



O/c

REGISTERED POST WITH A/D
HAND DELIVERY
AFFIXATION ON PROPERTY

ESTATE OFFICER,
SYAMA PRASAD MOOKERJEE PORT, KOLKATA (SMP, KOLKATA)
(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971- Central Act.)
The Public Premises (Eviction of Unauthorised Occupants) Act 1971
OFFICE OF THE ESTATE OFFICER
6, Fairlie, 1st Floor
Kolkata - 700 001

Court Room at the 1st Floor
of Kolkata Port Trust's
Legal Division, Head Office,
15, Strand Road, Kolkata-700 001

PROCEEDINGS No.664/R & 665/R of 2004
REASONED ORDER No.46 & 48 DATED: 16.03.2022

FORM-"E"

Form of Order under Sub-Section (1) and (2A) of Section 7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971

To
The Military Estate Officer and or/
The Defence Estate Officer,
Calcutta Circle,
Office of the MEO, Calcutta Circle,
13, Camac Street (6th Floor),
Calcutta-700 017

4785-4785

AND ALSO

The Officer Commanding, 218, Pet Cont. Unit ASC Type 'B'
Hastings, Calcutta - 700 022.

4786

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

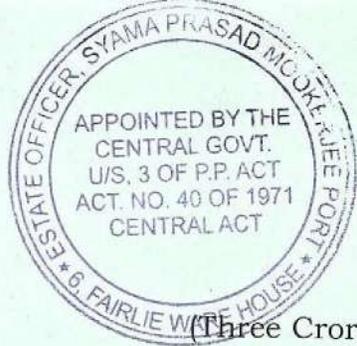
AND WHEREAS by written notice dated 27.01.2005 you were called upon to show cause on/or before 24.02.2005 why an order requiring you to pay damages of Rs.4,65,97,167.74 (Four Crores Sixty-Five Lakhs Ninety-Seven Thousand One Hundred Sixty-Seven and Seventy-Four paisa) for Plate No BB-87 and Rs. 3,65,90,775.51 (Three Crores Sixty-Five Lakhs Ninety Thousand Seven Hundred Seventy-Five and Fifty-One paisa) for Plate No.BB-88, being the rent payable together with compound interest in respect of the said premises should not be made.

AND WHEREAS you have not made any objections or produced any evidence before the said date.

NOW THEREFORE, in exercise of the powers conferred on me by Sub-section (1) of Section 7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby require you to pay the sum of Rs.4,65,97,167.74 (Four Crores Sixty-Five Lakhs Ninety-Seven Thousand One Hundred Sixty-Seven and Seventy-Four paisa) (including rent from the period 01.01.1973 to 19.02.2002, compensation from the period 20.02.2002 to 06.09.2005 and interest as on date) for Plate No BB-87 and Rs. 3,65,90,775.51

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Please see on Reverse



// 2 //

(Three Crores Sixty-Five Lakhs Ninety Thousand Seven Hundred Seventy-Five and Fifty-One paise) (including rent from the period 03.07.1975 to 19.02.2002, compensation from 20.02.2002 to 06.09.2005 and interest as on date) for Plate No.BB-88 for the said period (both days inclusive) to Kolkata Port Trust by 04.04.2022.

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, which is the current rate of interest as per the Interest Act, 1978 (as gathered from the official website of State Bank of India) from the date of incurrence of liability till its final payment in accordance with Kolkata Port Trust's Notification published in official Gazette/s.

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.

A copy of the reasoned order No.46 & 48 dated 16.03.2022 is attached herewith.

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.BB-87

The said piece or parcel of land measuring about 6054.86Sq.m. is situated at Budge Budge, Police Station-WPPS, Dist-24 Parganas(S). It is bounded on the North by their Foreshore Road, on the South by the Trustees' Rly. Line and partly by the land licensed to S.K. Oil Co. and partly by the land transferred to Govt. of West Bengal for construction of Coma Gata Memorial, on the East by the Trustees' vacant land, on the West by the N.S. Road.

Plate No.BB-88

The said godown measuring about 2605.28 sq.mts.is situated at Budge Budge, Police Station-WPPS, dist-24 Parganas (S). It is bounded on the North, South, East and West by the Trustees' land leased to Military Estate Officer.

