

SCAN

**REGISTERED POST WITH A/D.
HAND DELIVERY
AFFIKATION 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.50 DT 11.10.2022
PROCEEDINGS NO. 1385 OF 2013

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

M/s. Durlabhaji Bhurabhai Metalware(P) Ltd (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. Durlabhaji Bhurabhai Metalware(P) Ltd, 162, Old China Bazar Street, Kolkata-700001 is in unauthorized occupation of the Public Premises specified in the Schedule below:

R E A S O N S

1. That the proceedings against O.P. is very much maintainable.
2. That the contentions of O.P. with regard to non-maintainability of proceedings on the plea of "Estoppel, waiver & acquiescence" has got no merit in the facts and circumstances of the case.
3. That O.P. has defaulted in making payment of monthly licence fees/rental dues to SMPK in gross violation to the condition for grant of tenancy under monthly term licence.
4. That O.P. cannot take the plea of waiver of revocation of licence in terms of Quit Notice, taking the shield of acceptance of licence fees/ rent by SMPK.
5. That O.P. cannot take the plea of time barred claim by SMPK, taking the shield of Limitation Act.
6. That O.P. has parted with possession of the subject premises(under Plate No. SW-110) to M/s Baruni Robber Pvt. Ltd in clear violation of the term of such tenancy without having any authority of law.
7. That O.P. has failed to bear any witness or adduce any evidence in support of its "Authorised Occupation".
8. That notice for revocation of licence dated 20.05.2008 issued by the Port Authority to O.P., demanding possession is valid, lawful and binding upon the parties.
9. That O.P.'s occupation has become unauthorized in view of Sec.2 (g) of the P.P. Act.
10. That O.P. is liable to pay damages for its wrongful use and enjoyment of the Port Property upto the date of handing over of clear vacant and unencumbered possession to SMPK.

PLEASE SEE ON REVERSE

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



12/10/2022

(2)

A copy of the reasoned order No.50 dated 11/10/2022 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. **Durlabhaji Bhurabhai Metalware(P) Ltd, 162, Old China Bazar 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. **Durlabhaji Bhurabhai Metalware(P) Ltd, 162, Old China Bazar 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

- i) Compartment No.14 being Godown space msg.216 sq.m. or thereabouts(under Plate No.SW-110)on the 2nd floor of Kolkata Port Trust's Canning Warehouse is situated in the presidency town of Kolkata.
- ii) Compartment No.15 being Godown space msg.216 Sq.m or thereabout(under Plate No.SW-109) on the 1st floor of Kolkata Port Trust's Clive Warehouse is situated in the presidency town of Kolkata.
- iii) Southern half of Compartment No.4 being Godown space msg.108 sq.m or thereabouts (under Plate No.SW-114) of Kolkata Port Trust's Clive Warehouse is situated in the presidency town of Kolkata.

Trustees' means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata).

Dated: 12/10/2022



Signature & Seal of
Estate Officer.



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

By Order of :
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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


Head Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

12/10/2022

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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
6, Fairlie Place Warehouse
Kolkata-700001.

Form "E"

PROCEEDINGS NO.1385/R OF 2013
ORDER NO. 50 DATED: 11, 10, 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. Durlabhaji Bhurabhai Metalware(P) Ltd,
162, Old China Bazar 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 30.07.2013 you are called upon to
show cause on or before 18.09.2013 why an order requiring you to pay a sum
of Rs.23,26,969/-(Rupees Twenty three Lakh twenty six thousand nine
hundred sixty nine 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.23,26,969/-(Rupees Twenty
three Lakh twenty six thousand nine hundred sixty nine only) for the period
from 1st day of July, 1989 upto 30th day of June, 2008 (both days inclusive) to
SMPK by 28.10.2022

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



12/10/2022

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

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

12/10/2022



: 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.

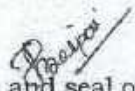
In case the said sum is not paid within the said period or in the said manner, it will be recovered as arrears of land revenue through the Collector.

SCHEDULE

- i) Compartment No.14 being Godown space msg.216 sq.m. or thereabouts(under Plate No.SW-110)on the 2nd floor of Kolkata Port Trust's Canning Warehouse is situated in the presidency town of Kolkata.
- ii) Compartment No.15 being Godown space msg.216 Sq.m or thereabout(under Plate No.SW-109) on the 1st floor of Kolkata Port Trust's Clive Warehouse is situated in the presidency town of Kolkata.
- iii) Southern half of Compartment No.4 being Godown space msg.108 sq.m or thereabouts (under Plate No.SW-114) of Kolkata Port Trust's Clive Warehouse is situated in the presidency town of Kolkata.

Trustees' means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata).

