

SCAN

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HAND DELIVERY  
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**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 1<sup>st</sup> Floor  
of Kolkata Port Trust's  
Fairley Warehouse  
6, Fairley Place, Kolkata- 700 001.

REASONED ORDER NO. 41 DT 10.06.2022  
PROCEEDINGS NO. 1544 OF 2017

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

**Syama Prasad Mookerjee Port, Kolkata  
(Erstwhile BOARD OF TRUSTEES OF THE PORT OF KOLKATA)**

-Vs-  
**M/s B.R Herman & Mohatta(India) Pvt. Ltd (O.P)**

**F O R M - "B"**

CERTIFIED COPY OF THE ORDER  
PASSED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
*[Signature]*  
OFFICE OF THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

**ORDER UNDER SUB-SECTION (1) OF SECTION 5 OF THE PUBLIC  
PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971**

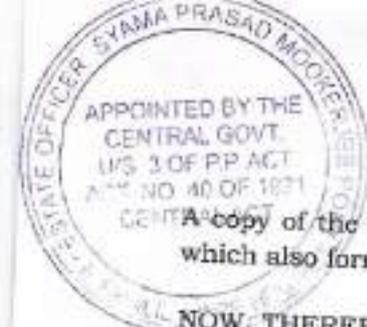
WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that **M/s B.R Herman & Mohatta(India) Pvt. Ltd of 19, British Indian Street, Kolkata-700001 AND Mustafa Building Jash Chamber, Sri P.M Road Fort City Mumbai, Maharashtra India, Mumbai - 400001 Fax.91-22-22664444 AND ALSO AT 109/2, Foreshore Road, Shibpur, Howrah** 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 SMPK and the Notice/s issued by this Forum are in conformity with the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act 1971.
2. That in gross violation of the terms and conditions of the subject lease, O.P has defaulted in making payment the dues/damages and taxes payable to SMPK.
3. That O.P. have unauthorisedly parted with possession of the Public Premises and failed to vacate the premises upon determination of the period as mentioned in the notice to quit dated 12.03.1970 read with vacation notice dated 19.05.2014 as issued by the Port Authority.
4. That O.P. cannot take the plea of time barred claim by SMPK, taking the shield of Limitation Act.
5. That O.P's contention regarding vacating of the premises is not supported by law.
6. That A.P. has got no right to hold the property after determination of lease (which was granted by the Port Authority in favour of O.P.) by service of notice to quit dated 12.03.1970 read with vacation Notice dated.
7. That O.P. cannot take the plea of res judicata to defeat the claim of SMPK.
8. That no case has been made out on behalf of O.P. as to how its occupation in the Public Premises could be termed as "authorised occupation" after issuance of notice dated 12.03.1970 read with vacation Notice dated 19.05.2014, demanding possession by the Port Authority.
9. That O.P. has failed to bear any witness or adduce any evidence in support of their contention regarding "authorised occupation" and O.P's occupation has become unauthorized 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

*[Handwritten mark]*



(2)

A copy of the reasoned order No. 41 dated 10.06.2022 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 B.R Herman & Mohatta(India) Pvt. Ltd of 19, British Indian Street, Kolkata-700001 AND Mustafa Building Jash Chamber, Sri P.M Road Fort City Mumbai, Maharashtra India, Mumbai - 400001 Fax.91-22-22664444 AND ALSO AT 109/2, Foreshore Road, Shibpur, Howrah** 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 B.R Herman & Mohatta(India) Pvt. Ltd of 19, British Indian Street, Kolkata-700001 AND Mustafa Building Jash Chamber, Sri P.M Road Fort City Mumbai, Maharashtra India, Mumbai - 400001 Fax.91-22-22664444 AND ALSO AT 109/2, Foreshore Road, Shibpur, Howrah** 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: HB-31, HB-33, HL-250/1, HL-250/2 & HL-250/3**

Trustees' land msg. about 7028.35 Sq.m which is bounded on the **North:** partly strip of open land and partly Trustees' land allotted to Bengal Jute Mill Co Ltd. And other different tenants, on the **East:** River Hooghly, on the **South:** Strip of open land used as Road alongside Trustees Land allotted to CESC Ltd and Bengal Jute Mills Spur & on the **West:** partly strip of open land used as road partly strip of open land alongside Foreshore Road.