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

Dated: 17/03/22

Signature & Seal of the Estate Officer
16/03/2022

COPY FORWARDED TO THE ESTATE MANAGER (I/C)/CHIEF LAW OFFICER, SYAMA PRASAD MOOKERJEE PORT, KOLKATA,(ERSTWHILE BOARD OF TRUSTEES' FOR THE PORT OF 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

APPOINTED BY THE CENTRAL GOVT.

ACT. NO. 40 OF 1971

Of 2004 Order Sheet No. 49

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

MILITARY ESTATE OFFICER & THE DEFENCE ESTATE OFFICER

FINAL ORDER

For the sake of brevity and convenience, the Proceeding No.664/R of 2004 and Proceeding No.665/R of 2004, both are taken up together.

The instant proceedings number 664/R, and 665/R of 2004 both arises out of the application bearing no. Lnd. 4435/III/21/3197 dated 07.09.2021 filed by Syama Prasad Mookerjee Port, hereinafter referred to as SMP, Kolkata, (erstwhile known as Kolkata Port Trust), the applicant herein, praying for an order of recovery of the total outstanding dues, and other charges, etc. along with accrued interest, in respect of the public premises as defined in the Schedule of the said application, against M/s. MILITARY ESTATE OFFICER DEFENCE ESTATE OFFICER, the O.P. herein, under relevant provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

The **factual** matrix of the case is required to be put forward in a nutshell to link up the chain of events leading to this proceeding no. 664/R, and 665/R of 2004, within the four corners of PP Act, 1971, as revealed under point-wise in a chronological order.

- 1) In the course of hearing, it was submitted by SMP, Kolkata that O.P. was allotted land (godown) msg.2605.28Sq.m. or thereabouts comprised under Plate No.BB-88, situated at Budge Budge, Police Station-W.P.P.S.,Dist-24 pgs (S) and another land msg. 6054.86 Sq.mor thereabouts comprised under Plate No.BB-87, situated at Budge Budge, Police Station-W.P.P.S.,Dist-24 pgs (S) and a huge sum of money was recoverable from O.P. in respect of O.P.'s occupation into the public premises and failure on the part of O.P. to pay the rental dues to SMP. This had given rise to the cause of action on the part of SMP for the proceeding under the said Act. It was strongly argued by SMP, Kolkata, that O.P. had no authority to occupy the public premises after the Notice of Ejectment dated 28.01.2002.
- 2) On careful consideration and the submission as put forward by SMP, Kolkata, this Ld. Forum found out that SMP had made a strong case to proceed against O.P. under the relevant provisions of the Act and

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

48
16/03/2022

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. 665, 665/R, Of 2004 Order Sheet No. 50

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

THE MILITARY ESTATE OFFICER & THE DEFENCE ESTATE OFFICER

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16/03/2022

Rules thereunder. Therefore, this Forum of law formed its opinion to proceed against O.P. under the relevant provisions of the Act and Rules and issued Show Cause Notice u/s-4 of the Act dated 27.01.2005 and Notice u/s-7 of the Act dated 27.01.2005, and directed O.P. to appear before this Ld. Forum by 24.02.2005 for production of documents, evidence, hearing, etc.

3) During the course of hearing, O.P. submitted that rental dues at the old rate stands paid upto 2002 and the Army Authority has objection to the Port's Authority proposal for enhancement of rental charges with retrospective effect. In reply to this, SMP, Kolkata submitted that rent charges as claimed against O.P. are statutory in nature on the strength of Schedule of Rent Charges as notified time to time under due process of Law. O.P. further submitted vide application No.001921/34/Q/Q3 dated March, 2005, that certain temporary sheds as constructed by them would be demolished and they are willing to hand over the public premises in question to the Port Authority by 31.03.2005. Under this situation, this Ld. Forum was of the opinion that as the property/possession would be handed over to the Port Authority there will be no justification to proceed against O.P. u/s-4 of the Act. However, the possession of the property in question was delivered by the Army Authority to SMP, Kolkata mutually on 06/09/2005. However Vide Order No.7 dated 05.04.2005, this Ld. Forum directed the Army Authority for early liquidation of the dues/charges for occupation into the Port property.