Dated: 12.10.2022


Signature and seal of the
Estate Officer

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. 1385, 1385/R of 2013 Order Sheet No. 47

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/s. DURLABHAJI BURABHAI METAL WARE (P) LTD.
VS



5th O

11.10.2022

FINAL ORDER

Relevant facts leading to this proceeding are required to be put forward in order to link up the chain of events. It is the case of Syama Prasad Mookerjee Port, Kolkata [erstwhile Kolkata Port Trust/KoPT], hereinafter referred to as 'SMPK', the applicant herein, that M/s. Durlabhaji Bhurabhai Metalware (P) Ltd, hereinafter referred to as the 'opposite party'/'O.P.', came into occupation of the Port Properties, being Godown space measuring about 216 sq.m. (under Plate No. SW-110) at Compartment No.14 on the 2nd floor of Canning Warehouse, godown space msg. about 216 Sq.m(under Plate No.SW-109) at Compartment No.15 on the 1st Floor of Clive Warehouse and godown space msg. about 108 Sq.m. (under Plate No. SW-114) on the southern half of compartment No.4 at Clive Warehouse in the presidency town of Kolkata, as a month to month Licencee on certain terms and conditions, as outlined in the SMPK's letter of allotment of such premises.

It is the case of SMPK that O.P. violated the condition of such tenancy by defaulting in payment of monthly licence fees/rent, taxes and other charges of SMPK, by unauthorisedly parting with possession of such premises to rank outsiders and also by encroachment upon the port property msg. about 29.29 sq.m on the 1st floor of Clive Warehouse near Compartment No.15 and 110.37 Sq.m on the ground floor of the same warehouse by unauthorisedly erecting asbestos shed.

It is the case of SMPK that in view of such aforementioned breaches committed by O.P., SMPK made a request to the O.P. to quit, vacate and deliver up the peaceful possession of the subject premises on 01.07.2008 in terms of the notice to quit bearing no. Lnd. 4956/08/664 dated 20.05.2008. As the O.P. did not vacate the premises even after issuance of the notice, the instant proceeding bearing no 1385, 1385/R of 2013 was initiated before the Forum for the eviction of the alleged unauthorised occupant, seeking other reliefs. It is also the case of SMPK that as the O.P. has failed to deliver back possession after expiry of the period mentioned in the notice to

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

12/10/2022

de

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. 1385, 1385/R of 2013 Order Sheet No. 48

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S, DURLABHATI BURABHAI METALWARE (P) LTD.



quit dated 20.05.2008, it is strongly argued that the O.P. continued unauthorized enjoyment of the premises without paying the requisite charges for occupation militates against the well laid provisions of the Public Policy and as such is highly objectionable.

This Forum of Law formed its opinion to proceed against O.P. under the relevant provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and issued show Cause Notices u/s 4 of the Act (for adjudication of the prayer for eviction) and u/s 7 of the Act (for adjudication of the prayer for realization of Rent etc.) as per the Rules made under the Act, both dated 30.07.2013 (vide order no. 04 dated 03.04.2013).

The O.P. appeared before this Forum through their Ld. Advocate and contested the case and filed several applications/ objections. It reveals from record that O.P. filed their reply to the Show Cause Notice on 12.03.2018. The O.P. also filed their Written Notes of Arguments on 01.04.2019, SMPK on the other hand, filed their rejoinder/comments dated 06.07.2018 in response to the reply to Show cause filed by O.P.

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

- 1) The application of the Port Authority for evicting the O.P. is not maintainable under law as well as fact.
- 2) Being a statutory authority, SMPK has failed to act in accordance with principles of fair play, equity and justice. Thus the action of the Port authority is perverse, arbitrary, unjustified and incolourable exercise of power without authority.
- 3) The said application of the Port authority is concocted with same false and frivolous allegations and/or statement for having illegal gain from Ld' Estate Officer.
- 4) The said application is barred by the principles of waiver, acquiescence and estoppel.

570
11.10.2022

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

12/10/2022

SPV

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. 1385, 1385/R of 2013 Order Sheet No. 49

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S. DURLABHAJI BURABHAJI METAL WARE (P) LTD.

570

11.10.2022

By Order of:
THE ESTATE OFFICER,
SYAMA PRASAD MOOKERJEE PORT
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SYAMA PRASAD MOOKERJEE PORT

Head Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

12/10/2022

- 5) The said application is also barred by the law of limitation.
- 6) The said application is misconceived one and created with an intention to harass the Opposite Party of the instant case.
- 7) That the notice to quit was not served upon O.P. as such the preconditions of initiation of any proceeding under P.P Act has not been satisfied in the present case in any manner.
- 8) In view of the Gazette Notification dated 29th January, 2019 the schedule property is vested with the State Government therefore, Port authority as well as the Estate Officer have no jurisdiction to proceed with the instant matter.
- 9) In view of the joint inspection Report dated 21.07.2015 no breaches on the part of O.P. were found therefore, contention of SMPK in the said eviction Notice dated 20th May, 2008 as well as in the application for eviction on the grounds of parted with possession, encroachment and unauthorized construction does not stand and cannot stand.
- 10) The Opposite Party is not concerned with the occupation of Plate No.SW-110 as because O.P. was never granted lease in respect of the said premises however, O.P is only concerned about get back/adjustment of money including rent and /or occupational charges and other charges which are inadvertently adjusted against the said Plate No.SW-110.
- 11) In spite of statutory mandate and/or existing law, SMPK authority did not make the M/s Baruni Robber Pvt. Ltd as party of the instant proceeding thus the instant proceeding is also suffered from misjoinder and/or non joinder of proper and/or necessary party.
- 12) The show Cause notice/s does not and cannot have any reasonable nexus or live-link with the purported



