 - IX) Whether O.P's occupation would be treated as "unauthorized occupation" in view of Sec.2(g) of the Act and O.P. is liable to pay damages /compensation for unauthorized use and occupation of the Port properties in question or not.

With regard to **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 O.P's status as unauthorized occupant in to the public premises with the prayer for order of eviction, recovery of rental dues and damages against O.P. on the plea of determination of the lease in question on and from 08.02.2008 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 Can't be any

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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:

"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 Can't 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:-

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“The legal issue that has arisen is as to the extent of Estate Officer’s authority under the said Act of 1971. While it is an attractive argument that it is only upon an occupier at any public premises being found as an unauthorized occupant would 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 Can’t 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 authoritative decisions as cited above, I have no hesitation in my mind to decide that this Forum of Law is very much competent to adjudicate upon the matter in the facts and circumstances of the case.

With regard to **issue No. II**, i.e on the question of surrendering possession, O.P vide their reply to the Show Cause dated 14.02.2019 and also vide their Written Notes of Arguments dated 10.12.2019 denied the allegation of SMPK and claimed that they have already surrendered their possession in favour of SMPK therefore no question of eviction could arise. It is the categorical submission of O.P. that they took a decision to surrender their tenancy right and accordingly requested SMPK to send their representative to take possession on December 16, 1992 vide their letter dated 25.11.1992 and SMPK inspite of receiving such letter, neither gave any reply nor took possession of the same therefore, O.P sent its representative at the Plot on December 16, 1992 to

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handover vacant possession of the said plots but none from SMPK turned up. SMPK should be deemed to have taken possession of the suit plot on December 16, 1992 and on and from December 16, 1992 the relationship of landlord tenant between SMPK and the O.P become snapped. However, I am not satisfied with such submission of O.P. and in my view there is a sufficient scope of doubt in O.P's plea firstly, because there might have been status quo in operation in connection with the Writ Petitions being C.O. 18381(W) of 1992 and C.O. 18382(W) of 1992 on force on the subject premises which debarred the SMPK from taking over the possession and O.P. despite of having knowledge of such fact asked SMPK to take over possession moreover, after vacation of such status quo O.P. did not show any interest regarding surrender of such plots and Secondly, because as per the settled law legal position is very much clear with regard to right and liabilities of lessor and lessee arising out of the provisions of the Transfer of Property Act. Admittedly, O.P. was occupying the Port Property being the Public Premises in question as lessee and as per provision of the T.P. Act. O.P. is under obligation to keep and on the determination of the lease to restore, the Property in a good condition as it was at the time of taking of possession of the same. In other words O.P. is under legal obligation to protect the property leased to them from encroachment and on determination of lease the lessee is bound to put the lessor into possession in its original condition. It is evident from record that no such attempt was ever made by O.P. for surrendering their possession. Therefore, O.P. Can't claim "surrender of possession" by way of just offering through a letter to SMPK. To discharge its liability as lessee, O.P. must have to surrender possession to the lessor/SMPK in vacant/original condition as it was at the time of taking over possession from SMPK. Thus I am firm in holding that SMPK has rightfully expressed their view that they have

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never take over possession from O.P. in the facts and circumstances when possession was not offered by O.P. in clear, vacant and unencumbered condition. With this observation the issue is decided against O.P. and clearly decided in favour of SMPK.

As regards the **issue No.III**, It is the case of O.P. that they are not in possession of the Public Premises since long and as such they are not liable to make payment towards rental dues and/or charges for compensation/ mesne profit as claimed by SMPK. As per law a lessee is bound to deliver back possession of the premises to its lessor in its original condition after expiry of the lease period or after determination of the lease etc. as the case may be. Mere writing of letter communicating any intention to surrender possession or informing the status of the property does not necessarily mean that the property has been actually surrendered to SMPK and SMPK had taken over possession of such property upon such surrender. In course of hearing it is argued by SMPK that there Can't be any question of taking possession of the property in encumbered condition from O.P. The written objection of O.P. does not disclose any commitment or assurance from the part of SMPK regarding acceptance of possession of the property with the occupation of third party occupiers. According to O.P.,(written objection/reply of O.P. filed on 14.02.2019) they left the premises since 16th December 1992 whereas by their own averment it is subsequently stated that inspite of receiving such letters none on behalf of SMPK turned up, these two statements in my view are apparently contradictory. As per law, O.P. has failed to make out any case in support of their contention regarding vacating/ surrendering of the premises to SMPK and in my considered view, O.P. was and still under constructive possession of the premises through unauthorised subtenants as possession of the premises has not yet been

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surrendered or vacated in favour of SMPK thus the issue is decided in favour of SMPK.

In **issue No.IV**, the ground of non-payment of rental dues as a cause of action to SMPK for serving notice of ejection dated 24.01.2008 is never denied by O.P. Moreover, it is stated in the notes of argument on behalf of O.P. as filed on 10.12.2019 that the rental dues upto middle of January 1993 has been paid to SMPK under cover of their letter dated 08.09.2005 as full and final payment towards rent. Such being the case, I have no doubt about the legality of serving ejection notice dated 24.01.2008 to O.P. by the Port Authority on a legally valid cause of action on the part of SMPK.

I must say that for occupation and enjoyment of the public premises, one must have to pay the requisite charges for such occupation. O.P. must have to pay the charges for occupation and enjoyment of the Port Property either in the form of arrear charges equivalent to rental dues for the relevant period or in the form of damages as the case may be and occupation of a public premises without paying requisite charges is opposed to public policy. An occupant of the Port Property Can't claim its occupation as "authorised occupation" without making payment of dues/charges for such occupation which includes interest for delayed payment also. In this instant case it appears that in course of hearing, SMPK not only confirmed their claim on account of rental dues but also asserted their right to claim interest for delayed payment as well. The O.P. on the other hand merely disputed the claim of the Port Authority without coming out with any material particulars. The O.P. did not bother to pay the said amounts as well. In my view, the conduct of the O.P. does not inspire any confidence and I am not at all inclined to protect the occupation of the O.P. even for the sake of natural justice. In my considered view, the Port Authority has a definite

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ACT NO. 10 OF 1971
CENTRAL ACT

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legitimate claim to get its revenue involved into the Port Property in question as per the SMPK's Schedule of Rent Charges for the relevant period and O.P. Can't claim continuance of its occupation without making payment of requisite charges as mentioned in the Schedule of Rent Charges as applicable for all the tenants/occupiers of the premises in a similarly placed situation and such Schedule of Rent Charges is notified rates of charges under provisions of the Major Port Trusts Act 1963. Hence, the issue is decided in favour of SMPK.

Issue No. V, regarding unauthorized parting with possession as alleged against O.P. by SMPK, I do not find any substantive material to come into conclusion regarding "Unauthorised Parting with Possession" except the report of the OSD(L). Wherefrom it appears that at the time of service of ejection notice on 05.02.2008 by hand two temporary hotels along with a parking Zone on the remaining part were found and according to the local people the entire premises are under the occupation of Md. Majhar Hossain and Md. Islam. However, O.P. vide their reply to the Show Cause Notice/s merely denied such allegation "as afterthought". In my view, existence of such entities 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. Thus mere claim on behalf of O.P that at the time of acceptance of surrender in the year 1992, it was never alleged that the O.P. has parted with possession etc. are all baseless and in my view not sufficient to defend this type of serious allegations. The O.P could have very well produced documents related to their trade or business from that premises but O.P chose to produce nothing. Even O.P did not produce any single photographic evidence to counter the allegation of SMPK or invite Port Authority for instant Joint Inspection for

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verification of such claim. As such it is very difficult to accept the mere claim of the O.P. which is bereft of any cogent reason. Moreover, induction of a third party without the approval of SMPK is also against the spirit of tenancy. Thus the issue is decided in favour of SMPK.