Trustees' godown msg. about 2935.37 Sq.m. which is bounded on the **North:** by Trustees' land allotted to M/s. B.R Herman & Mohta(India) Pvt. Ltd, on the **East:** Trustees' land allotted to M/s. B.R Herman & Mohta(India) Pvt. Ltd, on the **South:** strip of open land used as road & on the **West:** Trustees' land land allotted to M/s. B.R Herman & Mohta(India) Pvt. Ltd.

Trustees Goomty msg. about 10.962Sq.m. which is bounded on the **North:** by partly Trustees' land allotted to Bengal Jute Mills Co. Ltd and partly Trustees strip of open land alongside Foreshore Roads, on the **East:** Trustees land allotted to Bengal Jute Mills Co. Ltd, on the **South:** Trustees land allotted to M/s. B.R Herman & Mohta(India) Pvt. Ltd & on the **West:** Strip of open land alongside Foreshore Road.

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

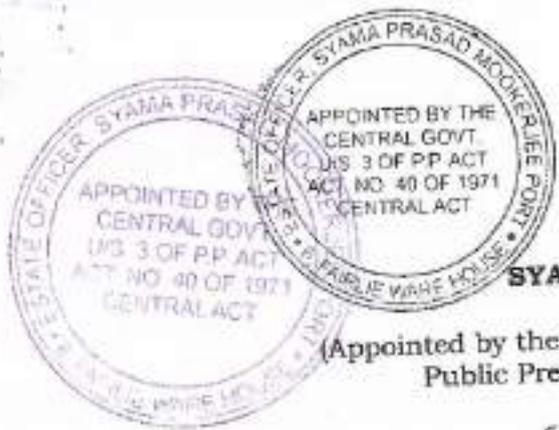
By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

Dated: 13.6.2022

CERTIFIED COPY OF THE ORDER  
PASSED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
MUK. 13/6/22  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

  
Signature & Seal of  
Estate Officer.

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 1<sup>st</sup> Floor  
Of Kolkata Port Trust's  
Fairlie Warehouse  
6, Fairlie Place, Kolkata- 700 001.

PROCEEDINGS NO.1544/D OF 2017  
ORDER NO.41 DATED: 10.06.2022.

**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 B.R Herman & Mohatta(India) Pvt Ltd.  
19, British Indian Street, Kolkata-700001

**AND**

Mustafa Building Jash Chamber,  
Sri P.M Road Fort City Mumbai, Maharashtra India,  
Mumbai - 400001 Fax:91-22-22664444

**AND ALSO AT**

109/2, Foreshore Road, Shibpur, Howrah.

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

CERTIFIED COPY OF THE ORDER  
FORWARDED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
*[Signature]*  
Mook Assistant  
OFFICE OF THE LD. 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:

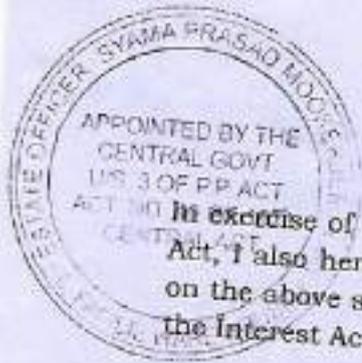
AND WHEREAS by written notice dated 20.03.2017 you are called upon to show cause on or before 10.04.2017 why an order requiring you to pay damages of Rs.3,67,01,838.30 (Rupees Three Crore sixty seven Lakh one thousand eight hundred thirty eight and paise thirty only) together with [compound interest] for unauthorised use and occupation of the said premises, should not be made;

AND WHEREAS I have considered your objections and/or 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.3,67,01,838.30 (Rupees Three Crore sixty seven Lakh one thousand eight hundred thirty eight and paise thirty only) assessed by me as damages on account of your unauthorised occupation of the premises for the period from 01.01.1971 to 31.10.2014 (both days inclusive) to SMPK by 29.06.2022.

