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

Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)
Public Premises (Eviction of Unauthorised 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.62 DT 26.9.2022
PROCEEDINGS NO. 1168 OF 2011

SYAMA PRASAD MOOKERJEE PORT, KOLKATA
(ERSTWHILE BOARD OF TRUSTEES OF THE PORT OF KOLKATA)
-Vs-
M/s. Bells General Industries (O.P)

FORM - "B"

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

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
26.9.2022
Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that
M/s. Bells General Industries, 26/1, Strand Road, Kolkata-700001 is in
unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

1. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear dues/damages etc. as prayed for on behalf of SMPK.
2. That no case has been made out on behalf of O.P. as to how O.P's occupation could be considered as "Authorised Occupation" after determination of short term lease as granted by the Port Authority.
3. That the contentions of O.P. with regard to non-maintainability of proceedings on the plea of "Limitation, Estoppel and acquiescence" have got no merit in the facts and circumstances of the case.
4. That O.P. has defaulted in making payment of rental dues to SMPK in gross violation to the condition of tenancy under short term lease as granted by the Port Authority.
5. O.P's contention regarding non-applicability of the SMPK's Schedule of Rent Charges has got no merit in the present fact and circumstances of the case.
6. That O.P has carried out unauthorised construction on the subject public premises and also made addition & alteration of the godown space without having any authority of law.
7. That 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".
8. That the notice/s to quit dated 08.11.2000 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.
9. 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.

PLEASE SEE ON REVERSE

(2)

A copy of the reasoned order No. 62 dated 26.9.2022 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. Bells General Industries, 26/1, Strand Road, 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. Bells General Industries, 26/1, Strand Road, 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. A-14

Compartment no.7 msg.205.59 Sq.mtrs. or thereabouts in the ground floor of the Trustees' godown known as Armenian Ghat Warehouse is situated on the west side of Armenian Ghat Street in the Presidency town of Calcutta. It is bounded on the North by the Trustees' compartment No.8 of the same warehouse leased to Oriental Agencies on the East by Armenian Ghat Street on the South by the Stair case of the same warehouse leading to the upper floor and on the West by the Trustees' sloped open wharf land. Trustees' means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata).

Dated: 26.9.2022.

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
26.9.2022
Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



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



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

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

OFFICE OF THE ESTATE OFFICER

6, Fairley Place (1st Floor)
KOLKATA - 700 001

Form " E "

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

REASONED ORDER NO.62 DT 26.9.2022
PROCEEDINGS NO. 1168/R OF 2011

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

By Order of :
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
26.9.2022
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

To
**M/s. Bells General Industries,
26/1, Strand Road,
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 19.09.2011 you are called upon to
show cause on or before 19.10.2011 why an order requiring you to pay a sum
of Rs.12,07,503.00(Rupees Twelve lakh seven thousand five hundred three
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.12,07,503.00(Rupees Twelve
lakh seven thousand five hundred three only) for the period from 1st day of
April, 1991 to 31st day of December, 2000 (both days inclusive) to SMPK
by 18.10.2022

PLEASE SEE ON REVERSE

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. A-14

Compartment no.7 msg.205.59 Sq.mtrs. or thereabouts in the ground floor of the Trustees' godown known as Armenian Ghat Warehouse is situated on the west side of Armenian Ghat Street in the Presidency town of Calcutta. It is bounded on the North by the Trustees' compartment No.8 of the same warehouse leased to Oriental Agencies on the East by Armenian Ghat Street on the South by the Stair case of the same warehouse leading to the upper floor and on the West by the Trustees' sloped open wharf land. Trustees' means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata).

