

o/c



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



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

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

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

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

REASONED ORDER NO.25 DT
PROCEEDINGS NO. 1622 OF 2017

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

-Vs-

M/s. Trans India Lines (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**

22543

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that **M/s. Trans India Lines, 1/1, Bhukailash Road, Kidderpore, Calcutta-700023** is in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

1. That the proceedings against O.P. is very much maintainable.
2. That O.P. was in default in making payment of rental dues to SMPK at the time of issuing ejection notice dated 16.11.2012.
3. O.P.'s plea regarding invalidity of service of notice to quit dated 16.11.2012 upon the recorded address of O.P. has got no merit in fact and circumstances of the case.
4. That O.P.'s contentions with regard to applicability of Sec.114A of T.P. Act have also got no merit in the facts and circumstances of the case.
5. That O.P. has failed to bear any witness or adduce any evidence in support of their occupation as "authorised occupation".
6. That the Port Authority is well within its jurisdiction and very much justified in serving notice of ejection dated 16.11.2012, demanding possession from O.P. and the notice is valid, lawful and binding upon the parties.
7. That O.P.'s occupation has become unauthorised in view of Sec. 2(g) of the P.P. Act and O.P. is liable to pay damages for unauthorised use and enjoyment of the Port Property in question upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

PLEASE SEE ON REVERSE

(2)

A copy of the reasoned order No. 25 dated 18-10-2022 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. Trans India Lines, 1/1, Bhukailash Road, Kidderpore, Calcutta-700023** 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. Trans India Lines, 1/1, Bhukailash Road, Kidderpore, Calcutta-700023** and all other persons concerned are liable to be evicted from the said premises, if need be, by the use of such force as may be necessary.

SCHEDULE

Plate No. D-664

Trustees' land msg.495 Sq.mtrs at Hoboken Depot, in the presidency town of Kolkata under Plate No.D-664. It is bounded on the North by the Trustees' drain and occupation of M/s. ColCox Syndicate Pvt. Ltd and on the East by the Trustees' land and on the South by the Trustees' drain beyond which is the occupation of Aditya Iron Steel Co. and on the West by the Trustees' road. Trustees' means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata).

Dated: 19.10.2022


Signature & Seal of
Estate Officer.

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

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

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

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Public Premises (Eviction of Unauthorized Occupant) Act 1971
OFFICE OF THE ESTATE OFFICER
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KOLKATA - 700 001

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

Form " E "

PROCEEDINGS NO.1622/R OF 2017
ORDER NO. 25 DATED:

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. Trans India Lines,
1/1, Bhukailash Road,
Kidderpore,
Calcutta-700023.**

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

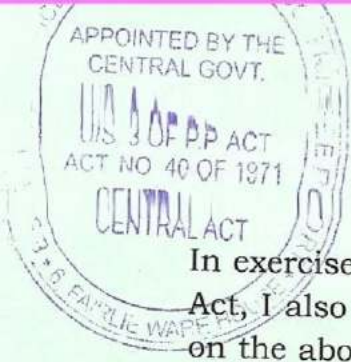
AND WHEREAS, by written notice dated 02.04.2018 you are called upon to
show cause on or before 02.05.2018 why an order requiring you to pay a sum
of Rs.4,73,107/- (Rupees Four lakh seventy three thousand one hundred seven
only) being the rent payable together with compound interest in respect of the
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.4,73,107/- (Rupees Four lakh
seventy three thousand one hundred seven only) for the period from 1st day of
March, 2010 to 19th day of December, 2012 (both days inclusive) to SMPK
by 03-11-2022



PLEASE SEE ON REVERSE



: 2 :

In exercise of the powers conferred by Sub-section (2A) of Section 7 of the said Act, I also hereby require you to pay compound interest @ 6.65 % 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. D-664

Trustees' land msg.495 Sq.mtrs at Hoboken Depot, in the presidency town of Kolkata under Plate No.D-664. It is bounded on the North by the Trustees' drain and occupation of M/s. ColCox Syndicate Pvt. Ltd and on the East by the Trustees' land and on the South by the Trustees' drain beyond which is the occupation of Aditya Iron Steel Co. and on the West by the Trustees' road. Trustees' means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata).