4) In the meantime the matter was again taken up by this Ld. Forum on being mentioned by SMP, Kolkata, for recovery of their outstanding dues/charges as payable by O.P. as reflected from Orders No.8 & 9 dated 11.09.2012 and 19.09.2012 respectively. O.P. was directed to appear before this Ld. Forum, but it filed an application and prayed for time to file reply to the Show Cause Notice/s and for reconciliation work of the respective books of accounts. On accepting this prayer, O.P. then filed an application dated 26/02/2014, and another one on 09/07/2021 stating that the application filed by SMP, Kolkata is not at all

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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SYAMA PRASAD MOOKERJEE PORT

[Signature] 17/03/22
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

[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. 225 of 2004 Of 2004 Order Sheet No. 51
U/S 3 OF PP ACT
ACT. NO. 48 OF 1971
CENTRAL ACT

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

THE LANDLORDS ESTATE OFFICER & THE DEFENCE ESTATE OFFICER

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16/03/2022

maintainable, since the Central Government or any of its departments do not fall within the ambit of the term "unauthorized occupation as defined under the provisions of the Public Premises" and further submitted that the disputes between two Government organizations should be resolved amicably and public spat in this regard is completely undesirable. In reply to this, representatives of SMP, Kolkata submitted an application No.Lnd.4435/III/14/3571 dated 25.03.2014 stating that as per Section 2(g) of the PP Act, 1971, it decides the question of liability as the tenancy of the Army Authority had been determined by the Port Authority by the due service of Ejectment Notice, and further stated that this Ld. Forum is only competent to decide the question of rights and liability of the parties in respect of public premises in question in view of Section 15 of the PP Act, 1971, citing certain case laws, such as O.N.G.C, where the Hon'ble Apex Court of India has been revised by the Hon'ble Apex Court itself by recalling the earlier orders passed to this effect in civil Appeal No.1183 of 2011 (Electronics Corporation of India Ltd. -vs- Union of India &Ors.) by judgment and Order dated 17.02.2011. Representatives of SMP, Kolkata on one hearing also verbally stated in relation to the above issue, that a High Power Committee was formed in the past for resolution of disputes between the different Government Organizations and/or departments, however such efforts have failed and the parties are left with no other alternatives apart from seeking redressal of their grievances before this Ld. Forum.

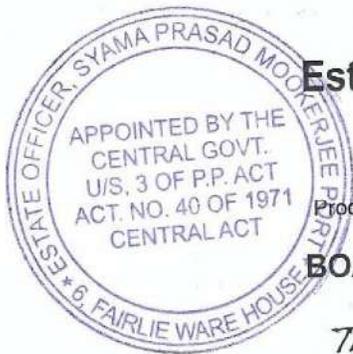
- 5) After due consideration of the submissions/arguments made on behalf of the parties, I find that following issues have come up for my adjudication/decision:-
- (i) Whether the petition of SMP, Kolkata is maintainable or not;
 - (ii) Whether the Central Government or any of its Departments do fall within the ambit of the term "unauthorized occupation";

Issues Nos. (i) & (ii) are taken up together for convenient discussion. In this regard, I must say that the properties owned and controlled by the Port Authority has been declared as "Public Premises" by

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17/03/22
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

[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. 665, 665/R, Of 2004 Order Sheet No. 52

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
THE MILITARY ESTATE OFFICER & THE DEFENCE ESTATE OFFICER

48
16/03/2022

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
17/03/22
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and Section-15 of the Act puts a complete bar on the 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. SMP, Kolkata had come up with an application for declaration of representatives of O.P.'s status as unauthorized occupants into the public premises with the prayer of eviction, recovery of compensation etc. 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, a proceeding 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 Port of Calcutta) wherein it has been observed specifically, that the Estate Officer shall have jurisdiction to proceed with the manner 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, 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 PP Act in Civil Appellate Jurisdiction being MAT No.2847 of 2007 (The Board Of Trustees' 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. 665, 665/R, Of 2004 Order Sheet No. 53

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA
VS
MILITARY ESTATE OFFICER & THE DEFENCE ESTATE OFFICER

the Port of Kolkata and Anr -vs- Vijay Kumar Arya & Ors.) reported in Calcutta Weekly Note 2009 CWN (Vol.113)-P-188. 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 the purpose 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 discussions above, it can be said that SMP, Kolkata has every legal right to initiate this Proceeding before this Forum.