Dated: 26.9.2022

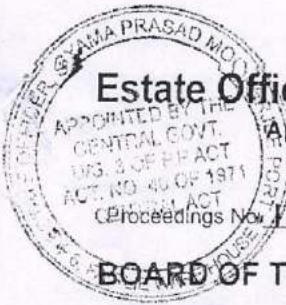


Signature and seal of the
Estate Officer



By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
26.9.2022
The Assistant
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. 1168/R, Of 2011 Order Sheet No. 64

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA VS

M/S. Bells General Industries

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26.9.2022

FINAL ORDER

The instant proceeding No.1168, 1168/R of 2011 is taken up today for final disposal. The factual aspect involved in this matter is required to be put forward in a nutshell in order to link up the chain of events leading to this proceedings. It is the case of Syama Prasad Mookerjee Port, Kolkata [erstwhile Kolkata Port Trust], hereinafter referred to as SMPK, Applicant herein, that godown space msg. 205.59 Sq.m or thereabouts situated at Armenian Ghat Warehouse(ground floor) Thana- North Port Police Station, District-Kolkata, comprised under occupation Plate No. A-14 was allotted to **M/s. Bells General Industries, O.P.** herein, on short term lease for a initial period of two months and extended from time to time upto 30.06.2001 with options of renewal for years each under the cover of a lease deed executed by and between both the parties. It is submitted by SMPK that while in possession of the Port property as lessee, O.P. defaulted in making payment of SMPK's monthly rent, taxes and also accrued interest thereon, erected unauthorized structures and also carried out addition alterations of land without taking any permission from SMPK.

It is the case of SMPK that in view of the aforesaid breaches committed by the O.P. and also in view of the implementation of their land use plan, SMPK had issued notice to quit dated 08.11.2000 asking the O.P. to hand over clear, vacant, peaceful and unencumbered possession of the property to SMPK on December 2000. But O.P has failed and neglected to vacate/ hand over the possession of such premises to SMPK after service of the said Notice to Quit.

This Forum of Law formed its opinion to proceed against O.P. 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/s u/s 7 of the Act (for adjudication of

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SYAMA PRASAD MOOKERJEE PORT
26.9.2022
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. 1168, 1168/R of 2011 Order Sheet No. 65

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

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the prayer for rent etc.) all dated 19.09.2011 (vide Order No.4 dated 24.08.2011).

O.P. entered appearance through their Ld' Advocates and filed on 25.01.2012 an application for recalling/modifying the order of this forum dated 14.12.2011 along with other allied prayers.

On 08.02.2012 O.P. filed their reply to the Show Cause U/s-7 along with a written objection to the maintainability of SMPK's application dated 25.01.2012 together with an application for inspection of documents as relied upon by SMPK. SMPK also filed their rejoinder on the same day.

On 15.02.2012 O.P. filed their reply against the said rejoinder file by SMPK.

On 05/06 March 2012 vide its application being No.13/31/12/818 SMPK filed their comment against the aforesaid three applications filed by O.P. on 08.02.2012.

On 14.03.2012 a further petition was filed by O.P. praying another date for inspection of documents on the plea of non availability of Original papers/documents from SMPK.

On 10.04.2012 SMPK files report of joint inspection of documents signed by P. Hazra, Land Inspector. Thereafter on 09.05.2012 SMPK expressed their inability to produce the Registered Lease Deed before the Forum.

On 06.06.2012 O.P. filed reply to Show Cause u/s-4 to contest the entire claim of SMPK. It is seen that another application on the very same day was also filed by O.P. under section 8(b) of P.P Act praying interalia to issue order, direction upon SMPK to discover documents on oath. However, finding no justification in O.P's claim such application of O.P. was rejected by the Forum vide it's order dated 06.06.2012 thereafter it revealed from the application of O.P. dated 17.04.2013 that a revisional application being C.O No.2411 of 2012 was moved by O.P. before the Hon'ble High Court, Calcutta challenging the said Order No.16 dated 06.06.2012. It was also seen that

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[Signature]
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. 1168, 1168/R Of 2011 Order Sheet No. 66

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O.P. had claimed two months adjournment on ground of pendency of aforesaid C.O. before the Hon'ble High Court, Calcutta. However, by an Order dated 25.07.2013 such C.O was later on dismissed by Hon'ble High Court holding the order dated June 6th 2012 as good.

On 04.09.2013 O.P. filed an application to this forum praying for hearing of the objection u/s 7(3) however, during the course of hearing on 19.02.2014 the Forum was not convinced by such submission of O.P. and accordingly disposed of such application with an observation that proceeding u/s 4 & 7 could be conducted simultaneously.

On 17.09.2013 SMPK filed their rejoinder against O.P's reply to the Show Cause refuting their claim. Subsequently O.P. also filed their comment on such written objection denying SMPK's contention.