PLEASE SEE ON REVERSE

*[Handwritten mark]*



: 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: HB-31, HB-33, HL-250/1, HL-250/2 & HL-250/3**

Trustees' land msg. about 7028.35 Sq.m which is bounded on the **North:** partly strip of open land and partly Trustees' land allotted to Bengal Jute Mill Co Ltd. And other different tenants, on the **East:** River Hooghly, on the **South:** Strip of open land used as Road alongside Trustees Land allotted to CESC Ltd and Bengal Jute Mills Spur & on the **West:** partly strip of open land used as road partly strip of open land alongside Foreshore Road.

Trustees' godown msg. about 2935.37 Sq.m. which is bounded on the **North:** by Trustees' land allotted to M/s. B.R Herman & Mohta(India) Pvt. Ltd, on the **East:** Trustees' land allotted to M/s. B.R Herman & Mohta(India) Pvt. Ltd, on the **South:** strip of open land used as road & on the **West:** Trustees' land land allotted to M/s. B.R Herman & Mohta(India) Pvt. Ltd.

Trustees Goomty msg. about 10.962Sq.m. which is bounded on the **North:** by partly Trustees' land allotted to Bengal Jute Mills Co. Ltd and partly Trustees strip of open land alongside Foreshore Roads, on the **East:** Trustees land allotted to Bengal Jute Mills Co. Ltd, on the **South:** Trustees land allotted to M/s. B.R Herman & Mohta(India) Pvt. Ltd & on the **West:** Strip of open land alongside Foreshore Road.

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

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

CERTIFIED COPY OF THE ORDER  
MADE BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
13.6.2022  
OFFICE OF THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

Date 13.6.2022.

  
Signature & Seal of the  
Estate Officer.

**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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1544, 1544/D of 2017 Order Sheet No. \_\_\_\_\_

**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

VS

**M/s B.R. HERMAN & MOHATTA(INDIA) PVT. LTD.**

**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), hereinafter referred to as SMPK, applicant herein, that land msg. about 7028.35 sq.m.(under Plate No.HL-250/1), Godown msg. about 2935.37Sq.m.(under Plate No.HB-31) and Electric Goomty msg. about 10.962 sq.m.(under Plate No.HL-250/2) along with two way leave Plates bearing No.HB-33 & HL-250/3 situated at Ramkristopur, Howrah was allotted to **M/s. B.R. Herman & Mohatta(India) Pvt Ltd (O.P.)** on long term lease and O.P. violated the conditions for grant of such lease in by way of defaulting in payment of dues/charges of SMPK, 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 occupations w.e.f 01.05.1970 in respect of Plates Nos.HB-31 & HB-33, w.e.f 01.07.1970 in respect of Plate No.HL-250/1 and w.e.f 01.04.1971 in respect of Plate No.HL-250/2 & HL-250/3 respectively in terms of the notice to quit dated 12.03.1970 read with vacation notice bearing No. Lnd. 1856/1/IV/14/462 dated 19.05.2014. As the O.P. did not vacate the premises even after issuance of the said Notices, the instant Proceeding bearing No.1544, 1544/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 19.05.2014, 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.*

41

10.06.2022

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

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

2



**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

1544, 1544/D of 2017 Order Sheet No. 61

**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

**VS**  
**M/S B.R. HERMAN & MOHANTA (INDIA) PVT. LTD.**

41  
10.06.2022

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 damages etc.) dated 20.03.2017 as per Rule made under the Act.