Dated: 19.10.2022


Signature and seal of the
Estate Officer

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



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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 Unauthorised Occupants) Act 1971

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

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

PROCEEDINGS NO.1622/D OF 2017
ORDER NO. 25 DATED:

Form- G

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

To

**M/s. Trans India Lines,
1/1, Bhukailash Road,
Kidderpore,
Calcutta-700023.**

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

AND WHEREAS by written notice dated 02.04.2018 you are called upon to show cause on or before 02.05.2018 why an order requiring you to pay damages of Rs. 9,71,606/- (Rupees Nine Lakh seventy one thousand six hundred six only) together with [compound interest] for unauthorised use and occupation of the said premises, should not be made;

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

NOW, THEREFORE, in exercise of the powers conferred on me by Sub-section (2) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971, I hereby order you to pay the sum of Rs. 9,71,606/- (Rupees Nine Lakh seventy one thousand six hundred six only) assessed by me as damages on account of your unauthorised occupation of the premises for the period from 20.12.2012 to 31.01.2017 (both days inclusive) to SMPK by 03-11-2022

PLEASE SEE ON REVERSE



: 2 :

In exercise of the powers conferred by Sub-section (2A) of Section 7 of the said Act, I also hereby require you to pay compound interest @ 6.65 % per annum on the above sum till its final payment being the current rate of interest as per the Interest Act, 1978.

In the event of your refusal or failure to pay the damages within the said period or in the manner aforesaid, the amount will be recovered as an arrear of land revenue through the Collector.

SCHEDULE

Plate No. D-664

Trustees' land msg.495 Sq.mtrs at Hoboken Depot, in the presidency town of Kolkata under Plate No.D-664. It is bounded on the North by the Trustees' drain and occupation of M/s. ColCox Syndicate Pvt. Ltd and on the East by the Trustees' land and on the South by the Trustees' drain beyond which is the occupation of Aditya Iron Steel Co. and on the West by the Trustees' road. Trustees' means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata).

Date 19.10.2022


Signature & 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. 1622, 1622/R-D of 2017 Order Sheet No. 30

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/s TRANS INDIA LINES

FINAL ORDER

The factual matrix involved in this matter is required to be put forward in a nutshell for clear understanding and to deal with the issues involved. It is the case of Syama Prasad Mookerjee Port Kolkata (Erstwhile Kolkata Port Trust/KoPT), hereinafter referred to as SMPK, applicant herein, that land msg. about 495 Sq.m situated at SMPK's Hoboken Depot in the presidency town of Kolkata comprised under Plate No. D-664 was allotted to **M/s. Trans India Lines (O.P.)** on long term lease for 15 years with effect from 13.07.2001 and O.P. violated the conditions for grant of such lease in terms of the SMPK's offer for such grant bearing No. Lnd.4091/2/7 dated 27.07.1999 by way of non-payment of rental dues, unauthorised parting with possession and also by way of carrying out of unauthorised construction.

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 20.12.2012 in terms of the notice to quit bearing No. Lnd. 4091/ Q/7/12/3463 dated 16.11.2012. As the O.P. did not vacate the premises even after issuance of the said Quit Notice, the instant Proceeding bearing No.1622, 1622/R & 1622/D of 2017 was initiated before the Forum for eviction of the alleged unauthorised occupant, seeking other relief. It is also the case of SMPK that as the O.P. has failed to deliver back possession even after the issuance of notice demanding possession dated 16.11.2012, O.P.'s occupation is unauthorised and O.P. is liable to pay damages for wrongful use and enjoyment of the Port Property in question.

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. Show Cause Notice u/s 7 of the Act (for adjudication of the prayer for realisation of rental dues and damages etc.) all dated 02.04.2018 as per Rule made under the Act.