- 6) During the course of exhaustive hearing, SMP, Kolkata submitted that despite several chances/opportunities being given to O.P. by this Ld. Forum, (vide Orders dated 03.03.2020, 17.03.2020, 21.09.2020, 29.09.2020, 07.10.2020, 19.10.2020, 10.11.2020, 01.12.2020, 06.01.2021, 10.02.2021, 07.04.2021, 06.07.2021, 19.01.2022, 27.01.2022), O.P. did not come forward for any reconciliation of accounts. Several communication were also given to O.P. from SMP, Kolkata, requesting O.P. for reconciliation, one such application which proves this statement of SMP and also draws my attention is letter No.Lnd.4435/III/20/2361 dated 03/11/2020. Hence, I am also left with no other alternatives than to rely on to the submissions of SMP, Kolkata, because as seen from the earlier records it is found that several directions were passed by this Ld. Forum about reconciliation of Books of Accounts. Hence, it can be said that no rights have been taken away from

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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SYAMA PRASAD MOOKERJEE PORT
17/03/22
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

Proceedings No. 665/R, Of 2004 Order Sheet No. 54

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
THE MILITARY ESTATE OFFICER & THE DEFENCE ESTATE OFFICER

O.P. and all the points were left open for discussion and nothing had been done behind the back of O.P.

- 7) Thereafter, several dates since 23.12.2020 were given with a direction upon O.P. to appear before this Forum for any submission/hearing etc., or reconciliation of the Accounts, but no further response was filed on behalf of O.P., other than letter dated 09/07/2021, which states the same grounds as mentioned in points 5(i) & (ii) of this Final Order. As such I have no bar to accept the claim of SMP on account of rental dues, damages etc. as per statement of accounts maintained regularly in SMP's office in regular course of business.
- 8) Now in view of the spirit as laid down in the Public Premises Act, 1971 for speedy and summary disposal of the case and further considering the continuous non-appearance of O.P. inspite of sufficient opportunities being given and after exhaustion of all available means of service, this Ld. Forum finds no need to keep the matter pending and Final Order was reserved in this matter on 21.02.2022. Now this Ld. Forum has decided to adjudicate the matter ex-parte.
- 9) As no one from O.P. had appeared, since 2020 and nothing had been filed in view of reconciliation, I have no bar to accept the claim of SMP, Kolkata on account of rental dues etc. In fact, in absence of any credible rebuttal by O.P., I have nothing to disbelief in respect of claim of SMP, Kolkata against O.P. as per statement of accounts maintained regularly in SMP, Kolkata's office in regular course of business.
- 10) It is my considered view that a sum of Rs. 4,65,97,167.74 (Four Crores Sixty-Five Lakhs Ninety-Seven Thousand One Hundred Sixty-Seven and Seventy-Four paisa) for Plate No BB-87 and Rs. 3,65,90,775.51 (Three Crores Sixty-Five Lakhs Ninety Thousand Seven Hundred Seventy-Five and Fifty-One paisa) for Plate No. BB-88, in question is due and recoverable from O.P. by the Port Authority on account of damages and O.P. must have to pay such dues to SMP, Kolkata on or before 04.04.2022. Such dues would attract compound interest @ of 6.30% per

By Order of:
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17/03/22
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

J. Prasad

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. 665, 665/R, 2004 Of 2004 Order Sheet No. 55

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

THE MILITARY ESTATE OFFICER & THE DEFENCE ESTATE OFFICER

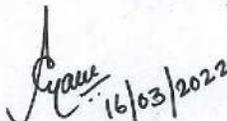
16/03/2022

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 SMP, Kolkata's books of accounts.

I sign the formal order u/s-7of the Act. Department is directed to draw up final 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; Port Authority is at liberty to recover the dues, etc. in accordance with law.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL.


(NARGIS YEASMEEN)
ESTATE OFFICER

*** ALL EXHIBITS AND DOCUMENTS ARE REQUIRED TO BE TAKEN BACK WITHIN ONE MONTH FROM THE DATE OF PASSING OF HIS 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
17/03/22
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT