



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 Kolkata Port Trust's
Fairley Warehouse
6, Fairley Place, Kolkata- 700 001.

REASONED ORDER NO. 23 DT 21.02.2022
PROCEEDINGS NO. 1553 OF 2017

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-

M/s. Kajaria Sons Pvt. 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. Kajaria Sons Pvt. Ltd of 32, Armenian Street, Kolkata-700001 AND
ALSO OF 67/40, Strand Road, Kolkata-700006 is in unauthorized
occupation of the Public Premises specified in the Schedule below:

REASONS

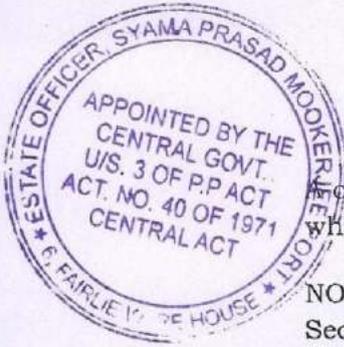
1. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear dues/damages etc. as prayed for on behalf of KoPT.
2. That O.P. has violated the condition of monthly term lease as granted by the Port Authority by way of not making payment of rental dues and taxes to KoPT, for a prolonged period of time.
3. That O.P has parted with possession of the public premises without any authority of law, in facts and circumstances of the case.
4. The O.P or any other person/occupant has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation".
5. That the notice to quit dated 28.06.2006 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties and O.P.'s occupation and that of any other occupant of the premises has become unauthorised in view of Sec.2 (g) of the P.P. Act.
6. That O.P. is liable to pay damages for wrongful use and occupation of the public premises up to the date of handing over the clear, vacant and unencumbered possession to the port authority.

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 22/02/2022
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

PLEASE SEE ON REVERSE



(2)

A copy of the reasoned order No. 23 dated 21.02.2022 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. Kajaria Sons Pvt. Ltd of 32, Armenian Street, Kolkata-700001 AND ALSO OF 67/40, Strand Road, Kolkata-700006** 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. Kajaria Sons Pvt. Ltd of 32, Armenian Street, Kolkata-700001 AND ALSO OF 67/40, Strand Road, Kolkata-700006** 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.

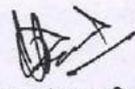
SCHEDULE

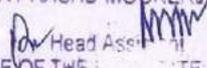
Plate No - SB-195/1/A

The said piece or parcel of land msg. about 339.282 sq.m or thereabouts is situated on the south side of cross Road No.11, Kulpi Ghat in the presidency town of Kolkata. It is bounded on the north by the Cross Road No.11 leading from Strand Road, on the east by the Trustees' land, on the south partly by the Trustees' land and partly by the Trustees' Quarters and on the west by the Trustees' land.

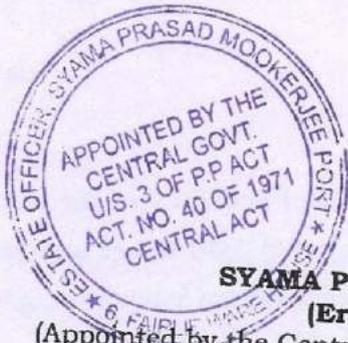
Trustee's means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata).

Dated: 22/02/2022


Signature & Seal of
Estate Officer.

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

Head Ass. 22/02/2022
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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



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

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

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

OFFICE OF THE ESTATE OFFICER

6, Fairley Place (1st Floor)

KOLKATA - 700 001

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

Form " E "

PROCEEDINGS NO.1553/R OF 2017
ORDER NO. 23 DATED: 21.02.2022

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. Kajaria Sons Pvt. Ltd.
32, Armenian Street,
Kolkata-700001

AND ALSO OF
67/40, Strand Road,
Kolkata-700006.

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

AND WHEREAS, by written notice dated 25.05.2017 you are called upon to
show cause on or before 14.06.2017 why an order requiring you to pay a sum
of Rs.95,354/- (Rupees Ninety four Thousand three hundred fifty four only) for
Plate No.SB-195/1/A 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.95,354/- (Rupees Ninety four
Thousand three hundred fifty four only) for the period 1st day September 2005
to 31st day of July 2006 (both days inclusive) to SMP, Kolkata by 10.03.2022

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

22/02/2022

OFFICER
SYAMA PRASAD MOOKERJEE PORT

PLEASE SEE ON REVERSE

: 2 :



In exercise of the powers conferred by Sub-section (2A) of Section 7 of the said Act, I also hereby require you to pay compound interest @ 6.30 % 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 - SB-195/1/A

The said piece or parcel of land msg. about 339.282 sq.m or thereabouts is situated on the south side of cross Road No.11, Kulpi Ghat in the presidency town of Kolkata. It is bounded on the north by the Cross Road No.11 leading from Strand Road, on the east by the Trustees' land, on the south partly by the Trustees' land and partly by the Trustees' Quarters and on the west by the Trustees' land.