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. 1385, 1985/R of 2013 Order Sheet No. 50

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/S, DURLABHAJI BURABHAI METALWARE (P) LTD,
^{VS}



11.10.2022

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

12/10/2022

application and the proceeding cannot be initiated on the basis of such an old application.

13) The present proceeding is without any foundation and has been initiated by SMPK authority by suppressing the true and correct facts with an ulterior motive.

14) In spite of several objections and/or prayer for reconciliation by O.P., SMPK authority malaffectedly denied inspection of their accounts and relevant documents thereto.

15) That the O.P. was paying monthly rent to SMPK and the said rent was duly accepted by SMPK hence, the said eviction notice for termination of entire relationship between the parties have no legal stand and/or wing and the occupation of O.P. cannot be termed as unauthorized.

16) The SMPK authority whimsically increased the rent amount upto 5% to 6% from the existing rent within a period of 12 months twice for which they have not submitted any explanation before the Estate Officer and no copy of such explanation was also served upon O.P.

17) No explanation was also given by SMPK authority for justification of charging higher amount than the rent amount and no copy of the same was served upon the O.P.

18) Increase of rent as per new rent schedule was never been intimated to O.P. although as per the settled proposition it ought to have been intimated prior to implementation of the same.

19) Interest charged by SMPK for the arrear dues is exorbitant and is also contrary to the provision of Section 7(2A) of the Public premises (Eviction of Unauthorised Occupants) Act, 1971.

Referring to the above contentions, M/s Durlabhaji Bhurabhai Metalware Pvt. Ltd /O.P. has prayed for dismissal of the instant proceedings in limini.

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. 1885, 1885/R of 2013 Order Sheet No. 51

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/S. DURLABHATI BURABHAI METALWARE (P) LTD.
VS

510

11.10.2022

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

12/10/2022

SMPK, the petitioner, denying the claim of O.P. argued that SMPK has issued Quit Notice in terms of revocation of licence and instituted Proceeding against O.P. claiming rent and compensation charges within legitimate period therefore, Limitation Act has no application on the proceedings before the quasi-judicial authority like this Forum and the proceedings is very much maintainable. It is further pointed out by SMPK that the inspection Report placed before the Forum shows that the breaches of encroachment, unauthorised parting and unauthorised construction was removed subsequently by O.P in respect of Plate No.SW-109 and SW-114 however, in respect of Plate No.SW-110 the breach of parting with possession to one Baruni Robbers Pvt Ltd is still subsisting. Further it is argued by SMPK, that the rate and charges as fixed by the SMPK are not fixed whimsically however, such rate and charges are time to time fixed by the Tariff Authority of Major Ports therefore, O.P. cannot deny their liability to pay such rate, charges and interest according to the notification published by the Tariff Authority of Major Ports. The subject Plots are not at all within the domain of the Gazette Notification dated 29.01.2019 as such the statement made by O.P. are only to mislead the Ld' Forum in passing a favourable order and also for perpetrating the miscarriage of justice.

Heard the rival arguments from both the sides and considered all the documents placed before me including SMPK's quit notice dated 20.05.2008, petition dated 12.08.2008, SMPK's application dated 04.06.2014, 09.07.2014, 03.09.2014, 08.07.2015, 09.12.2015, 12.05.2016, 06.08.2019, Inspection Report along with joint Minutes of the Inspection dated 21.07.2015, Statement of Accounts (19.03.2013, 09.07.2014, 15.09.2016), O.P.'s applications dated 13.08.2013, 22.10.2013, 28.10.2013, 30.10.2013, 06.11.2013, 02.12.2013, 11.12.2013, 09.04.2014, 23.07.2014, 06.05.2015, 14.05.2015, 22.05.2015, 10.06.2015, 08.07.2015, 14.01.2016, 08.06.2016, 12.03.2019 & 31.01.2022 Applications of O.P's Advocate dated 02.02.2016



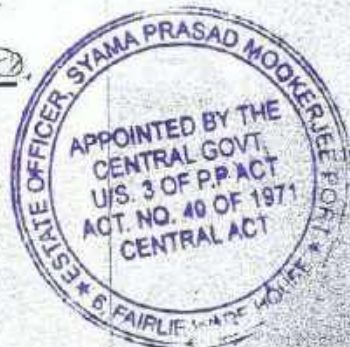
Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1385, 1385/R of 2013 Order Sheet No. 52

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S. DURABHAI BURABHAI METALWARE (P) LTD.