The issue of non-maintainability of proceedings (under **issue No. VI** due to "ambiguous schedule" mentioned in the Application dated 01.04.2008 has received my due attention. It is true that description of the property under Schedule is of paramount importance for initiation of proceedings but in the instant case, I do not find anything to interfere into the matter. No material has been placed from O.P.'s side to infer incorrect or inappropriate description of the property under Schedule. Exchange of letters from O.P.'s side in connection with the property must lead to the conclusion that the property is very much identifiable and there Can't be any scope for any confusion about the detection of such property as mentioned under the Schedule A of the Application dated 01.04.2008. It is also very much evident from the correspondence from O.P.'s side dated 17.12.1992 and the ejection notice of SMPK bearing No. Lnd. 4480/ 6/III/08/3900 dated 24.01.2008 that O.P. was well aware of the occupation No. being properties covered under Plate No. GR-114 for which the proceedings have been initiated. It is worthy to point out that O.P. has also duly took over possession of the premises by executing the Certificate/Memorandum of possession on 21.01.1966. An appraisal of the facts involving the matter must lead to the conclusion that O.P. is very much aware of the property under Schedule which was allotted to O.P. by the Port Authority on short term lease basis and there is no scope for any confusion regarding identification of the property as mentioned under the schedule of the application dated 01.04.2008. Accordingly, I do not find any merit to the submissions made by O.P. with regard to

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"ambiguity of the Schedule". Hence, the issue is decided against O.P.

On **issue No. VII** i.e on the question of applicability of Estoppel, I must say that according to law the question of estoppel 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 estoppels there must be an intention or permission to believe certain thing. There is no material to prove any intention or permission on the part of SMPK to consider/accept O.P's status into the Public Premises as "lessee" in respect of Proceedings No.1064 of 2010 and to withdraw/ cancel the notice dated 24.01.2008. As such, it is my considered view that the question of 'estoppel' as raised on behalf of O.P. does not arise at all in view of the facts and circumstances of the case.

With regard to **Issues No.VIII & IX** the discussions against the foregoing issues are bound to dominate these issues. I have deeply gone into the submissions/ arguments made on behalf of the parties in course of hearing. The properties of the Port Trust(read as SMPK) are coming under the purview of "public premises" as defined under the Act. Now the question arises 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



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determined for any reason whatsoever. As per Transfer of Property Act, a lease of immoveable 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. Here the contractual period of lease in favour of O.P. was determined on and from 08.02.2008 and the Port Authority by service of notice dated 24.01.2008 has intended to take over possession of the premises and did not recognize O.P. as tenant by way of not issuing rent demand. As per law O.P. is bound to deliver back possession of the premises to SMPK in its original condition after determination of the contractual period of lease. However, the O.P. prefers to continue in occupation even after demand for possession issued from SMPK's end vide notice dated 24.01.2008. There is no material to prove O.P's intention to pay the dues/charges to SMPK as per SMPK's demand on the basis of Schedule of Rent Charges which includes a substantial amount of interest for delayed payment inspite of repeated chances. I waited a considerable period to afford a comfortable time to O.P. to settle/to narrow down the dispute with SMPK but failed. As such, I have no bar to accept SMPK's contentions regarding determination of tenancy by due service of ejection notice as discussed/decided against the aforesaid paragraphs on evaluation of the facts and circumstances of the case. Now as per the decision of the Division Bench of Hon'ble High Court, Calcutta dated 29.06.2018 as there is no constraint to proceed with the matter for damages, I have no hesitation to adjudicate damages against O.P.

"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 of ejection dated 24.01.2008, O.P. has lost its authority to

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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 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.
.....
.....
.....”

Undoubtedly, the tenancy under lease is governed by the provisions of the Transfer of Property Act 1882 and there is no scope for denial of the same. 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. Can't claim its occupation as "authorized" without receiving any rent demand note. The question of "Holding Over" Can't arise in the instant case as the Port Authority never consented to the occupation of O.P.

By Order of :
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

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

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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. 1064.1064/R-D of 2010 Order Sheet No. 61

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In the instant case there was no consent on the part of the Port Authority either by way of accepting rent from O.P. or by any other mode, expressing the assent for continuance in such occupation after expiry of the period as mentioned in the notice to quit the premises. 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. Can't claim continuance of its occupation without making payment of requisite charges as mentioned in the Schedule of Rent Charges. To take this view, I am fortified by the Apex Court judgment report 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. 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. 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, demanding possession from O.P. as stated above have been validly served upon O.P. in the facts and circumstances of

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Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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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.

Hence the logical conclusion which could be arrived at in view of the discussions against the foregoing paragraph that it is a fit case for allowing the prayer of the Port Authority for issuance of order of eviction u/s 5 of the Act against O.P. on the following grounds/reasons.

1. That this Forum of Law is very much competent to adjudicate upon the rights and liabilities of the parties in respect of the public premises in question.
2. That O.P's contention regarding vacating of the premises is not supported by law.
3. That O.P. was in default in making payment of rental dues to SMPK at the time of issuing ejectment notice dated 24.01.2008.
4. That O.P. has unauthorisedly parted with possession of the subject Public Premises to third parties and failed to vacate the premises upon determination of the period as mentioned in the notice to quit dated 24.01.2008 as issued by the Port Authority.
5. That the contentions of O.P. with regard to non-maintainability of proceedings on the plea of "Estoppel" has got no merit in the facts and circumstances of the case.
6. That O.P's plea with regard to non-maintainability of proceedings in view of "ambiguity of schedule" of the Public Premises has got no merit on evaluation of the facts and circumstances of the case.
7. That O.P. has failed to bear any witness or adduce any evidence in support of their contentions regarding authorized occupation.

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8. That O.P's occupation has become unauthorised in view of Sec.2(g) of the P.P. Act.
9. That the notice to quit dated 24.01.2008 as issued by Port Authority, demanding possession from O.P. is valid, lawful and binding upon the parties and O.P. is liable to pay damages for unauthorised/ wrongful use and enjoyment of the Port Property in question upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

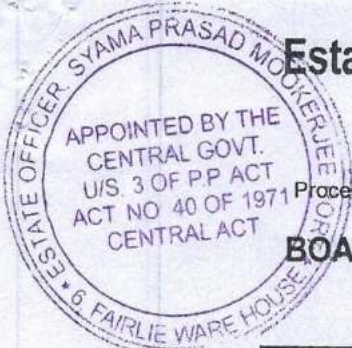
ACCORDINGLY, Department is directed to draw up formal order of eviction u/s 5 of the Act as per Rule made there under, giving 15 days time to O.P. and any person/s whoever may be in occupation to vacate the premises. I make it clear that all person /s whoever may be in occupation are liable to be evicted 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.

It is my considered view that a sum of Rs.25,15,384/- (Twenty five Lakh fifteen thousand three hundred eighty four only) for the period from 1st day of March, 1990 to 7th Day of February, 2008 (both days inclusive) is due and recoverable from O.P. by the Port authority on account of rental dues and O.P. must have to pay the rental dues to SMPK on or before ~~2.3.09.23~~ 23.02.23. Such dues 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

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Head Assistant
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Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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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.

Likewise, I find that SMPK has made out an arguable claim against O.P., founded with sound reasoning, regarding the damages/compensation to be paid for unauthorised occupation. As such, I must say that Rs.38,894/- (Thirty eight thousand eight hundred ninety four only) as claimed by the Port Authority as damages in relation to the subject premises in question, is correctly payable by O.P. for the period 08.02.2008 to 31.03.2008 (both days inclusive) and it is hereby ordered that O.P. shall also make payment of the aforesaid sum to SMPK by ~~23.09.22~~ 23.09.22. The said damages shall also 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 31.03.2008 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 31.03.2008, indicating therein, 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

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[Handwritten signature]



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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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

By Order of :
THE ESTATE OFFICER
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Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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