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

Dated: 22/02/2022

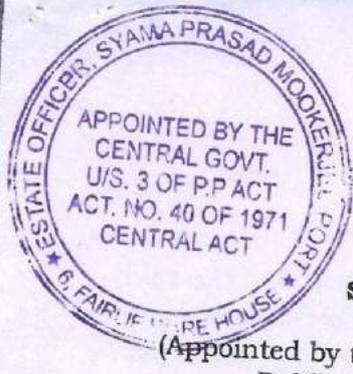
Signature and seal of the
Estate Officer

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

Head Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
22/02/2022

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



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

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

(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)
Public Premises (Eviction of Unauthorised Occupants) Act 1971
OFFICE OF THE ESTATE OFFICER
6, Fairlie Place (1st FLOOR) KOLKATA-700001

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

PROCEEDINGS NO.1553/D OF 2017
ORDER NO. 23 DATED: 21.02.2022

Form- G

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

To

M/s. Kajaria Sons Pvt. Ltd.
32, Armenian Street,
Kolkata-700001
AND ALSO OF
67/40, Strand Road,
Kolkata-700006.

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 22/02/2022
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

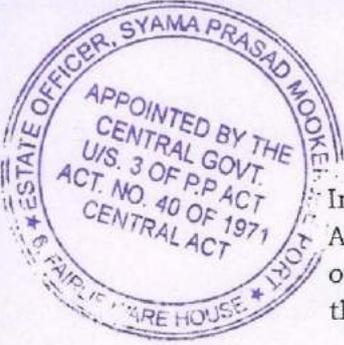
AND WHEREAS by written notice dated 25.05.2017 you are called upon to show cause on or before 14.06.2017 why an order requiring you to pay damages of Rs.40,47,094.38 (Rupees Forty Lakh forty seven thousand ninety four and paise thirty eight Only) for Plate No. SB-195/1/A, together with [compound interest] for unauthorised use and occupation of the said premises, should not be made;

AND WHEREAS I have considered your objections and/or evidence produced before this Forum;

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.40,47,094.38 (Rupees Forty Lakh forty seven thousand ninety four and paise thirty eight Only) assessed by me as damages on account of your unauthorised occupation of the premises for the period from 01.08.2006 to 31.03.2017 (both days inclusive) to SMP, Kolkata by 10.03.2022.

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 @ 6.30 % 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

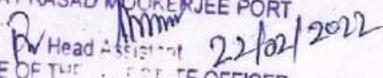
Plate No - SB-195/1/A

The said piece or parcel of land msg. about 339.282 sq.m or thereabouts is situated on the south side of cross Road No.11, Kulpi Ghat in the presidency town of Kolkata. It is bounded on the north by the Cross Road No.11 leading from Strand Road, on the east by the Trustees' land, on the south partly by the Trustees' land and partly by the Trustees' Quarters and on the west by the Trustees' land.

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

Date 22/02/2022


Signature & Seal of the
Estate Officer.

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

PW Head Assistant 22/02/2022
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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



Proceedings No. 1553, 1553/R/1553/D of 2017 Order Sheet No. 18

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S. KAJARIA SONS PVT. LTD.

23

21.02.2022

FINAL ORDER

The instant Proceeding No.1553, 1553/R, 1553/D of 2017 is taken up today for final disposal. It is the case of Syama Prasad Mookerjee Port, Kolkata [erstwhile Kolkata Port Trust], hereinafter referred to as KoPT, applicant herein, that **M/s Kajaria Sons Pvt. Ltd, O.P.** herein, came into occupation of KoPT's land measuring about 339.282sq.m or thereabouts situated on the South Side of Cross Road No.11, KulpiGhat in the presidency town of Kolkata, comprised under **Plate No.SB-195/1/A**, being the Public Premises in question, as a monthly term lessee on certain terms and conditions and O.P. has neglected to pay rent, taxes and other charges of KoPT and also parted with possession of said premises unauthorisedly in violation term of such tenancy. It is strongly argued on behalf of KoPT that the O.P. has no authority under law to occupy the said public premises after expiry of the period as mentioned in the Quit Notice being No Lnd.5/48/06/4015 dated 28.06.2006 and the O.P. is liable to pay compensation/ mesne profit etc for wrongful use and occupation of the Port property upto the date of handing over of vacant possession of the same.