520
11.10.2022

By Order of:
THE ESTATE OFFICER
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Head Assistant
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12/10/2022

& 31.05.2016, O.P.'s application(undated) for adjustment of amount lying in the suspense deposit, O.P.'s application(undated) for direction upon SMPK to produce paper relating to payment in the said Account, O.P.'s reply/written Objection to show cause notice filed on 12.03.2018, SMPK's comment/rejoinder dated 06.07.2018 & O.P.'s written notes of argument dated 01.04.2019.

After careful consideration of all relevant papers/documents as brought before me in course of hearing and after due consideration of all the submissions/ arguments made on behalf of the parties, I find that following issues have come up for my adjudication :-

- (i) Whether the instant proceeding is maintainable or not;
- (ii) Whether the present proceeding is maintainable in view of the State of W.B Gazette Notification dated 29th January 2019 or not;
- (iii) Whether O.P. is in default of making payment of licence fees/rental dues to SMPK or not;
- (iv) Whether the plea taken by O.P. regarding non-service of notice for revocation of licence dated 20.05.2008 has got any merit in determining the point at issue or not;
- (v) Whether the instant proceeding is suffered from mis-joinder and/or non-joinder of proper and/or necessary party or not;
- (vi) Whether the instant proceeding is hit by the principles of waiver, acquiescence and estoppel or not;
- (vii) Whether O.P. can take the shield of time barred claim under Limitation Act to contradict the claim of SMPK on account of rental dues or not;
- (viii) Whether SMPK's claim on account of interest for delayed payment is sustainable and if so, to what

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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Proceedings No. 1385, 1385/R of 2013 Order Sheet No. 53

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S. DURLABHAI BURABHAI METAL WORK (P) LTD.

570

11.10.2012

By Order of
THE ESTATE OFFICER
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By Head Assistant
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SYAMA PRASAD MOOKERJEE PORT

12/10/2012

- extent such claim on account of interest is sustainable;
- (ix) Whether SMPK's statement/allegation regarding unauthorized construction & parting with possession by O.P. in favour of Baruni Robbers Pvt. Ltd has got any merit or not;
- (x) Whether O.P. has made any encroachment upon SMPK's land or not;
- (xi) Whether the plea taken by O.P. about waiver of the revocation of licence in terms of notice to quit dated 20.05.2008 by the SMPK, has got any merit or not;
- (xii) Whether the notice for revocation of licence, demanding possession from O.P. by the Port Authority dated 20.05.2008 is valid and lawful or not;
- (xiii) Whether O.P. is liable to pay damages for unauthorized use and enjoyment of the Port Property or not;

Issues No. (i) & (ii) are taken up together for convenient 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 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 licence fees/rental dues and compensation/damages etc. against O.P. on the ground of termination of authority to occupy the premises as earlier granted to O.P. in respect of the premises in question. So long the property of the Port Authority is coming under the purview of "public premises" as defined under the Act, adjudication process by serving Show Cause Notice/s u/s 4 & 7 of the Act is very much maintainable and



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. 1385, 1385/R or 2013 Order Sheet No. 54

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/S. DURABHAI BURABHAI METALWARE (P) LTD.
VS

570

11.10.2022

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.

As regards the issue of Gazette Notification of State of W.B. dated 29th January 2019 as annexed by O.P with the application dated 12.03.2019, I must say that such notification is of no effect today because being aggrieved by the said Notification dated 29.01.2019, SMPK has preferred a Writ Petition being W.P. No. 74 of 2019 before the Hon'ble Calcutta High Court and Hon'ble High Court has already vide its Judgement dated 10.08.2020 allowed such W.P. No 74 of 2019 by setting aside such Notification dated 29th January 2019 with the following observations:-

"..... A) that the original notice dated 25th October, 2018 was both subject and purpose specific.

B) That the contents of the original notice dated 25th October, 2018 had the effect of enticing the Board to take a legal position qua Municipal Premises number 68 and 69 comprising in all 12 Bighas and 7 Cottahs of land.

C) In a well thought out manoeuvre by the State respondents the Board was allowed to hold on its position over a Lot A, while, simultaneously unleashing the provisions of the 2012 Act declaring the surprise Board to be a persona non grata qua Lots B1 and B2.

D) Finding itself outmanoeuvre, the Board has pressed this action by claiming title also in respect of several properties in Lots B1 and B2 in respect of which neither the KMC has measured not declared the Municipal Premises No. to fulfill the conditions precedent of an inquiry inherent in the 2012 Act.

E) The KMC decided to aid the arbitrary state action by failing to identify and/or correlate the Municipal Premises Nos. of the property in issue with its corresponding area/ boundary.



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12/10/2022

DFV

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. 1385, 1385/R of 2013 Order Sheet No. 55

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/S. DURLABHATI BURABHAI METALWARE (P) LTD.
VS



S^{no}

11.10.2022

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**OFFICE OF THE LD. ESTATE OFFICER
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In the backdrop of the above discussion, this Court is persuaded to interdict the passage of the Royal Horse. This Court finds the action impugned of the Respondents to the foundationally flawed and accordingly sets it aside....."

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

Issues No. (iii) & (iv) are required to be discussed analogously. O.P vide their reply as well as Written notes of Arguments dated 12.03.2018 & 01.04.2019 denied the claim of SMPK on account of arrear licence fees/rent. It was the categorical submission of O.P. that pursuant to the direction of Hon'ble High Court payment was being regularly made by O.P through installment as fixed by the Hon'ble High Court without any default. It was also agitated by O.P. that SMPK authority within a tenure of 12 months had abnormally increased the Licence fees/rent upto 5% to 6% from the existing rent which is without jurisdiction and has no basis. However, I am not convinced by such submission of O.P. because admittedly, a licence on month to month was granted to O.P. by the Port Authority on certain terms and conditions which includes a rate for grant of such licence and O.P. continued in occupation of the Port Premises on the basis of such grant. The matter of default in payment of licence fees/rental dues arises during the period 1st day of July, 1989 to 30th June, 2008. Although O.P. has made some sporadic payments but never succeeded in complete and full discharge of their dues taxes and interest. Further, O.P's plea against enhancement of monthly licence fees/rent for occupation into the Port Property is also not relevant in the facts and circumstances of the case. It is my firm and considered view that as per law a licensee like O.P. cannot raise any dispute about the enhancement of charges for occupation by SMPK/Land Lord and it is pertinent to mention that such enhancement and/or imposition of monthly charges for

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/S. DURLABHATI VS
BURABHATI METAL WARE (P) LTD.



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occupation into the Port Property is governed by the provisions of the Major Port Trusts Act, 1963 on the basis of schedule of rent charges as time to time notified in Calcutta Gazette under Authority of Law and O.P. must have constructive notice in respect of publication of such notification as per law like all tenant/occupier of Port Premises. In fact nobody can deny the existence and enforceability of such notification under law. In my view, such 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 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.

I also find no merit to the submissions made on behalf of O.P. regarding O.P's occupation as "authorized occupation" for non service of any notice of revocation of licence through notice to quit in question. During the course of hearing it is seen that such notice of revocation of licence has been identified by SMPK's representative and such notice has been kept and/or maintained by SMPK in its Estate Department in official course of business. I must observe that papers/documents kept regularly in official course of business by a statutory authority like SMPK has a definite probative value of substance. Further A copy of the SMPK's ejectment notice dated 20.05.2008 is perused wherefrom it indicates that Dipak Das has received such notice of revocation of licence as a representative of O.P. on 21.05.2008, Therefore, I am unable to give any contrary opinion but for acceptance of such Notice on behalf of O.P. Acknowledgement made by Dipak Das in my view is a conclusive evidence for acceptance of such notice on behalf of O.P. Moreover, after accepting the notice of revocation of licence dated 20.05.2008, no right sustains in

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/S, DURLABHAI VS BURADHAI METALWARE (P) LTD.

570

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O.P's favour to object or raise any dispute regarding such notice.

In view of the discussion as aforesaid, the issues are decided against O.P.

Regarding the **issue No.(v)**, O.P vide their Written Notes of Arguments dated 01.04.2019 alleged that inspite of statutory mandate and/or existing Law thereof the SMPK authority did not make the M/s Baruni Robbers Pvt Ltd as a party of the said proceeding though he was a proper and/or necessary party for proper adjudication of the instant Proceeding and thus the instant Proceeding also suffers from misjoinder and/or nonjoinder. However, in my view such statement/allegation of O.P is not at all acceptable to me because there was no direct privity of contract between SMPK and M/s Baruni Robbers Pvt Ltd. It is only O.P. with whom SMPK had a contractual relation therefore, the issue is decided in favour of SMPK.

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



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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/S. JURLABHAI BURABHAI METALWARE (P) LTD.
VS



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Issue No.(vii), i.e on the question of time barred claim of SMPK on the issue of "limitation" and applicability of Limitation Act-1963, I have carefully considered all the submissions/ arguments made on behalf of O.P. before the Forum. It is the case of O.P. that SMPK's claim against O.P. is hopelessly barred by applying the Law of Limitation, 1963. However, as per settled law, 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 P.P. Act puts a complete bar in entertaining any matter before the Civil Court in respect of Public Premises. As such, I am firm in holding that Limitation Act has no application in the instant case. Hence, the issues is decided against O.P.

With regard to **issue No. (viii)**, I must say that the plea taken by O.P. for denial of SMPK's claim on account of interest is required to be adjudicated seriously as the issue involves mixed question of fact and law as well. It is the case of Kolkata Port Trust (read as SMPK) that claim of interest for delayed payment is in accordance with the Schedule of Rent Charges as per provision of the Major Port Trusts Act 1963, after obtaining sanction of the Central Govt. as per provision of the said Act. It is contended that notification published under Authority of Law has statutory force of law and O.P. cannot deny the claim of SMPK on the strength of such notification. It is also contended that continuing in occupation of the public premises must necessarily mean that O.P. is under legal obligation to pay such charges on account of interest also in case of failure to pay SMPK's demand as per Schedule of Rent Charges. It is, however, the contention of O.P. that Interest charged by SMPK for the arrear dues is exorbitant and is also contrary to the provision of Section 7(2A) of the Public premises(Eviction of Unauthorised Occupants) Act, 1971. I have duly considered the submissions/ arguments made on behalf of the parties. It is my considered view that payment of interest is a natural fall out and one must have to pay interest in case of default in making payment of the

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S. DURLABHAI BURABHAI METAL WARE (P) LTD.

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principal amount due to be payable. Needless to mention that one of the basic conditions of licence that the licensee/ O.P. is liable to pay licence fees rents in timely manner to the licensor SMPK and any breach in such terms shall invariably attract the penal charges by way of interest. All canons of law permits charging of interest if payments are being made in delayed fashion. O.P cannot deny such liability of payment of interest as it has failed to pay the principal amount due to be payable by him more so this forum has no power in the matter of waiver of interest for which O.P has to pray before proper Authority of SMPK. As such, I have no hesitation to decide the issue in favour of SMPK and I have no bar to accept the claim of SMPK on account of Interest accrued for delayed payment. However, as regards the extent of such claim of interest, I am very much convinced by O.P's submission. In my view, this Forum must exercise the power mentioned in Sec. 7 (2-A) of the P.P. Act, 1971 as amended in the year 2015, which mentions that interest is to be charged as per the current rate of interest within the meaning of the Interest Act, 1978. The relevant portion of the amended Section 7 of the PP Act is reproduced below:-

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

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

It may be noted that the words "compound interest" in the sub-section (2A) above were substituted by the said Notification for the original words "simple interest". I must mention that I am not convinced with the submission of SMPK that the rate



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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S. DURLABHAI BURABHAI METALWARE (P) LTD.

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notified by the TAMP, should be applied in the instant case. For the purpose of determining the current rate of interest within the meaning of the Interest Act, 1978, I have gone through the website of the State Bank of India as well as the Reserve Bank of India, and in my view, the rate of 6.45 % (compound interest) is applicable as the same is the present highest rate of interest as mentioned in the Interest Act, 1978.

In view of the discussion as above, having regard to the conduct of O.P., it is my considered view that natural justice will prevail, if O.P. is allowed to pay the amount of interest due at the above rate of 6.45%.

On the question of unauthorized construction and unauthorized parting with possession under **Issue No.(ix)**, I must say that O.P. by its reply has emphatically denied both the allegations as alleged on behalf of SMPK and I do not find any material from SMPK's side to come into conclusion regarding the issue of unauthorized construction. However, regarding the issue of unauthorized parting with possession against O.P., SMPK has come up with a Joint Inspection Report dated 21.07.2015 which depicts that One M/s Baruni Robber Pvt. Ltd is presently been occupying the Compartment no.14(under Plate No.SW-110) of Canning Warehouse and no such breaches were found in respect of other two compartments such as Compartment No.15 & Compartment No.4 of Clive Warehouse(under Plate No.SW-109 & 114). Although O.P has denied the occupation of Plate No SW-110 vide their reply to the Show Cause but the Letter/s of O.P. addressing SMPK dated 16.08.1989, 03.11.1989 & 07.02.2002 depicts that O.P. was very much in occupation of the subject premises therefore, O.P. cannot deny the allegation of Parting with possession as per the inspection report filed by SMPK. In my view, existence of M/s Baruni Robber Pvt. Ltd 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 it has not



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parted with possession etc. are all baseless in my view, and not acceptable in any sense of law. Thus, the issue is decided against O.P.

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Further the issue of encroachment in **issue No. (x)** as removed as per the inspection Report dated 21.07.2015, I do not find any material from SMPK's side to come into conclusion regarding the issue of encroachment therefore, such issue is left outside the scope of my consideration.

12/10/2022
As regards the **Issue No.(xi)**, O.P. vide their reply dated 12.03.2018 submitted that the O.P. was paying monthly rent to SMPK and the said rent was duly accepted by SMPK hence, the said eviction notice for termination of entire relationship between the parties have no legal stand and/or wing and the occupation of O.P. cannot be termed as unauthorized. However, in my view, mere acceptance of rent or other charges during pendency of the eviction proceedings does not confer any better right to O.P. and it does not amount to waiver of revocation of licence in terms of quit notice. As per law, in order to constitute a waiver of notice to quit, O.P. must have to prove that SMPK by accepting rent had intended to treat the lease as subsisting. In absence of any such intention on the part of SMPK being proved, mere acceptance of an amount tendered by O.P. during pendency of the proceedings can't be said to be a "waiver" on the part of SMPK. In the present case in hand SMPK actively prosecuted the proceedings for ejectment against O.P. and as such it cannot be an accepted proposition that the notice to quit is infructuous by any sense of law.

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

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Issues No. (xii) & (xiii) are taken up together for convenient discussion. In view of the discussion against the foregoing paragraphs, there is no alternative but to hold that the notice

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/S, DURLABHATI BURABHAI METALLORE (P) LTD.
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for revocation of licence dated 20.05.2008 is valid, lawful and binding upon the parties.

At the cost of reiteration I must say that a licensee like O.P. is bound to pay the monthly demand as licence fees/rent as per demand of SMPK in order to constitute a valid licence in respect of the Property in question and failure on the part of O.P. to comply with the fundamental condition for grant of such licence that is to say non-payment of monthly licence fee is definitely entitled the Port Authority to exercise its right to revoke the licence by due notice to O.P. A monthly licence is continuing on month to month basis on the basis of conduct of both the parties. To clarify the position of a monthly licensee, I must say that O.P. is recognized as a monthly licensee on the basis of renewal of licence by monthly demand and O.P. in turn acknowledges such grant of licence by way of making payment to SMPK on the basis of such demand from SMPK's end. O.P. cannot claim as a licensee without making payment of monthly licence fees on demand from SMPK. As no case has been made out by O.P. with regard to fulfillment of all the conditions of licence in terms of the offer from SMPK, Port Authority is free to take action against O.P. by revoking the licence. In my view, a licensee like O.P. has no right to object or raise any dispute about the SMPK's claim against O.P. for licence fees or rent for occupation and enjoyment of the Port property in question. Licensee like O.P. is holding a very inferior quality of right to occupy the premises that is to say not like a lessee. There is no material to show as to how O.P. can claim its occupation as authorized occupation or subsisting tenancy under licence without receiving or paying any valid demand. The moment, Port Authority decided to stop sending demand/bill to O.P., such act on the part of SMPK is required to be considered under law as unwillingness on the part of the Port Authority to recognize O.P. as licensee in respect of the property in question. Even at the cost of reiteration, I must say that a licensee like O.P. cannot claim its occupation as "subsisting tenancy" without making payment of monthly licence fees for a particular month on



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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/S. DURABHAI VS DURABHAI METALWARE (P) LTD.

SMD

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evaluation of the factual aspect involved in this matter. True to say that there cannot be any licence without making payment of monthly licence fee and the licence shall be deemed to have been revoked even there is no existence of formal notice for revocation of licence. Hence, I am convinced that there is no merit to the contentions made on behalf of O.P. on the plea of non-receipt of notice for revocation of licence. Moreover, it is the contention of SMPK that notice for revocation of licence has been served upon O.P. followed by stoppage of sending monthly rent demand note. In view of the circumstances, I find no merit to the submissions made on behalf of O.P. regarding O.P's occupation as "authorized occupation" for want of any notice for revocation of licence though notice to quit in question has been identified by SMPK's representative and such notice has been kept and/or maintained by SMPK in its Estate Department in official course of business. I must observe that papers/documents kept regularly in official course of business by a statutory authority like SMPK has a definite probative value of substance.

It is my considered view that O.P's continuance in occupation in the public premises was never consented by the Port Authority as there is no demand for monthly licence fees from O.P. signifying SMPK's assent for such occupation. As per law institution of proceedings/suit is sufficient to express the intention of the landlord and no notice for revocation of licence is necessary to evict a licensee like O.P.

Decisions against the foregoing paragraphs will certainly lead to the conclusion that O.P. is liable to pay damages.

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



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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
10/S, DURLABHATI BURABHAI MESTAL NARE (P) LTD.



3rd
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"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 licence granted to O.P. was undoubtedly revoked by the Port Authority by due service of notice for revocation of licence and institution of proceedings against O.P. by SMPK is a clear manifestation of Port Authority's intention to get back possession of the premises. In fact there is no material to prove O.P.'s intention to pay the dues/charges to SMPK and all my intention to narrow down the dispute between the parties has failed. In such a situation, I have no bar to accept SMPK's contentions regarding revocation of licence by notice dated 20.05.2008, on evaluation of the facts and circumstances of the case.

"Damages" are like "mesne profit" that is to say the profit arising out of wrongful use and occupation of the property in question. I have no hesitation in mind to say that after expiry of the period as mentioned in the said notice to Quit dated 20.05.2008, O.P. has lost its authority to occupy the public premises, on the evaluation of factual aspect involved into this matter and O.P. is liable to pay damages for such unauthorized use and occupation. To come into such conclusion, I am fortified by the decision/observation 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 judgement 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

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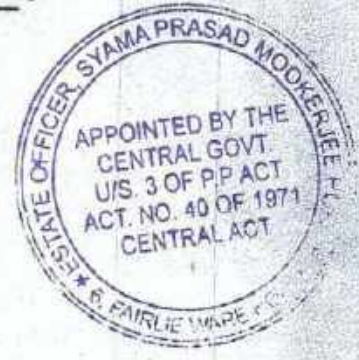
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11.10.2012

which he continues to occupy the premises, he becomes liable to pay damages for use and occupation at the rate at which the landlord would have let out the premises on being vacated by the tenant.

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12/10/2012

Undoubtedly, the tenancy under licence is governed by the principles/provisions of the Indian Easement Act and there is no scope for denial of the same. Though the status of a "licencee" is entirely different from the status of a "lessee", the principle established by the Hon'ble Apex Court of India in deciding any question about "damages" in case of a "lease" may be accepted as guiding principle for determining any question about damages in case of a "licence".

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

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 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

SMD

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. 1388, 1385/R of 80/19 Order Sheet No. 66

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
10/19. DURLABHAI BURABHAI METAL WARE (P) LTD



500

11.10.2022

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 ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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 course of hearing, it is submitted on behalf of SMPK that the charges claimed on account of damages is on the basis of the SMPK's Schedule of Rent Charges as applicable for all the tenants/occupiers of the premises in a similarly placed situation and such Schedule of Rent Charges is notified rates of charges under provisions of the Major Port Trusts Act 1963. In my view, such claim of charges for damages by SMPK is based on sound reasoning and should be acceptable by this Forum of Law. As per law, when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract to be likely to result from the breach of it. 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 revocation of licence in terms of ejection notice, demanding possession from O.P. as stated above has been validly served upon O.P. in the facts and circumstances of the case and such notice is valid, lawful and binding upon the parties. In view of the discussions above, the issue are decided in favour of SMPK.

[Signature]
NOW THEREFORE, in view of the discussion above against foregoing issues, I am left with no other alternative but to issue order of eviction u/s 5 of the Act against O.P. for the following reasons/grounds:

12/10/2022

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1385, 1385/R of 2013 Order Sheet No. 67

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

10/S, DURABHAI BURABHAI METALWARE (P) LTD.
VS



500
11.10.2022

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

12/10/2022

1. That the proceedings against O.P. is very much maintainable.
2. That the contentions of O.P. with regard to non-maintainability of proceedings on the plea of "Estoppels, waiver & acquiescence" has got no merit in the facts and circumstances of the case.
3. That O.P. has defaulted in making payment of monthly licence fees/rental dues to SMPK in gross violation to the condition for grant of tenancy under monthly term licence.
4. That O.P. cannot take the plea of waiver of revocation of licence in terms of Quit Notice, taking the shield of acceptance of licence fees/ rent by SMPK.
5. That O.P. cannot take the plea of time barred claim by SMPK, taking the shield of Limitation Act.
6. That O.P. has parted with possession of the subject premises (under Plate No. SW-110) to M/s Baruni Robber Pvt. Ltd in clear violation of the term of such tenancy without having any authority of law.
7. That O.P. has failed to bear any witness or adduce any evidence in support of its "Authorised Occupation".
8. That notice for revocation of licence dated 20.05.2008 issued by the Port Authority to O.P., demanding possession is valid, lawful and binding upon the parties.
9. That O.P.'s occupation has become unauthorized in view of Sec.2 (g) of the P.P. Act.
10. That O.P. is liable to pay damages for its wrongful use and enjoyment of the Port Property upto the date of handing over of clear vacant and unencumbered possession to SMPK.

[Handwritten signature]

Accordingly, I sign the formal order of eviction under Sec. 5 of the Act as per Rules made thereunder, giving 15 days time to O.P. to vacate the premises. I make it clear that all person/s

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. 1385, 1385/R of 2013 Order Sheet No. 62

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S. DURLABHAI BURABHAI METALWARE (P) LTD.

570

11.10.2022

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 of Department
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

12/10/2022

whoever may be in occupation, are liable to be evicted by this order as their occupation into the Public Premises is/are unauthorised in view of sec. 2(g) of the Act. 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.23,26,969/- (Rupees Twenty three lakh twenty six thousand nine hundred sixty nine only) for the period from 1st day of July, 1989 to 30th day of June, 2008 (both days inclusive) is due and recoverable from O.P. by the Port authority on account of licence fees/rental dues and O.P. must have to pay such dues to SMPK on or before 28.10.2022. 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 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 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 for the purpose of assessment of such damages as per Rule made under the Act.



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. 1385, 1385/R of 2013 Order Sheet No. 69

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S. DURLABHAI BYRABHAI METALWARE (P) LTD.

S/O

U.10.2022

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

(J.P. Boipai)

ESTATE OFFICER

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



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

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

12/10/2022