By Order of
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE
19/10/2022
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE



5
18.10.2022

[Handwritten signature]



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1622-1622/R-D of 2017 Order Sheet No. 31

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S. TRANS INDEA LINE

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18-10-2022

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 05.09.2018. The O.P. also filed their Written Notes of Arguments on 18.04.2019, SMPK on the other hand, filed their comments dated 26.09.2018 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 Ejectment notice dated 16.11.2012 as issued by SMPK was not validly served upon the recorded address of O.P.
- 2) The Eviction Proceeding has been initiated without following the requirement under law as per Section 114-A of the T.P Act.
- 3) SMPK by being abstain from filing reply against O.P's petition dated 06.06.2018 & 27.07.2018 has sufficiently admitted the question of maintainability as raised by O.P.
- 4) All payments at the single rate have already been paid off by O.P as per SMPK's demand. Further O.P. is ready and willing to pay the interest for delayed payment at the single rate by 12 months instalments.
- 5) There is no breach like "unauthorised Construction" as the same was removed by O.P. to the satisfaction of SMPK on their identification and there is nothing about "unauthorised parting with possession" as alleged by SMPK.
- 6) SMPK's claim for damages/compensation @ 3xSoR also cannot sustain as there is no latches on the part of O.P. to comply with the requirement of SMPK during the subsistence of lease period in question.
- 7) SMPK has failed to discharge it's responsibility in dealing with O.P's occupation as per prevalent Land Policy Guideline issued by Govt. Of India in order to exercise O.P's option for exercising "F.R.R" as per the said guideline.

By Order of
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
KOLKATA
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
KOLKATA
19/10/22
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
KOLKATA

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. 1622, 1622/R-D of 2017. Order Sheet No. 32

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S. TRANS INDIA LINES.

- 25
18/10/2022
- 8) SMPK has failed to justify its action for service of notice to quit and as such the proceeding is not maintainable.
 - 9) O.P's right to get the option of "FRR" and O.P's Civil right of doing business over the public premises cannot be curtailed by any illegal means.
 - 10) SMPK's action against O.P has no leg to stand therefore, the instant proceeding should be dismissed.

SMPK, the Petitioner, denying the claim of O.P. argued that the ejection notice dated 16th November, 2012 as served upon O.P. was served as per statute and it was a good service. O.P has not fully paid off the SMPK's due and a huge amount on account of rent/damages/ compensation charges are still due and recoverable from O.P. Further it is argued by SMPK that O.P.'s contention regarding demolition of unauthorised construction etc. also cannot sustain. It is merely an attempt on the part of O.P. to deceive the instant Forum. SMPK has further pointed out that they are not in a position to accept instalment from O.P. and O.P. should pay their dues within three months.

Heard the rival arguments from both the sides and considered all the documents placed before me including SMPK's quit notice dated 16.11.2012, petition dated 01.06.2017, SMPK's application dated 20.07.2018, 08.08.2018, 18.09.2018, Statement of Accounts (03.02.2017, 25.09.2018 & 26.03.2019), O.P.'s applications dated 16.05.2018, 06.06.2018, 29.06.2018 & 27.07.2018, O.P's reply/written Objection to show cause notice filed on 05.09.2018, SMPK's comment/rejoinder dated 26.09.2018 & O.P.'s written notes of argument dated 18.04.2019.

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 :-

- 1) Whether the proceedings is maintainable against O.P. or not;

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SYAMA PRASAD MOOKERJEE

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SYAMA PRASAD MOOKERJEE

19/10/2022
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE



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. 1622, 1622/P-D of 2017 Order Sheet No. 33

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

MIS- TRANS INDEBA LINES.

25
18-10-2022

- II) Whether O.P.'s plea of invalid service of notice to quit dated 16.11.2012 upon the recorded address of O.P. has got any merit in determining the point at issue or not;
- III) Whether O.P. has defaulted in making payment of rental dues to SMPK, or not;
- IV) Whether O.P.'s plea for relief/s against forfeiture u/s 114-A of the Transfer of Property Act is at all relevant for the purpose of determining the rights and liabilities of the parties or not;
- V) Whether the O.P. has made unauthorised construction on the subject premises or not;
- VI) Whether the O.P. has parted with possession of said public premises to third parties or not;
- VII) Whether SMPK is justified in serving notice of ejection dated 16.11.2012 to O.P. or not;
- VIII) Whether O.P. is liable to pay damages/ compensation as claimed by SMPK in terms of the condition of such lease or not;

THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
KOLKATA
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SYAMA PRASAD MOOKERJEE PORT
19/10/22
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

AS

With regard to **issue No.I**, I must say that the properties owned and controlled by the Port Authority has been declared as "public premises" by the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and Section-15 of the Act puts a complete bar on Court's jurisdiction to entertain any matter relating to eviction of unauthorized occupants from the public premises and recovery of rental dues and/or damages, etc. SMPK has come up with an application for declaration of O.P.'s status as unauthorized occupant in to the public premises with the prayer for order of eviction, recovery of dues and damages against O.P. on the plea of determination of lease or 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,