It further appears that O.P. had filed another revisional application being C.O No.854 of 2014 before the Hon'ble High Court, Calcutta challenging the Order dated 19.02.2014, and such C.O was also dismissed by Hon'ble High Court vide its order dated 04.07.2014.

Be that as it may, pursuant to order of this Forum, another written objection on 13.08.2014 contradicting the SMPK's Statement of Accounts was filed by O.P. Thereafter, SMPK also filed their rejoinder to such reply/written objection on 11.09.2014 and O.P again filed their reply to such rejoinder.

SMPK filed copy of lease deed dated 20.07.1970 vide their application dated 22.03.2016 and also a Rent Schedule, 1988 vide application dated 12.04.2016.

On 09.11.2016 a written objection was again filed by O.P with a prayer of non maintainability of SMPK's application.

Finally, the instant matter was assigned to me as a successor Estate Officer on 16.11.2021. However, despite

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26.9.2022
Asst. Assistant
OFFICE CHARGE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Q



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. 1168, 1168/R of 2011 Order Sheet No. 67

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S. Bells General Industries

62
26.9.2022

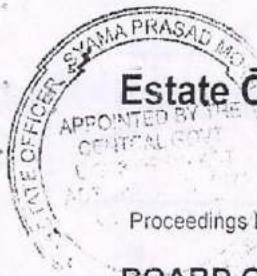
of service of such Orders through all available modes and publication of the instant matter in a widely circulated News Paper, no one turned up to contest the instant matter before me and the matter was reserved for passing final order on 05.04.2022. Now for the sake of natural justice, I am going to decide the instant matter by taking into account the instant application along with the other documents available on record.

Upon careful perusal of the documents on record and the rival contentions of the parties, I think the following issues have come up for my consideration:

- I) Whether the proceedings against O.P. is maintainable or not;
- II) Whether the application dated 25.01.2012 as filed by SMPK is also maintainable or not;
- III) Whether there is any cause of action on the part of SMPK or not.
- IV) Whether SMPK's Application before this Forum of Law dated 19.07.2001 is maintainable without verification or not.
- V) Whether the statement of O.P. with regard to non-receipt of notice to quit dated 08.11.2000 has got any merit or not.
- VI) Whether the proceedings at the instance of SMPK against O.P. is barred by law of estoppel waiver and acquiescence or not;
- VII) Whether O.P. is liable to pay any rental dues to SMPK or not;
- VIII) O.P's plea regarding non-applicability of the SMPK's Schedule of Rent Charges has got any merit or not;
- IX) Whether O.P. has carried out unauthorised construction and parted with possession of the

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26.9.2022
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

A



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. 1168, 1168/R Of 2011 Order Sheet No. 68

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S. Bells General Industries

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- Public Premises unauthorisedly as alleged by SMPK or not;
- X) Whether the proceedings against O.P. is barred by Limitation Act or not;
- XI) Whether SMPK's notice dated 08.11.2000 as issued to O.P., demanding possession from O.P. is valid and lawful or not;
- XII) Whether after alleged expiry of such Quit Notices O.P.'s occupation could be termed as "unauthorised occupation" in view of Sec.2 (g) of the P.P. Act and whether O.P. is liable to pay damages to SMPK during the period of their unauthorised occupation or not;

Issue No. I & II are taken up together for discussion. 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 unauthorised 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 unauthorised occupant into 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 lease, earlier granted to O.P. in respect of the premises in question. So long the property of the Port Authority is coming under the purview of "public premises" as defined under the Act, adjudication process by serving Show Cause Notice/s u/s 4 & 7 of the Act is very much maintainable and there cannot be any question about the maintainability of proceedings before this Forum of Law. In fact, proceedings before this Forum of Law is not statutorily barred unless there is any specific order of stay of such proceedings by any competent court of law. To take this

By Order of:
THE ESTATE OFFICER,
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE
ORDER PASSED BY THE ESTATE OFFICER,
SYAMA PRASAD MOOKERJEE PORT
26.9.2022
Assistant
OFFICE OF THE ESTATE OFFICER,
SYAMA PRASAD MOOKERJEE PORT

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKAIA

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



Proceedings No. 1168, 1168/R Of 2011 Order Sheet No. 69

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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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 if 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:

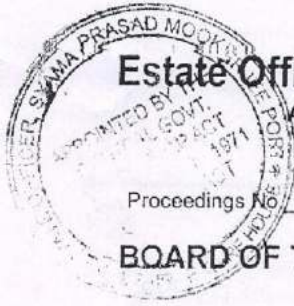
"In essence the jurisdiction of the Estate Officer in initiating the said proceedings and/or continuance thereof is under challenge. **In fact, the jurisdiction of the Estate Officer either to initiate such proceedings or to continue the same is not statutorily barred.** As such, the proceedings cannot 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 would he be subject to the Estate Officer's

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OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Appointed by the Central Govt. Under Section 3 of the Public Premises
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Proceedings No. 1168, 1168/R Of 2011 Order Sheet No. 70

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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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 authoritative decisions as cited above, I have no hesitation in my mind to decide the issue in favour of the Port Authority.

Regarding the maintainability of SMPK's application dated 25.01.2012, O.P. vide their application/written objection dated 08.02.2012 strongly submitted that no inspector had ever come to the tenancy of the opposite party and no such alleged inspection was done by SMPK on the subject premises however, I am not satisfied with the submission of O.P. because inspection of premises is the routine act of the port authority and as a landlord it has every authority to inspect such premises for checking the breach if any committed by lessee as such O.P's application is not tenable in the eye of law and the issue is accordingly decided in favour of SMPK.

As regards the **issue No. III**, i.e on issue of cause of action O.P. vide their reply to the Show Cause Notice/s denied the submission of SMPK and claimed their occupation as monthly term lessee. However, from the certified copy of the lease agreement it appears that there is no dispute regarding the occupation of O.P. into the Port Property. Admittedly, O.P. is enjoying the property on short term lease basis. SMPK has also filed copies of several letters

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OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKAIA

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

Proceedings No. 1168, 1168/R of 2011 Order Sheet No. 71

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

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addressing the O.P (such as letter dated 13.10.1995, 08.07.1996, 05.03.1997, 26.05.1997, 19.05.1999) etc. whereby SMPK repeatedly requested O.P for liquidation of their dues on account of rent. These amply depicts SMPK's cause of action for initiation of the instant proceeding. Further, the detailed Statement of Accounts filed by SMPK depicts the substantial dues on the part of SMPK. In fact, O.P. has sufficiently admitted the default in making payment of rental dues to SMPK by their conduct and O.P.'s lack of interest in payment of SMPK's due in pursuance of the order passed by this Forum of Law of course binds the parties in dispute on specific condition as "without prejudice to the rights and contentions of the parties". In this circumstances, SMPK as Land Lord/Lessor of the premises has definite cause of action against O.P./Lessee to demand possession of the premises and for recovery of dues/charges for continuous use and enjoyment of the Port Property in question. Hence, the issue is decided accordingly.

On **issue No. IV**, I must say that this is a quasi-judicial Forum of Law and as an Adjudicating Authority under the P.P. Act has taken all reasonable care to ensure the formation of my opinion to proceed against O.P. under the relevant provision of the Act and Rules made thereunder. In course of hearing, I have examined the representative of SMPK and on the basis of materials brought before me, I formed my opinion to proceed against O.P. by way of issuing Show Cause Notice u/s.4 & 7 of the Act. This Forum has the power under law to administer oath for submission of any paper/document on behalf of the Port Authority and for oral submissions also. As such, I have no doubt to consider the application dated 19.07.2001 as filed by S.K. Das, Asst. Land Manager for Land Manager is an application on behalf of Syama Prasad Mookerjee, Port, Kolkata (Erstwhile Board of Trustees of the Port of Kolkata)

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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. 1168, 1168/R Of 2011 Order Sheet No. 72

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

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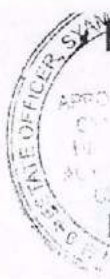
and verification of such application is not mandatorily required as in case of Suits before the Civil Courts of competent jurisdiction. Hence, I have no doubt to accept the application as signed by Shyama Kanta Das, Asst. Land Manager as the application on behalf of SMPK and Shri Das is duly authorized to file such application as authorized person in doing so.