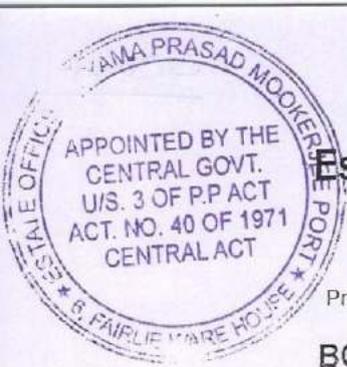
It is placed on record that a Title Suit (being No.1035 of 2017) has been preferred by O.P. and the same is pending before the City Civil Court, Kolkata however, in spite of a specific order of the Forum dated 21.08.2017, neither of the parties have clearly apprised this Forum about the status of the above referred suit. Therefore, it may be presumed that there is no order of stay at present. Such being the case, I am going to dispose of the instant matter today.

This Forum issued Show Cause notice under Section 4 of the Act (for adjudication of the prayer for issuance of Order of Eviction etc.) and Show Cause Notice/s under 7 of the Act (for adjudication of the prayer for recovery of rental dues, damages, interest etc) all dated 25.05.2017 (vide Order No.3 dated 25.05.2017).

The said notice was served through Speed Post as well as by hand delivery to the recorded address of O.P. at 32, Armenian Street, Kolkata-700001 and also to 67/40, Strand Road, Kolkata- 700006. It appears from record that said Notice/s sent to the above recorded address of

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

22/02/2022



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. 1553, 1553/RN/ISSAD of 2017 Order Sheet No. 19

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S. KAJARIA SONS PVT. LTD.

23

21.02.2022

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]
22/02/2022
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

O.P was not returned back. However, the report of the Process Server dated 06.06.2017 depicts that the copy of the said Notice was served upon O.P personally and affixation was duly made on the subject premises on the same day at about 2:10 P.M as per the mandate of the P.P Act.

Thereafter on 14.06.2017 i.e. on the Schedule date of appearance and filing of reply to the Show Cause Notice/s, O.P's application for adjournment dated 13.06.2017 attracted the attention of the Forum. However, allowing the prayer of O.P, Forum gave them direction to file their reply without any further delay but on 07.07.2017 the Ld' Advocate of O.P prayed further time to file their reply to the Show Cause. Thereafter on 24.07.2017 Ld' Advocate of O.P finally filed his reply to the Show Cause as duly signed by the authorised Signatory of O.P. along with a Vakalatnama to contest the matter before the Forum. KoPT also filed its comments on the said reply/written objection on 21.08.2017 along with an updated Statement of Accounts to clarify the present dues as on date. I have duly considered the applications of O.P as filed on 24.07.2017, 25.10.2017 and 08.06.2018. After due consideration of the submissions/arguments made on behalf of the parties, I find that following issues have come up for my adjudication/decision:

- I. Whether the petition of KoPT is maintainable or not;
- II. Whether the Communication letter addressed to the Secretary Jagannath Ghat Cross Road Tenant Association by the Estate Manager, Murshidabad Estate, Judicial Department, Govt of West Bengal has any bearing to the facts and circumstances of the present matter or not;
- III. Whether O.P. has defaulted in making payment of rental dues to KoPT, or not;
- IV. Whether O.P has parted with possession unauthorisedly, or not;
- V. Whether KoPT's notice dated 28.06.2006 as issued to O.P., demanding possession from O.P. is valid and lawful or not;

[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. 1533, 1553/RA/ISS/01 2017 Order Sheet No. 20

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S. KATARIA SONS PVT. LTD.



23

21.02.2022

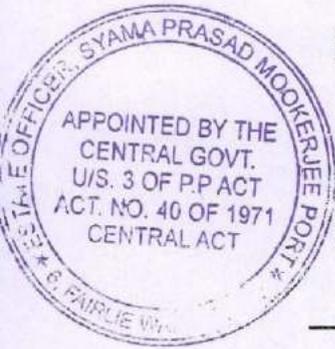
VI. Whether after alleged expiry of such Quit Notice O.P.'s occupation could be termed as "unauthorised occupation" in view of Sec.2 (g) of the P.P. Act and whether O.P. is liable to pay damages to KoPT during the period of its unauthorised occupation or not;

As regards the **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. KoPT has come up with an application for declaration of representatives of O.P's status as unauthorized occupant in to the public premises with the prayer for order of eviction, recovery of compensation 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 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:

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

[Handwritten signature]

[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. 1553, 1553/K & 1553/D of 2017 Order Sheet No. 21

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S. KAJARIA SONS PVT. LTD.