The O.P appeared before the Forum through its Ld' Advocate and contested the case by filing several applications/objections. It reveals from record that O.P. filed its reply to the Show Cause Notice/s on 10.04.2017 praying inter alia for the dismissal of the instant proceeding as time barred. It further reveals that on 03.07.2017 an effective reply to the Show Cause was again filed by O.P. in suppression of their initial reply which followed by two application/s dated 25.10.2017, an affidavit (intimating lease deed not in O.P's possession) dated 17.01.2018 and its Written Notes Of Arguments(W.N.A) dated 18.07.2019. SMPK also filed their comments/rejoinder dated 30.06.2017 and 03.08.2017, application dated 14.12.2017(enclosing Inspection Report) and an application dated 01.08.2018(enclosing document relating to contractual relation between SMPK and O.P.) and an application dated 10.06.2019(highlighting the issue of unauthorised construction). The main contentions of O.P. can be summarized as follows:

- 1) The Show Cause Notice/s are illegal, without authority of law, without jurisdiction and void ab-initio therefore, should be withdrawn forthwith.
- 2) The respondent is not an unauthorised occupant of the said premises as alleged and therefore the provisions of the said Act are not applicable to the Opposite Party.
- 3) The instant application has been filed by the petitioner on the basis of a few select inspection reports, correspondence and documents without disclosing all records of the SMPK.

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT, KOLKATA  
CERTIFIED COPY OF THE ORDER  
PASTED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
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. 1544, 1544/D or 2017 Order Sheet No. 62

**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

**VS**

M/s B.R. HERMAN & MOHANTA (INDIA) PVT. LTD.

41

10.06.2022

- 4) The subject premises are not public premises within the meaning of Sec2(c) of the P.P Act therefore, SMPK is required to prove such fact.
- 5) The Ld' Forum has no jurisdiction to proceed against the O.P.
- 6) The present petition filed after 46 years is hopelessly time barred and also beyond the time prescribed under the law of limitation. SMPK's claim for eviction and for arrears of rent/ mesneprofit/ compensation/damages is also time barred and not within the time period as required by the law of limitation.
- 7) The present proceedings is also not maintainable as the petition is not properly signed and verified by person(s) duly and properly authorised by the Petitioner to file the present proceeding.
- 8) The Proceeding instituted on the basis of the aforesaid signing and verification is without any authority and ought to be dismissed with cost.
- 9) Show Cause Notice is arbitrary, unreasonable and contrary to law and consequently ultravires Article 14, 19(1) (g), 21 and 300A of the Constitution of India.
- 10) Show Cause Notice has been issued mechanically without proper application of mind and law by the Ld' Estate Officer.
- 11) O.P. has vacated the demised premises long back as such the present proceeding is misconceived and should be dismissed.
- 12) It has been untruly alleged by SMPK that O.P. has inducted M/s Joy Durga Company but O.P. never inducted any person or M/s. Joy Durga Company into tenancy or sub tenancy.
- 13) No unauthorised parting with possession of such premises has been committed by O.P. After vacation of such premises by O.P. it was the duty of SMPK to take care of the possession of such premises.

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

CERTIFIED COPY OF THE ORDER  
IN REPLY TO THE PETITION  
FILED IN THE COURT OF THE  
ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

9

**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

1544, 1544/D of 2017 Order Sheet No. 63

**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

**VS**  
**M/S B.R. HERMAN & MOHATTA (INDIA) PVT. LTD.**

14) Since O.P. has never enjoyed the possession of the demised premise it is no way liable to make payment of the demand raised by SMPK.

Referring the above contentions, the M/s B.R Herman & Mohatta(India) Pvt Ltd has prayed for dismissal of the instant proceedings in limini.

It reveals that subsequently during the course of hearing on 10.04.2017, the following 4 Nos. Companies/concerns appeared before this Forum of Law through their Ld. Advocate by filing "Vakalatnama" and added as party.

- i) Goel Steels & M.L Steel Traders Pvt Ltd.
- ii) S.N Engineers & Supplies and Mundhra Bright Steel.
- iii) M/s. Joy Durga .
- iv) Bimal Kheria C/o M/s Bhagwati Steelments (P) Ltd.

The submission of Sri Bimal Kheria C/o M/s Bhagwati Steelment(P) Ltd, the added party gave a new dimension to the instant matter. The Added Party asserted **that it is occupying the Port Property in question and carrying on its business with all necessary licence or licenses from the competent authority which required under the law for carrying on their business and the rént receipt granted by the O.P.** The relevant portion of the statement of Sri Bimal Kheria as per their petition/reply filed on 04.08.2017 reads as follows :

.....  
2) That this Opposite Party was allotted on a monthly rental charges at Rs.500/- payable according to English calendar month for a plot of land situated at 108, Foreshore Road, Ramkristopur, P.S. Shibpur, Howrah-711102 for the purpose of storage by B.R. Herman & Mohata(India)Private Ltd, Engineers and Metal Merchant having its office at 189, Abdul Hamid Street, Kolkata-700069 and since then BhagwatiSteelments (P) Ltd is in physical possession of the above referred rental accommodation and carrying on its business with all necessary licence or licences from competent authority.

41

10.06.2022

By Order of  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

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

OFFICE OF THE 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

APPOINTED BY THE  
CENTRAL GOVT.  
UIS-3 OF PP ACT  
ACT NO 40 OF 1971  
CENTRAL GOVT.

Proceedings No. 1544, 1544/D of 2017 Order Sheet No. 64

**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

**VS**  
**M/S B.R. HERMAN & MOHATTA (INDIA) PVT. LTD.**

41

10.06.2022

3) That since induction as a tenant in the plot allotted by B.R. Herman & Mohata(India)Pvt. Ltd, this Opposite Party carrying on business without any objection and/or disturbance from any corner on regular payment of the monthly rent to B.R. Herman & Mohata(India) Pvt. Ltd and the said Company received the monthly rent from your Petitioner upto the month of 2000 by granting rent receipts and the said B.R. Herman & Mohata(India) Pvt. Ltd used to collect the rents for several months at a time and it was the usual pattern of collection of rent by the said company from your petitioner and the said company collected rent upto the month of 2006 with an assurance to issue rent receipts in favour of this Opposite Party as because there was a cordial relation between the said company and this Opposite Party.

4) That your petitioner is ready and willing to be a tenant or lessee, as the case may be, under the Port Trust of Calcutta for his occupied portion and also ready and willing to pay the necessary rent, premium, if any, to the Port Trust of Calcutta for a reasonable terms.

As the other Added Parties such as S.N Engineering & supplies and Mundhra Bright had failed to file any reply, the latest precipitation of the matter comes out from the reply of M/s Joy Durga Company, the another added Party of this instant Proceeding. Joy Durga Company(Added Party) filed a petition on 25.08.2017 praying lease deed and the inspection Report, a petition intimating the Revisional application being C.O. No.3955 of 2017 challenging the impugned orders dated 04.08.2017 & 25.08.2017 passed by the Estate Officer was filed on 15.11.2017,Reply to the Show Cause Notice/s was filed by the Added Party on 24.01.2018, an application(praying direction upon SMPK to produce the original lease deed) on 01.04.2019 and their Written Notes of Arguments on 26.07.2019. SMPK also filed their comment on the reply filed by Added Party on 22.03.2018 The main contentions of their reply as filed on 24.01.2018 are summarized as follows:

1) That M/s Joy Durga Company, hereinafter referred to as the 'company' is a bonafide tenant under M/s. B.R.

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

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

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

2



**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. 1544, 1544/D of 2017 Order Sheet No. 65

**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

**M/S B.R. HERMAN & MOHATTA (INDIA) PVT. LTD**

Herman & Mohatta (India) Pvt Ltd and since 2000 is enjoying tenancy in respect of the open space being on the road and a portion of the godown, tin shed 1 to 5, measuring about 31,500 sq.ft at 108, Foreshore Road, Ramkrishnapur, Howrah at monthly rental of Rs.10,000/- per month.

- 2) The Company has no knowledge about the said proceedings until and unless the said notice in respect of the said proceeding was served upon the Company by the Office of the Ld' Estate Officer.
- 3) The relation of the landlord and tenant between the said M/s. B.R. Herman and Mohatta (India) Pvt Ltd and the said company is recorded in an agreement for tenancy in letter form (Letter dated 31.01.2000) which was duly issued by the said M/s. B.R. Herman and Mohatta (India) Pvt Ltd in favour of the company.
- 4) The said Letter dated 31.01.2000 clearly contents about the creation of the said tenancy with the permission from the Port Trust Authority as such the company is at all not an unauthorised occupant but is an authorised subtenant in respect of the said premises.
- 5) Since the inception of the said tenancy the company is continuing its' business from the said premises upon paying the monthly rents as appended in the said agreement and for continuation of such business the company has obtained the trade licences (as renewed till date) thereof from the Kolkata Municipal Corporation and also obtained electric connection in the said premises in the name of the Company
- 6) Since the inception of the tenancy till receiving of the letter, the company was smoothly running their business and storing goods without any hindrance and/or any objection from any authority.
- 7) As per company's prayer although Port Authority has supplied some documents but never supplied the original lease deed on the basis of which original

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

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

OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

2

**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. 1544, 1544/D of 2017 Order Sheet No. 66

**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

**VS**  
**M/S C.R. HERMAN & MOHATTA (INDIA) PVT. LTD.**

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proceeding was started and/or the alleged report of inspections were submitted.

- 8) The Letter issued by the SMPK Authority upon O.P. on 19<sup>th</sup> May, 2014 was not included the name of M/s Joy Durga Company in the list of unauthorised occupants however, when the original application was filed on 27.08.2015 the name of such Company was included in the list of unauthorised occupants which is very surprising.
- 9) Mere service of notice seeking reply to the Show Cause can never be considered as a proceeding against the Company in accordance with law and/or due process of law.
- 10) The instant proceeding started after 36 years from the service of notice with a malafide intention only to keep the matter alive.
- 11) The Company vide its two applications dated 03.07.2017 and 25.08.2017 inter alia prayed direction from the Forum upon the Port Authority for supplying them copies of lease deed and various inspection reports relied upon by SMPK however, without disposing of such applications vide its order dated 04.08.2017 and 25.08.2017, the Forum gave them direction for filing reply to the Show Cause. Having found no alternative, the Company filed a civil revision before the Hon'ble High Court, Calcutta challenging the aforesaid orders which was registered as C.O. No.3599 of 2017. However, such C.O. was dismissed thereafter vide its order dated 13.11.2017.
- 12) In the intergenum some unidentified persons claiming to be the men, agent associate of O.P. and officials of O.P twice trespassed in the tenanted premises of the company and tried to forcefully remove the staffs of the company and/or its goods from the said premises for which a complaint was lodged before the local police authority.

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

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SYAMA PRASAD MOOKERJEE PORT

Hon'ble Assistant  
OFFICE OF THE E.O. 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.

1544, 1544/P

of

2017

Order Sheet No.

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**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

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13) Finding no alternative, a Title Suit bearing No.12407 of 2017 was filed before the Ld' Civil Judge(Jr. Division) 2<sup>nd</sup> Court, Howrah against O.P. and SMPK and in connection with such Title Suit thereafter, the Ld' Court vide its order dated 15.12.2017 directed both the parties to maintain status quo over the suit property. From this fact it is apparent that the Company is able to establish its authority about legal occupancy in the said premises and they cannot be thrown out without due process of law.

