

olc



**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

Form "E"

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

REASONED ORDER NO.15 DT 20.12.2022
PROCEEDINGS NO. 1697/R OF 2019

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. Shalimar Paints Ltd,
P.O: Danesh Shaik Lane,
Howrah-711109, P.O Box No.16095
AND ALSO AT
13, Camac Street,
Kolkata-700017

15138

15139

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

AND WHEREAS, by written notice dated 05.03.2019 you are called upon to
show cause on or before 14.03.2019 why an order requiring you to pay a sum
of Rs.24,142/- (Rupees Twenty Four thousand one hundred forty two 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.24,142/- (Rupees Twenty Four
thousand one hundred forty two only) for the period from July, 2001 to 30th
day of April, 2002 (both days inclusive) to SMPK by 06.01.2023

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 @ 7.25 % 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. P-12

Princep Ghat Jetty

The Jetty situated at North Takta Ghat(Strand Road riverside) Kolkata, it is bounded on the North by the River Hooghly. On the East by the Trustees' open land alongside Circular Railway, On the South by the Trustees' open land alongwith Circular Railway and on the West by the River Hooghly.

Shalimar Jetty

The Jetty/pontoon situated in between Daighat and Watgunj at Garden Reach Road(Riverside), Kolkata, it is bounded on the North by the River Hooghly, on the East by the River Hooghly, on the South by the Trustees' land occupied by M/s. LMJ Commercial Pvt. Ltd. and on the West by the River Hooghly.

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

Dated: 21.12.2022.

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. 1697/R of 2019 Order Sheet No. 13

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/s. Shalimar Paints Ltd

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20.12.2022.

FINAL ORDER

The instant proceedings No. 1697/R of 2019 arises out of the application bearing No. Lnd.3/85/16/269 dated 19.04.2016 filed by the **Syama Prasad Mookerjee Port, Kolkata** (Erstwhile Kolkata Port Trust/KoPT), hereinafter referred to as '**SMPK**' the applicant herein, praying for recovery of rent and other charges etc. along with accrued interest in respect of the public premises as defined in the 'Schedule A' of said application, against **M/S. Shalimar Paints Ltd**, the O.P herein, under relevant provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

The fact of the case in a nutshell is that the O.P. came into occupation of the Port property being Princep Ghat Pontoon situated at Princep Ghat Jetty, Kolkata (under Plate No.P-12) in the Presidency Town of Kolkata as a licensee on monthly term w.e.f 01.12.1988. Afterwards by a letter dated 18.05.1994 O.P sought permission from SMPK to use Shalimar Jetty situated in between Daighat and Watgunj at Garden Reach Road (Riverside), Kolkata instead of Princep Ghat Pontoon which become effective from 01.06.1994. Subsequently O.P by a letter dated 15.05.2002 had intimated their intention of stopping the use of Shalimar Jetty w.e.f 01.05.2002. It is pertinent to mention that both the Jetties are more fully described in the 'Schedule of Property' of the said SMPK's application dated 19.04.2016. The allegation levelled by SMPK against the O.P is that the O.P. has defaulted in payment of monthly rent/ licence fees and taxes. It is also the case of SMPK that O.P. was asked to pay such licence fees within fifteen days from the date of final notice dated 27.06.2013 and the O.P. has failed

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THE ESTATE OFFICER,
SYAMA PRASAD MOOKERJEE PORT
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ISSUED BY THE ESTATE OFFICER,
SYAMA PRASAD MOOKERJEE PORT
21.12.2022
Asst. Assistant
OFFICE OF THE ESTATE OFFICER,
SYAMA PRASAD MOOKERJEE PORT



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

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and neglected to pay such amount. It is further the case of SMPK that the O.P. is liable to pay rent/licence fees along with the accrued interest to SMPK, the details of which has been provided by SMPK vide 'Schedule-B' of the said application of SMPK dated 19.04.2016.

Considering the submission and documents filed by SMPK, the Notice to Show Cause was issued by this Forum dated 05.03.2019 (vide Order no 3 dated 12.02.2019) U/s 7 of the Public Premises (Eviction of Unauthorized Occupation) Act, 1971 to the O.P. directing them to file show cause as to why an order of payment of arrear rent/licence fees together with interest should not be made against the O.P. The O.P. was also called upon to appear before this forum in person or through authorized representative capable to answer all material question/s in connection with the matter along with the evidence which the opposite party intends to produce in support of their case.

It is placed on record that the said Notice was sent to the recorded addresses of O.P. vide Speed Post, hand delivery as well as by affixing the same in the Public Premises in question as per mandate of the Act and it is seen that both the communications have been received by O.P and O.P. appeared through it's representative who submitted his Letter of Authority subsequently to represent before this Forum and filed its Reply to the Show Cause on 21.05.2019 alleging inter-alia that O.P has surrendered and delivered back their possession of the subject premises vide letter dated 15.05.2002 and the claim of SMPK made for the period prior after 30.04.2005 is barred by limitation and 30.04.2005 was

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Head Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

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the exactly three years from the date of due. SMPK filed their rejoinder on 03.07.2019 against the Reply filed by O.P, denying the averments of O.P. and mentioning that so far the plea of limitation raised by O.P is concerned, Limitation Act is not applicable to the proceedings pending before an Estate Officer and it was further stated that final Notice was served on 27.06.2013 and SMPK moved before your Honour's forum on 19.04.2016 which is within three years as is mandated in the Limitation Act, hence the claim of SMPK against O.P is not hit by the provisions of limitation. The matter was heard on different occasions. The matter was last heard on 27.08.2019 when the final order was reserved. Liberty was granted to both parties to file their respective Written Notes of Arguments, if any. It appears from record that the O.P. has filed such Written Notes on 27.08.2019 when the final Order was reserved in the matter.

Now, while passing the final Order, upon considering the deliberations of the parties and after carefully going through all the documents placed on record, I find that following issue has come up for my adjudication:

- Whether O.P. can take the shield of time barred claim under Limitation Act to contradict the claim of SMPK or not;

On the question of time barred claim of SMPK on "limitation", opposing submissions have received my due attention. It is the case of O.P. that SMPK's claim against O.P. is time barred. However, having come across a decision of the Madhya Pradesh High Court in AIR 1980 MP 196(DB) wherein it was decided that Limitation Act has no application to the proceedings before the Estate

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Head Assistant
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SYAMA PRASAD MOOKERJEE PORT



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

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Officer as it is not a Court to be governed by the Civil Procedure Code, keeping in view the bar under Sec.15 of the P.P. Act. Admittedly, O.P. has accepted the jural relationship between SMPK and itself that is to say as debtor. In my view a combined reading of the relevant provisions of the Limitation Act read with the provision of the Indian Contract Act leaves no room for doubt that O.P. has specifically acknowledged its dues/charges for occupation into the Port property while acknowledging the jural relationship between the parties as debtor and as such cannot take the plea of time barred claim. The situation in which the Hon'ble Apex Court delivered its judgment has drastically changed upon amendment of the Public Premises Act, 1971 with the introduction of Sec.15 of the Act. The Apex Court delivered its judgment in New Delhi Municipal Corporation case on Public Premises Act 1958 wherein Sec.15 regarding taking away of jurisdiction of all Courts into the matters concerning the public premises was not there. The Public Premises Act 1971 has come into force after eliminating all constitutional infirmities. At the time of the Apex Court judgment, the 1958 Act was in force being the Public Premises (Eviction of Unauthorized Occupants) Act, 1958. This Act gave a choice of procedure to the Government. The fact that a contradictory process could be followed led to repeal of the 1958 Act and enactment of the Public Premise (Eviction of Unauthorized Occupants) Act 1971 which introduced Sec. 15 with the object of making the Act constitutionally valid and not violative of Article 14 of the Constitution of India. The Limitation Act is applicable for Civil Courts to try suits unless barred by some other Act. Sec.9 of the Civil Procedure Code reads as follows:

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SYAMA PRASAD MOOKERJEE PORT
Head Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
21.12.2022

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Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

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

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

The Limitation Act has no application in the proceedings before the Estate Officer which is not a Civil Court, governed by the Civil Procedure Code. Sec. 15 of the Act puts a complete bar on entertaining any matter before the Civil Court in respect of Public Premises. This Forum holds that Limitation Act has no application in the instant case and the Division Bench judgment of Madhya Pradesh High Court has its applicability in all sense of law.

In my understanding, Civil Suits are tried by the Courts as per the Civil Procedure Code and proceedings before this Forum of Law are guided by the P.P. Act which provides a code for adjudication of matters relating to public premises. However, Civil Procedure Code has only a limited application to the proceedings before the Estate Officer in-as-much as that an Estate Officer shall for the purpose of holding an enquiry under the P.P. Act, have the powers as are vested in a Civil Court under the Code of Civil Procedure while trying a suit in respect of

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SYAMA PRASAD MOOKERJEE
12.12.2022
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

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summoning and enforcing attendance of any person and examining him on oath which requires the discovery and production of documents. Section 8 of P.P. Act makes it abundantly clear that an Estate Officer under P.P. Act enjoys a very restricted power of CPC in terms of the Order-XVI, Rules 1 to 21 of the Civil Procedure Code (CPC) and Order- XI, Rule 12 to 21. No doubt the Estate Officer has been given power as vested in a Civil Court under CPC for the limited purpose of holding enquiry under the P.P. Act. Yet it is not a court to be governed by the Civil Procedure Code. As per CPC, the courts shall have jurisdiction to try all suits of a civil nature, excepting suits for which their cognizance is either expressly or impliedly barred.

There is no scope for interpretation with regard to jurisdiction of the Civil Court in respect of the matters specified under P.P. Act against the legislative mandate u/s.15 of the P.P. Act read with Sec.9 of CPC. As it is abundantly clear that Estate Officer, the Adjudicating Authority under the P.P. Act is not a Civil Court to be governed by the Civil Procedure Code, the proceedings before the Estate Officer cannot be considered under law to be a suit or proceedings under the CPC. As such, I am firm in holding that Limitation Act has no application in the instant case. The Division Bench judgment of Madhya Pradesh High Court reported in AIR 1980 MP 196 (D.B) (L.S. Nair -VS- Hindusthan Steel Ltd. & Ors.) has its applicability in all sense of law. In this connection this Forum is fortified by a judgment of the Hon'ble High Court, Calcutta in S.N. BHALOTIS -VS- L.I.C.I. & Ors. reported in 2000(1) CHN 880 with reference to the judgment reported in AIR 1972 Tripura 1 (Hemchandra

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Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

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Charkraborty -Vs- Union of India) wherein it was clearly held that proceedings initiated by an Estate Officer are not in the nature of suit nor the Estate Officer acts as a Court while deciding proceedings before him. It is my considered view that the contention with regard to "limitation" on behalf of O.P. is applicable in case of Civil suit before the Civil Court to be governed by CPC not before this Forum of Law, which is a quasi-judicial authority under P.P. Act which provides a complete code. More specifically, Limitation Act has its application for suits to be governed under CPC. Hence, the issue is decided in favour of SMPK. I am firm in holding that this Forum of Law is very much competent under law to adjudicate the claim of SMPK against O.P. and Limitation Act has no application to the proceedings before the Estate Officer which is a quasi-judicial authority under P.P. Act and neither a Civil Court to be governed by the Civil Procedure Code nor a "court" within the scheme of the Indian Limitation Act. Now on the basis of determination of abovementioned issues, I have no bar to accept the claim of SMPK on account of License fees/rental dues etc. In fact, I have nothing to disbelief in respect of SMPK's claim against O.P. as per statement of accounts maintained regularly in SMPK's office in regular course of business.

It is my considered view that a sum of Rs.24,142/- (Rupees Twenty four thousand one hundred forty two only) for the period from July 2001 to 30th day of April 2002 (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 06.01.2023. Such dues attracts Compound interest @ 7.25 % per annum, which is the current rate of

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12.12.2022
Head Assistant
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Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Appointed by the Central Govt. Under Section 3 of the Public Premises
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Proceeding No.

1697/R

of

2019

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Head Assistant
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Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

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interest as per the Interest Act, 1978 (as gathered 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. The formal order u/s 7 of the Act is signed accordingly. Department is directed to draw up formal order as per Rule u/s 7 of the Act. I make it clear that in the event of failure on the part of O.P. to pay the dues/charges as aforesaid; SMPK is at liberty to recover the License fees/rental dues etc. in accordance with law. All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL

(Sayan Sinha)
ESTATE OFFICER

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
20.12.2022
Head Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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