23

21.02.2022

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

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"In essence the jurisdiction of the Estate Officer in initiating the said proceedings and/or continuance thereof is under challenge. In fact, the jurisdiction of the Estate Officer either to initiate such proceedings or to continue the same is not statutorily barred. As such, the proceedings cannot be held to be vitiated due to inherent lack of jurisdiction of the Estate Officer. The bar of jurisdiction, in fact, was questioned because of the interim order of injunction passed in the aforesaid proceedings".

Hon'ble Division Bench of Calcutta High Court had the occasion to decide the jurisdiction of the Estate Officer under P.P. Act in Civil Appellate Jurisdiction being MAT No.2847 of 2007 (The Board of Trustees of the Port of Kolkata and Anr -vs- Vijay Kumar Arya &Ors.) reported in Calcutta Weekly Note 2009 CWN (Vol.113)-P188 The relevant portion of the judgment (Para-24) reads as follows:-

"The legal issue that has arisen is as to the extent of Estate Officer's authority under the said Act of 1971. While it is an attractive argument that it is only upon an occupier at any public premises being found as an unauthorized occupant would he be subject to the Estate Officer's 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 the light of the discussion above it can be said that KoPT has every legal right to initiate this Proceeding before this Forum.

As regards the **issue No. II**, i.e. on the issue of Murshidabad Estate, O.P vide their reply dated 24.07.2017 has submitted that they were requested by

[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. 7553, 1553/RA/1553/d of 2017 Order Sheet No. 22

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
MIS. KAJARIA SONS PVT. LTD.

23

21.02.2022

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

the Estate Manager, Murshidabad Estate not to pay any rent till the property was demarcated and in support of such contention although O.P. has annexed a Copy of Communication Letter (Being No.234/ME/J dated 15.05.2015) with their reply. However, no further documents have been produced by O.P to substantiate their claim. Further, a tenant cannot challenge his land lord's title. Therefore, I am unable to consider the averments of O.P in this regard solely on the basis of that communication Letter as addressed to Jagannath Ghat Cross Road Tenant Association.

As regards the **issue No.III** i.e. on the issue of non-payment of KoPT's rent and taxes, O.P admitted their dues vide their Letter/reply to the Show Cause notice/s dated 24.07.2017. It was the categorical submission of O.P. that they had paid the monthly rent. However, the fact of payment was not disclosed by KoPT. But in my view, such submission of O.P is baseless because they have failed to produce any sufficient documents in support of such contention. Moreover in the said reply to the Show cause and subsequently during the course of hearing O.P never disputed the quantum of dues and has only prayed for instalments and regularisation of their tenancy. Before this Forum, KoPT has filed detailed Statement of Accounts dated 05.04.2017 and a copy of updated Statement of Accounts dated 18.08.2017 which clearly indicates the huge dues on the part of the O.P. There is no reason to disbelieve such submission of the statutory authority like KoPT kept in its regular course of business. Moreover, O.P's plea that they never had any intention to pay the monthly rent etc. does not seem to have any justification in this juncture because such statement do not come to the protection of O.P. at all. 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 suffer 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



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. 1553, 1553/R A 1553/201 2017 Order Sheet No. 23

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S KAJARIA SOINS PVT. LTD.

23

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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 KoPT'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.

As regards the **issue No. IV**, i.e. on the issue of unauthorised parting with possession, although O.P. has not specifically submitted anything in their reply/written Objection but during the course of hearing they have verbally claimed that they have never parted with possession of the subject premises to any third party. In my view, such claim of O.P is not sufficient to defend this type of serious allegation such as unauthorised parting with possession. The O.P could have very well produced documents related to their trade or business from that premises but O.P chose to produce nothing. Even O.P did not produce any single photographic evidence to counter the allegation of KoPT. Moreover, it is seen that vide their Letter dated 27.02.2014 addressing the Estate Manager, unauthorised occupiers have admitted that they have been inducted by O.P as unauthorised subtenant. This induction of a third party without the approval of KoPT is also against the spirit of tenancy. Therefore, this issue is also decided in favour of KoPT.