Regarding **issue No. V** i.e on the question of non-receipt of notice, determining O.P's tenancy under short term lease by ejectment notice dated 08.11.2000 I must say that "Any notice required to be given to the lessees hereunder may be served on the lessees by sending the same through the post addressed to them at the address abovementioned and shall be deemed to have been duly served to them on the day next subsequent to the day on which it was posted."

It is claimed by SMPK that notice has been served through Registered Post with A/D etc. at the recorded address of O.P. at that point of time. Keeping in view of the fact that notice dated 08.11.2000 was served in proper address as mentioned in the lease deed, I am inclined to accept that notice was served properly by SMPK. Moreover, a notice served in official course of business cannot be ignored by mere statement against sufficiency of serving such notice. Therefore, the issue is decided in favour of Port Authority.

Regarding the **issue No.VI**, 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

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Asst. Land Manager
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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

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the part of SMPK to consider/accept O.P's status into the Public Premises as "lessee" in respect of Proceedings No. 1168, 1168/R of 2011 and to withdraw/ cancel the notice dated 08.11.2000. Mere claim of O.P. that nothing are lying due and payable by O.P. cannot be treated as waiver of their (SMPK's) right. It is my considered view that the question of 'estoppel' 'waiver' and 'acquiescence' as raised on behalf of O.P. does not arise at all in view of the facts and circumstances of the case. Thus the issue is also decided against O.P.

With regard to the **issue No. VII** i.e on the issue of nonpayment of SMPK's rent and taxes, O.P. denied the dues on its part vide reply/s to the Show Cause notice/s as filed on 08.02.2012 and 06.06.2012. It is the categorical submission of O.P. that no alleged amount as claimed by SMPK are lying due and payable by O.P. and no alleged 'Schedule B' appears and/or mentioned and/or stated by the petitioner in the eviction application. However, it appears that before this Forum, SMPK has filed copies of several letters addressing the O.P. (such as letter dated 13.10.1995, 08.07.1996, 05.03.1997, 26.05.1997, 19.05.1999) etc. whereby SMPK repeatedly requested O.P. for liquidation of their dues but inspite of receiving the copy of such letters, O.P apparently did not pay any heed to that matter. Further, SMPK has filed detailed Statement of Accounts, which clearly indicates the huge dues on the part of the O.P. since 1991. The Statements have been handed over to O.P vide applications dated 04.05.2016, 12.04.2016 and 16.07.2014. There is no reason to disbelief such submission of the statutory authority. Further, I may add that this Forum, in pursuance of Section 114 T.P Act has given opportunity to O.P to liquidate the dues of SMPK but O.P never succeeded in complete and full discharge of such dues taxes and interest. Thus this Forum holds that the

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charge of default in payment of rent and taxes is definitely established.

As regards the **issue No.VIII** i.e on the applicability of SMPK's Schedule of Rent Charges for tenants/users of the Port Property, I must say that when charges for occupation and enjoyment of Port Property are fixed up in accordance with provisions of the Major Port Trusts Act, it is very difficult to accept any contention regarding non-applicability of such charges and/or charging of fair rent. It may be recalled that SMPK's Schedule of Rent Charges is prepared in accordance with the provision of the Major Port Trusts' Act, 1963 and it has statutory force of law after publication of the same in accordance with the statutory mandate under the said MPT Act. I have duly taken notice of the fact that SMPK's Schedule of rent charges as per Gazette Notifications dated 31.03.1988 and 19.09.1996 were upheld by the Hon'ble High Court, Calcutta and the Hon'ble Apex Court of India as well on challenge vide judgment (unreported) of Justice A.N. Ray delivered on 04.02.1999 in C.O. No. 16196 (W) of 1993-Kumud Majumder -Vs- Board of Trustees' of the Port of Kolkata and Ors. with reference to SLP(C) No.3808 of 1992-Kolkata Port Trust -Vs- Auto Distributors Ltd. decided by the Hon'ble Apex Court on 16.08.1996, Judgment of Calcutta High Court delivered by Justice Barin Ghosh (unreported) on 09.12.2004 - Philips India Ltd. -Vs- Kolkata Port Trusts', confirmed by the Division Bench judgment (unreported) in A.P.O. No. 200 of 2005- Everest Industries Ltd. -Vs- SMPK & Ors. AND decision of the of the Hon'ble Supreme Court of India in Civil Appeal No.2528 of 2006, reported in (2006) 9 SCC 763. As such, there cannot be any question about enforceability/reasonability of such schedule of rent charges to the tenants/occupiers of the Port Property. Moreover, O.P. has failed to make out a case with supporting papers/documents that Port Authority had

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agreed to charge any rate of rent, different from that of notified Schedule of Rent Charges as applicable to the tenant occupier in similarly placed situation. In absence of any agreement between the parties or any specific commitment on the part of the Port Authority regarding charging of any rate of charges for occupation of the Port Property (other than the rate specified in the SMPK' schedule of Rent Charges), I am not inclined to accept any contention regarding non-applicability of the SMPK's Schedule of Rent Charges which is statutory in nature. Hence, the issue is decided against O.P.

Issue No. IX, i.e allegation of SMPK regarding unauthorized construction, addition & alteration of godown space also received the serious attention of the Forum. The content of SMPK's letter to O.P. dated 22.06.2000 (mentioned as Final Notice) is very much vital in deciding the issues. It reveals that SMPK has given one more opportunity to O.P. to remove the breaches before issuing the Ejectment Notice dated 08.11.2000, terminating the lease in question. However, O.P. vide their reply to the Show Cause dated 06.06.2012, merely denied such allegation without producing any cogent evidence. Further it appears that a plan being No.8750K dated 14.12.2011 showing details of the unauthorized portion of the structure standing upon the land as prepared by SMPK upon inspection of the property was handed over to O.P. vide SMPK's letter dated 25.01.2012 and O.P. was asked to produce relevant record in support of their carrying out of construction work which they claim to be 'authorized construction' but it is a very strange case that O.P. instead of producing sanctioned plan before this Forum of Law always prefers to deny SMPK's claim by statement only. Such act on the part of O.P. is highly unacceptable and in such a situation, I am inclined to come into conclusion that O.P. has sufficiently admitted about the existence of such unauthorized construction on

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the subject Public Premises in question under. Thus the issues is most reluctantly decided against O.P.

As regards the **issue No. X** i.e on the issue of applicability of limitation Act, Opposing submissions have received my due attention. However, I must say that the decision of Madhya Pradesh High Court in AIR 1980 MP 196(DB) is very much instrumental in deciding the question of applicability of Limitation Act in the proceedings before the Estate Officer, wherein it was decided that Limitation Act has no application to the proceedings before the Estate Officer as it is not a Court to be governed by the Civil Procedure Code, keeping in view the bar under Sec.15 of the P.P. Act.

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

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

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

The Limitation Act has no application in the proceedings before the Estate Officer which is not a Civil Court, governed by the Civil Procedure Code. Sec. 15 of the Act puts a complete bar on entertaining any matter before the

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Civil Court in respect of Public Premises. As such, I am firm in holding that Limitation Act has no application in the instant case. The Division Bench judgment of Madhya Pradesh High Court reported in AIR 1980 MP 196 (D.B) (L.S. Nair -VS-Hindusthan Steel Ltd. &Ors.) has its applicability in all sense of law. In this connection I am fortified by a judgement of the Hon'ble High Court, Calcutta in S.N. BHALOTIS -VS- L.I.C.I. &Ors. reported in 2000(1) CHN 880 with reference to the most celebrated judgment reported in AIR 1972 Tripura 1 (Hemchandra Charkraborty -Vs- Union of India) wherein it was clearly held that proceedings initiated by an Estate Officer are not in the nature of suit nor the Estate Officer acts as a Court while deciding proceedings before him. In my view, the contention of O.P. is devoid of particulars necessary for consideration and effective adjudication. Hence the issue is decided against O.P.

Issues XI and XII are taken up together, as the issues are related with each other. On evaluation of the factual aspects involved in this matter, the logical conclusion which could be arrived at is that SMPK's notice dated 08.11.2000 as issued to O.P., demanding possession of port property from O.P. is valid and lawful and binding upon the O.P. As per Section 2 (g) of the Act the "unauthorized occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. The lease granted to O.P. was determined and the Port Authority by due service of notice/s to Quit demanded possession from O.P. SMPK's application for order of eviction is a clear manifestation of

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Port Authority's intention to get back possession of the premises. In course of hearing, the representative of SMPK submits that O.P. cannot claim its occupation as "authorized" without receiving any rent demand note. The lease was doubtlessly determined by SMPK's notice demanding possession, whose validity for the purpose of deciding the question of law cannot be questioned by O.P. Therefore, there cannot be any doubt that the O.P. was in unauthorized occupation of the premises, In such a situation, I have no bar to accept SMPK's contentions regarding enforceability of the notice dated 08.11.2000, on evaluation of the facts and circumstances of the case. With this observation, I must reiterate that the notice to quit, demanding possession from O.P. as stated above have been validly served upon O.P. in the facts and circumstances of the case and such notice is valid, lawful and binding upon the parties. As per law O.P. is bound to deliver up vacant and peaceful possession of the public premises in its original condition to SMPK after expiry of the period as mentioned in the notice/s to quit.

"Damages" are like "mesne profit" which according to Section 2 (12) of the Code of the Civil Procedure, 1908 means "those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession" 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 determination of lease by way of Quit Notice, O.P. has lost its authority to occupy the public premises 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

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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.

The Port Authority has a definite legitimate claim to get its revenue involved into this matter as per the SMPK's Schedule of Rent Charges for the relevant period and O.P. cannot claim continuance of its occupation as "authorized occupation" without making payment of requisite charges. I am fortified by the Apex Court judgment reported in JT 2006 (4) Sc 277 (Sarup Singh Gupta -vs- Jagdish Singh &Ors.) wherein it has been clearly observed that in the event of termination of lease the practice followed by Courts is to permit landlord to receive each month by way of compensation for use and occupation of the premises, an amount equal to the monthly rent payable by the tenant. In my view, the case in hand is very much relevant for the purpose of determination of damages upon the guiding principle as laid down by the Hon'ble Apex Court in the above case. In course of hearing, it is submitted on behalf of SMPK that the charges claimed on account of damages is on the basis of the SMPK's Schedule of Rent Charges as applicable for all the tenants/occupiers of the premises in a similarly placed situation and such Schedule of Rent Charges is notified rates of charges under provisions of the

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Major Port Trusts Act 1963. In my view, such claim of charges for dames by SMPK is based on sound reasoning and should be acceptable by this Forum of law.

O.P. has 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 29.03.2000, 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 of the Port property in question upto the date of delivering vacant, unencumbered and peaceful possession to SMPK. The Issues XI and XII are thus decided in favour of SMPK.

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

1. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear dues/damages etc. as prayed for on behalf of SMPK.
2. That no case has been made out on behalf of O.P. as to how O.P's occupation could be considered as "Authorised Occupation" after determination of short term lease as granted by the Port Authority.
3. That the contentions of O.P. with regard to non-maintainability of proceedings on the plea of "Limitation, Estoppel and acquiescence" have got no merit in the facts and circumstances of the case.
4. That O.P. has defaulted in making payment of rental dues to SMPK in gross violation to the condition of

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tenancy under short term lease as granted by the Port Authority.

5. O.P's contention regarding non-applicability of the SMPK's Schedule of Rent Charges has got no merit in the present fact and circumstances of the case.
6. That O.P has carried out unauthorised construction on the subject public premises and also made addition & alteration of the godown space without having any authority of law.
7. That 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".
8. That the notice/s to quit dated 08.11.2000 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.
9. 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 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

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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.12,07,503/- (Twelve Lakh Seven thousand five hundred three only) for the respective Plate in question for the period from 1st day of April, 1991 to 31st day of December, 2000 (both day inclusive) is due and recoverable from O.P. by the Port authority on account of rental dues and O.P. must have to pay such dues to SMPK on or before 18.10.2022. 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 find that SMPK has made out an arguable claim against O.P., founded with sound reasoning, regarding the damages/compensation to be paid for the unauthorised occupation. I make it clear that SMPK is entitled to claim 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 as the possession of the premises is still lying unauthorisedly with the O.P. SMPK is directed to submit a statement comprising details of its calculation of damages, indicating there-in, the details of the rate of such charges, and the period of the damages (i.e. till the date of taking over of possession) together with the basis on which such charges are claimed against O.P. for my consideration

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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



(Sayan Sinha)

ESTATE OFFICER

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