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. 1622, 1622/R-7 Of 2017 Order Sheet No. 34

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S TRANS INDIA LINES

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10-2022

adjudication process by serving Show Cause Notice/s u/s 4 & 7 of the Act is very much maintainable and there cannot be any question about the maintainability of proceedings before this Forum of Law. In fact, proceedings before this Forum of Law is not statutorily barred unless there is any specific order of stay of such proceedings by any competent court of law. To take this view, I am fortified by an unreported judgment of the Hon'ble High Court, Calcutta delivered by Hon'ble Mr. Justice Jyotirmay Bhattacharya on 11.03.2010 in Civil Revisional Jurisdiction (Appellate Side) being C.O. No. 3690 of 2009 (M/s Reform Flour Mills Pvt. Ltd. -Vs- Board of Trustees' of the Port of Calcutta) wherein it has been observed specifically that the Estate Officer shall have jurisdiction to proceed with the matter on merit even there is an interim order of status quo of any nature in respect of possession of any public premises in favour of anybody by the Writ Court.

Relevant portion of the said order is reproduced below:

"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:-

By Order of
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE

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SYAMA PRASAD MOOKERJEE
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE



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. 1622/1622/R-2 Of 2017 Order Sheet No. 35

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S. TRANS PLYDEA LINES

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18-10-2022

"The legal issue that has arisen is as to the extent of Estate Officer's authority under the said Act of 1971. While it is an attractive argument that it is only upon an occupier at any public premises being found as an unauthorized occupant would he be subject to the Estate Officer's jurisdiction for the purpose of eviction, the intent and purport of the said Act and the weight of legal authority that already bears on the subject would require such argument to be repelled. Though the state in any capacity cannot be arbitrary and its decisions have always to be tested against Article 14 of the Constitution, it is generally subjected to substantive law in the same manner as a private party would be in a similar circumstances. That is to say, just because the state is a Landlord or the state is a creditor, it is not burdened with any onerous covenants unless the Constitution or a particular statute so ordains"

In view of the authoritative decisions as cited above, I have no hesitation in my mind to decide the issue in affirmative that is to say this Forum of Law has absolute authority under law to adjudicate upon the issues relating to the Public Premises in question.

Regarding **issue No.II**, I also find no merit to the submissions made on behalf of O.P. regarding validity of service of quit notice. During the course of hearing it is seen that such notice to quit 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 16.11.2012 is perused wherefrom it indicates that Bibhakar Jha has received such notice to quit as a representative of O.P. on 29.11.2012. Although O.P. in para -8 of their Written Notes of Argument dated 18.04.2019 claimed that Bibhakar Jha, who received such notice, is an unauthorised person but O.P. did not file any documents in support of their claim. Therefore, I am unable to give any

As

By Order of
THE ESTATE OFFICER
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SYAMA PRASAD MOOKERJEE
19/10/22
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

APPOINTED BY THE
CENTRAL GOVT.
U/S 3 OF P.P. ACT
ACT 1971
Proceedings No. 1622, 1622K-D of 2017

Order Sheet No. 36

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

MIS-TRAVEL EXPENSES

25
18.10.2022

contrary opinion but for acceptance of such Notice on behalf of O.P. Acknowledgement made by Bibhakar Jha in my view is a conclusive evidence for acceptance of such notice on behalf of O.P. Moreover, after accepting the notice quit dated 16.11.2012, no right sustains in O.P's favour to object or raise any dispute regarding such notice.

In view of the discussion as aforesaid, the issue is decided against O.P.