Issues V and VI are taken up together, as the Issues are related with each other. On evaluation of the factual aspects involved in this matter, the logical conclusion which could be arrived at is that KoPT's notice dated 28.06.2006 as issued to O.P., demanding possession of port property from O.P. is valid and lawful and binding upon the O.P.As per Section 2 (g) of the Act the "unauthorized occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. The lease granted to O.P. was determined by efflux of time limited thereby and the Port Authority by due service of notice demanded possession from O.P. KoPT's application for

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SYAMA PRASAD MOOKERJEE PORT
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

Proceeding No. 1553, 1553/R/1553/D of 2017 Order Sheet No. 24

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

MIS. KATARIA SONS PVT. LTD.

23

21.02.2022

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

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SYAMA PRASAD MOOKERJEE PORT

Head of Office of the Estate Officer
SYAMA PRASAD MOOKERJEE PORT

21.02.2022

order of eviction is a clear manifestation of Port Authority's intention to get back possession of the premises. In course of hearing, the representative of KoPT submits that O.P. cannot claim its occupation as "authorized" without receiving any rent demand note. The lease was doubtlessly determined by KoPT's notice demanding possession, whose validity for the purpose of deciding the question of law cannot be questioned by O.P. Therefore, there cannot be any doubt that the O.P. was in unauthorized occupation of the premises, In such a situation, I have no bar to accept KoPT's contentions regarding enforceability of the notice dated 28.06.2006, on evaluation of the facts and circumstances of the case. With this observation, I must reiterate that the notice to quit, demanding possession from O.P. as stated above 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. As per law O.P. is bound to deliver up vacant and peaceful possession of the public premises in its original condition to KoPT after expiry of the period as mentioned in the notice to quit.

"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 determination of lease by way of Quit Notice, O.P. has lost its authority to occupy the public premises and O.P. is liable to pay damages for such unauthorized use and occupation. To come into such conclusion, I am fortified by the decision/observation of the Hon'ble Supreme Court in Civil Appeal No.7988 of 2004, decided on 10th December 2004, reported (2005)1 SCC 705, para-11 of the said judgment reads as follows.

Para:11-" under the general law, and in cases where the tenancy is governed only by the provisions of the Transfer of Property Act 1882, once the tenancy comes to an end by determination of lease u/s.111 of the Transfer of Property Act, the right of the tenant to continue in possession of the premises comes to an end and for any period thereafter, for which he continues to occupy the premises, he becomes liable to pay damages for use and occupation at the rate at which the landlord would have let out the premises on being vacated by the tenant.



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. 1558, 1559/R/1553/D of 2017 Order Sheet No. 25

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S. KAJARIA SONS PVT. LTD.

23

21.02.2022

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

CERTIFIED COPY OF THE ORDER
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SYAMA PRASAD MOOKERJEE PORT

[Signature]
Head Assistant 22/2/2022
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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The Port Authority has a definite legitimate claim to get its revenue involved into this matter as per the KoPT's Schedule of Rent Charges for the relevant period and O.P. cannot claim continuance of its occupation as "authorized occupation" without making payment of requisite charges. I am fortified by the Apex Court judgment reported in JT 2006 (4) Sc 277 (Sarup Singh Gupta -vs- Jagdish Singh &Ors.) wherein it has been clearly observed that in the event of termination of lease the practice followed by Courts is to permit landlord to receive each month by way of compensation for use and occupation of the premises, an amount equal to the monthly rent payable by the tenant. In my view, the case in hand is very much relevant for the purpose of determination of damages upon the guiding principle as laid down by the Hon'ble Apex Court in the above case. In course of hearing, it is submitted on behalf of KoPT that the charges claimed on account of damages is on the basis of the KoPT'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. Recently the Act of 1963 has been replaced by the Major Port Authorities Act, 2021 as it received the assent of the President of India on 17.02.2021. As per the earlier Act of 1963, the Tariff Authority for Major Ports (TAMP) fixes the scale of rates for assets and services available at ports. Under the new law, the Board or committees appointed by the Board will determine these scale of rates for the usage of the port assets etc. As per Section 54 of the Act of 2021 the Central Government shall, by notification, constitute, with effect from such date as may be specified therein, a Board to be known as the Adjudicatory Board to exercise the jurisdiction, powers and authority conferred on such Adjudicatory Board by or under this Act, provided that until the constitution of the Adjudicatory Board, the Tariff Authority for Major Ports constituted under section 47A of the Major Port Trusts Act, 1963 shall discharge the functions of the Adjudicatory Board under this Act and shall cease to exist immediately after the constitution of the Adjudicatory Board under this Act: Provided further that on and from the date of constitution of the Adjudicatory

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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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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S. KAJARIA SONS PVT. LTD.