As regards the **issue No.III**, SMPK, states that O.P. has not made any payment since long. Although, O.P. vide their reply dated 05.09.2018 and also by their written notes of arguments dated 18.04.2019 have claimed that rental dues as payable to SMPK have already been paid off, but I must say that this statement of O.P. does not seem to have any justification in this juncture because such statement do not come to the protection of O.P. at all. It is a settled law that during the course of hearing if anything is received by SMPK from O.P that should be treated as occupational charges for unauthorised occupation and not as rent. In this instant case SMPK has received payment from the O.P. not as rent but as occupational charges and such occupational charges have been tendered on behalf of O.P. at single rate. Moreover, during the course of hearing SMPK has filed an updated Statement of Accounts dated 26.03.2019, 16.04.2019 in respect of said occupation, which clearly indicates the huge dues on the part of the O.P. In my view, such statement maintained by the statutory authority in the usual course of business has definite evidentiary value, unless challenged by any of the concerned/interested parties with fortified documents/evidences etc, ready to bear the test of legal scrutiny. During the course of hearing, I am given to understand by the Port Authority that the rent charged from time to time is based on the rates notified by the Tariff Authority for Major Ports (TAMP) in the Official Gazette, which is binding on all users of the port property. In my view, the breach committed by the O.P. is very much well established in the facts and circumstances of the case and O.P. must have to

AW

By Order
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE

CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE
19/10/22
Secretary
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE



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. 1622, 1622/R-D Of 2017. Order Sheet No. 37

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S - TRANS INDIA LINES

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bear the consequences, following due applications of the tenets of law. In my view, the conduct of the O.P. does not inspire any confidence and I am not at all inclined to protect O.P. even for the sake of natural justice. In my considered view, the Port Authority has a definite legitimate claim to get its revenue involved into the Port Property in question as per the SMPK's Schedule of Rent Charges for the relevant period and O.P. cannot deny such payment of requisite charges as mentioned in the Schedule of Rent Charges. In the aforementioned circumstances, being satisfied as above, I have no hesitation to uphold the claim of the Port Authority.

Regarding the **issue No. IV**, I have duly considered the submission/ arguments made on behalf of the parties in dispute and duly considered the notes of arguments on behalf of O.P. filed on 18.04.2019 in the context of O.P's prayer u/s 114-A of the Transfer of the Property Act. In my view, the question of applicability of the Section 114-A of the Act in the present case requires a serious consideration with evaluation of factual aspect on the basis of materials on record. As per provision of the Transfer of Property Act as envisaged u/s 114-A, relief against forfeiture in certain cases may be availed of by lessee where lease of immovable property has determined by forfeiture for a breach of an express condition which provides on breach thereof the lessor may re-enter, no suit for ejection shall lie unless or until the lessor has served on the lessee a notice in writing (a) specifying the particular breach complained of and (b) if the breach is capable of remedy, requiring the lessee to remedy the breach. In this instant case, admittedly, no formal lease has been prepared and registered in terms of the Indian Registration Act read with T.P. Act. and it is a settled Law that for non-registration of lease deed, O.P's status is nothing more than that of a monthly tenant. Sec.114-A is applicable for relief against forfeiture for non-payment of rent only. But here it is the specific case of SMPK that at the time of issuing quit notice O.P. has not only violated the condition of tenancy by way of not making

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SYAMA PRASAD MOOKERJEE PORT

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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payment of rental dues but also violated the condition of tenancy by way of carrying out unauthorised construction and unauthorised parting with possession of the premises in question without having any authority under law. Such being the case, it is my considered view that O.P. cannot claim relief against forfeiture of u/s 114A of the T.P. Act. In view of the discussion above this issue is decided also against O.P.

Issue no V and VI are taken up together, as the issues are related with each other. It is made clear that I have not gone into the merit of SMPK's allegations against O.P. regarding carrying out of unauthorised construction & unauthorised parting with possession to third parties as SMPK vide their application dated 26.08.2022 and also during the course of hearing on 08.08.2018 has already confirmed that both the breaches have been removed by O.P.

In view of the discussion against foregoing paragraphs, I have no other alternative but to decide the **issue No. VII** in favour of SMPK and to hold that there is no illegality or irregularity on the part of Port Authority in issuing notice dated 16.11.2012 to O.P. I should rather say that SMPK as land lord of the Public Premises in question is very much justified and well within its jurisdiction in serving such notice dated 16.11.2012, demanding possession from O.P. and as such the notice dated 16.11.2012 is valid, lawful and binding upon the parties.