21.02.2022

By Order of:
**THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT**
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SYAMA PRASAD MOOKERJEE PORT
Head Assistant 21/02/2022
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Board— (a) all the assets and liabilities of the Tariff Authority for Major Ports shall stand transferred to, and vested in, the Adjudicatory Board. In view of the above, I have no hesitation in mind that the Schedule of Rent Charges of the Tariff Authority for Major Ports (TAMP) has statutory force of law at present. In my view, such claim of charges for damages by KoPT is based on sound reasoning and should be acceptable by this Forum of Law.

O.P. failed to substantiate as to how its occupation could be termed as "authorised" in view of Sec. 2(g) of the P.P Act, after expiry of the period as mentioned in the KoPT's notice dated 28.06.2006, demanding possession from O.P. I have no hesitation to observe that O.P.'s act in continuing occupation after expiry and determination of the lease is unauthorized and O.P. is liable to pay damages for unauthorized use and occupation of the Port property in question upto the date of delivering vacant, unencumbered and peaceful possession to KoPT. The Issues VI and VII are thus decided in favour of KoPT.

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

1. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear dues/damages etc. as prayed for on behalf of KoPT.
2. That O.P. has violated the condition of monthly term lease as granted by the Port Authority by way of not making payment of rental dues and taxes to KoPT, for a prolonged period of time.
3. That O.P. has parted with possession of the public premises without any authority of law, in facts and circumstances of the case.
4. The O.P. or any other person/occupant has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation".
5. That the notice to quit dated 28.06.2006 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties and O.P.'s occupation

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Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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



Proceedings No. 1533, 1553/R/1553/A of 2017 Order Sheet No. 27

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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and that of any other occupant of the premises has become unauthorised in view of Sec.2 (g) of the P.P. Act.

6. That O.P. is liable to pay damages for wrongful use and occupation of the public premises up to the date of handing over the clear, vacant and unencumbered possession to the port authority.

ACCORDINGLY, I sign the formal order of eviction u/s 5 of the Act as per Rule made there under, giving 15 days time to O.P. and any person/s whoever may be in occupation to vacate the premises. I make it clear that all person/s whoever may be in occupation are liable to be evicted by this order and the Port Authority is entitled to claim damages for unauthorized use and enjoyment of the property against O.P. in accordance with Law up to the date of recovery of possession of the same. KoPT 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.95,354/- (Ninety Five Thousand three hundred fifty four only) for the period 01.09.2005 to 31.07.2006 (both days inclusive) is due and recoverable from O.P. by the Port authority on account of rental dues and O.P. must have to pay the rental dues to KoPT on or before 10.03.2022. Such dues attract compound interest @ 6.30 % per annum, which is the current rate of interest as per the Interest Act, 1978 (as gathered by me from the official website of the State Bank of India) from the date of incurrance of liability, till the liquidation of the same, as per the adjustment of payments, if any made so far by O.P., in terms of KoPT's books of accounts.

Likewise, I find that KoPT 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 40,47,094.38 (Forty Lakh forty seven thousand ninety four and paisa Thirty Eight only) as claimed by the Port

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Head of 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

Proceedings No. 1553, 1553/R NISSC/D of 2017

Order Sheet No. 28

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/S. KAJARIA SONS PVT. LTD.
VS

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Authority as damages in relation to the subject premises in question, is correctly payable by O.P. for the period 01.08.2006 to 31.03.2017 (both days inclusive) and it is hereby ordered that O.P. shall also make payment of the aforesaid sum to KoPT by ~~10.03.2022~~ 10.03.2022. The said damages shall attract compound interest @ 6.30 % 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 KoPT's books of accounts. I sign the formal orders u/s 7 of the Act.

I make it clear that KoPT 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, and as such the liability of O.P. to pay damages extends beyond 31.03.2017 as well, till such time the possession of the premises continues to be under the unauthorised occupation with the O.P. KoPT is directed to submit a statement comprising details of its calculation of damages after 31.03.2017, 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.

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


(Kausik Kumar Manna)
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

By Hand 
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

22/02/2022