Discussion against the foregoing paragraph are bound to dominate the **issue No. VIII**. I have deeply gone into the submissions/arguments made on behalf of the parties in course of hearing. The properties of the Port Trust are coming under the purview of "public premises" as defined under the Act. Now the question arises as to how a person becomes unauthorised occupant into such public premises. As per Section 2 (g) of the Act the "unauthorised occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such

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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. As per Transfer of Property Act, a lease of immoveable property determines either by efflux of time limited thereby or by implied surrender or on expiration of notice to determine the lease or to quit or of intention to quit, the property leased, duly given by one party to another. Here in case of this long term lease as no formal lease has been prepared and registered in terms of the Indian Registration Act read with T.P. Act, the tenancy in respect of the Public Premises in question is presumed to be continuing on month to month basis on the basis of agreement for lease and Port Authority by service of notice dated 16.11.2012 has intended to determine the tenancy of O.P. and did not recognize as tenant by way of not issuing rent demand. As such, I have no bar to accept SMPK's contentions regarding determination of tenancy by due service of ejection notice as aforesaid 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 of ejection, O.P. has lost their authority to occupy the public premises, on the evaluation of factual aspect involved into this matter and are liable to pay damages for such unauthorized use and occupation. To come into such conclusion, I am fortified by the decision/observation of the Hon'ble Supreme Court in Civil Appeal No.7988 of 2004, decided on 10th December 2004, reported (2005)1 SCC 705, para-11 of the said judgment which reads as follows.

AS

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

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

Undoubtedly, the tenancy under lease is governed by the provisions of the Transfer of Property Act 1882 and there is no scope for denial of the same.

In course of hearing, the representative of SMPK states and submits that Port Authority never consented in continuing occupation into the public premises and never expressed any intention to accept 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" since SMPK did not issue any rent demand note. The question of "Holding Over" cannot arise in the instant case as the Port Authority never consented to the occupation of O.P.

In the instant case there was no consent on the part of the Port Authority either by way of accepting rent from or by any other mode, expressing the assent for continuance in such occupation after expiry of the period as mentioned in the notice to vacate the premises. The Port Authority has a definite legitimate claim to get its revenue involved into this matter as per the existing terms and conditions for allotment for the relevant period and O.P. cannot claim continuance of its occupation without making payment of requisite charges for occupation. To take this view, I am fortified by the Apex Court judgment report in JT 2006 (4) Sc 277 (Sarup Singh Gupta - vs- Jagdish Singh & Ors.) wherein it has been clearly observed that in the event of termination of lease, the practice followed by Courts is to permit landlord to receive each month by way of compensation for use and occupation of the premises, an amount equal to the monthly rent payable by the tenant. In course of hearing, it is submitted on behalf of SMPK that the

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charges claimed on account of damages is @ 3x SoR from 01.06.2012 to 30.08.2012 and thereafter from 01.08.2016 upto 31.07.2022. O.P. in their Written Notes of arguments dated 18.04.2019 contended that SMPK's claim on account of compensation charges @ 3xSoR is unjustified, had there been proper and just action on the part of SMPK as per Land Policy Guideline, question of SMPK's compensation @ 3xSoR could have been avoided. However, I must say that as per law, when any occupant enjoys possession without having any valid authority, the party whose interest is hampered by such unauthorised occupation is entitled to receive, from the party who is occupying unauthorisedly, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from any breach, or which parties knew, when they made the contract to be likely to result from the breach of it. As regards the three times rate of compensation in respect of unauthorised occupation, the order dated 03.09.2012 passed by Hon'ble Justice Dipankar Datta in WP no. 748 of 2012 (M/s Chowdhury Industries Corporation Pvt. Ltd. versus Union of India & others) is very relevant. The said Order reads as follows:

"....."

It is undisputed that there has been no renewal of the lease prior to its expiry or even thereafter. There is also no fresh grant of lease. The petitioner has been occupying the property of the Port Trust unauthorisedly and, therefore, the Port Trust is well within its right to claim rent at three times the normal rent in terms of the decision of the TAMP, which has not been challenged in this writ petition.

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Furthermore, enhancement to the extent of three times the normal rent for persons in unauthorised occupation of Port Trust property does not appear to be utterly unreasonable and arbitrary warranting interference of the Writ Court.

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....."

In my view, such claim of charges for damages at the rate of 3 times of the rent by SMPK is based on sound reasoning and should be acceptable by this Forum of Law. As per law, when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract to be likely to result from the breach of it. Moreover, as per law O.P. is bound to deliver up vacant and peaceful possession of the public premises to SMPK after expiry of the period as mentioned in the notice to Quit in its original condition. As such, the issue is decided in favour of SMPK. I have no hesitation to observe that O.P's act in continuing occupation is unauthorized and is liable to pay damages for unauthorized use and occupation of the Port property in question upto the date of delivering vacant, unencumbered and peaceful possession to SMPK. With this observation, I must reiterate that the ejection notice, demanding possession from O.P. as stated above have been validly served upon the O.P. in the facts and circumstances of the case and such notice are valid, lawful and binding upon the parties. In view of the discussions above, the issue is decided firmly in favour of SMPK.

NOW THEREFORE, I think it is a fit case for issuing order of eviction against O.P. u/s 5 of the Act on the following grounds/reasons:-

1. That the proceedings against O.P. is very much maintainable.
2. That O.P. was in default in making payment of rental dues to SMPK at the time of issuing ejection notice dated 16.11.2012.
3. O.P.'s plea regarding invalidity of service of notice to quit dated 16.11.2012 upon the recorded address of

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- O.P. has got no merit in fact and circumstances of the case.
4. That O.P.'s contentions with regard to applicability of Sec.114A of T.P. Act have also got no merit in the facts and circumstances of the case.
 5. That O.P. has failed to bear any witness or adduce any evidence in support of their occupation as "authorised occupation".
 6. That the Port Authority is well within its jurisdiction and very much justified in serving notice of ejection dated 16.11.2012, demanding possession from O.P. and the notice is valid, lawful and binding upon the parties.
 7. That O.P.'s occupation has become unauthorised in view of Sec. 2(g) of the P.P. Act and O.P. is liable to pay damages for unauthorised use and enjoyment of the Port Property in question upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

ACCORDINGLY, I sign the formal order of eviction u/s 5 of the Act as per Rule made there under, giving 15 days time to O.P. and any person/s whoever may be in occupation to vacate the premises. I make it clear that all person/s whoever may be in occupation are liable to be evicted by this order and the Port Authority is entitled to claim damages for unauthorized use and enjoyment of the property against O.P. in accordance with Law up to the date of recovery of possession of the same. SMPK is directed to submit a comprehensive status report of the Public Premises in question on inspection of the property after expiry of the 15 days as aforesaid so that necessary action could be taken for execution of the order of eviction u/s. 5 of the Act as per Rule made under the Act.

It is my considered view that a sum of Rs.4,73,107/- (Rupees Four Lakh seventy three Thousand one hundred seven only) for the period from 1st day of March, 2010 to 19th day of December, 2012 (both days inclusive) is due and recoverable from O.P. by the Port authority on account of rental dues and

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O.P. must have to pay the rental dues to SMPK on or before 03-11-2017 Such dues attract compound interest @ 6.65 % 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.

Likewise, I find that SMPK has made out an arguable claim against O.P., founded with sound reasoning, regarding the damages/compensation to be paid for unauthorised occupation. As such, I must say that Rs 9,71,606/- (Nine Lakh seventy one thousand six hundred six only) as claimed by the Port Authority as damages in relation to the subject premises in question, is correctly payable by O.P. for the period from 20.12.2012 to 31.01.2017 (both days inclusive) and it is hereby ordered that O.P. shall also make payment of the aforesaid sum to SMPK by 03-11-22. The said damages shall attract compound interest @ 6.65 % 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 orders u/s 7 of the Act.

I make it clear that SMPK is entitled to claim further damages against O.P. for unauthorized use and occupation of the public premises right upto the date of recovery of clear, vacant and unencumbered possession of the same in accordance with Law, and as such the liability of O.P. to pay damages extends beyond 31.01.2017 as well, till such time the possession of the premises continues to be under the unauthorised occupation with the O.P. SMPK is directed to submit a statement comprising details of its calculation of damages after 31.01.2017, indicating there-in, the details of the rate of such charges, and the period of the damages (i.e. till the date of

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taking over of possession) together with the basis on which such charges are claimed against O.P., for my consideration for the purpose of assessment of such damages as per Rule made under the Act.

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

GIVEN UNDER MY HAND AND SEAL

(A.K Das)

ESTATE OFFICER

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

By Order of:
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