14) It is apparent from the instant proceeding that O.P. is in hand-in-glove with SMPK and is trying to avoid and/or escape the actual proceeding except appearing.

SMPK, the Petitioner, argues that the present Proceedings is entirely maintainable in the eye of law and not barred by any rules/principles of law. Ld' Estate Officer as empowered and appointed under the relevant provisions of the public premises(Eviction of Unauthorised Occupants) Act-1971 is the absolute/appropriate Forum of Law to deal with the instant Proceedings and can hold hearing even in absence of Opposite Party. SMPK further submits that after determination of the lease of O.P. suit for ejection was initiated against O.P. but that was subsequently compromised on O.P's request for clearance of their dues and removal of breaches but O.P. violated their own term and become declared as a wrongful occupier of the said public premises which culminated into the instant proceeding by virtue of SMPK's vacation letter dated 19.05.2014. Assertions made by O.P. in para No.9A to 9C of their reply are sheer indulgence of unconnected and unnoticed facts therefore, totally irrelevant. Statements made by O.P. in para No.10 to 16 of its reply are totally vague and baseless and are devoid of any merit. It is made only to confuse and distract the very purposes of this Forum of law and also to jeopardise the Govt. Exchequer. O.P. has violated the condition of such lease by defaulting in payment of dues/charges of SMPK and also by parting with possession to

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*[Signature]*  
OFFICE OF THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

**Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

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**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

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third parties. Even after determination of such lease O.P. not only continued their unlawful occupation into the subject premises but continued such breach of parting to illegal occupants. It is further argued by SMPK that no Court case was pending before any Court of Law and there was no order of stay with respect to the subject premises in question. One Hari Kumar & Co with whom SMPK never had any jural relation is erecting a construction unauthorisedly over the subject premises without having any permission from the Port Authority.

I have duly considered all the applications/ objections made on behalf of the parties and duly considered the submissions/arguments made on behalf of SMPK, O.P. and the Added Parties. After due consideration of all relevant papers/documents as brought before me in course of hearing, I find that following issues have come up for my adjudication/ decision :

- I) Whether the instant proceedings against the O.P. is maintainable or not;
- II) Whether the plea taken by O.P. regarding unilateral satisfaction for issuance of notice to Show Cause u/s 4 & 7 of the Act has got any merit or not.
- III) Whether the instant proceeding is hit by the principles of natural justice and principles of biasness or not;
- IV) Whether the instant proceeding is hit by the principles of "Res-judicata" or not;
- V) Whether O.P. can disown their liability towards payment of dues/damages on the plea that they have vacated the premises or not;
- VI) Whether claim of SMPK against O.P. is barred by limitation or not.
- VII) Whether O.P. is in default of making payment of dues/charges to SMPK or not;

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SYAMA PRASAD MOOKERJEE PORT  
10/6/22  
HEAD ASSISTANT  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

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- VIII) Whether the Added Parties(A.P) can claim themselves as the authorised subtenants of O.P or not;
- IX) Whether the Added Parties have got any right to hold such public premises after determination of such lease by service of notice to quit or not;
- X) Whether SMPK's claim against O.P. on account of creation of unauthorised sub-tenancy or parting with possession of such land is at all tenable under law or not;
- XI) Whether SMPK's notice dated 12.03.1970 as issued to O.P., demanding possession from O.P. is valid and lawful or not;
- XII) Whether O.P's occupation could be termed as "unauthorised occupation" in view of Sec.2 (g) of the P.P. Act and O.P. is liable to pay damages to SMPK during the period of its unauthorised occupation or not.

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 SYAMA PRASAD MOOKERJEE PORT

The issues No. I & II, are taken up together for convenient of discussion as the issues are mainly related to jurisdiction of this Forum of Law to entertain the application of SMPK dated 27.08.2005. In fact, the issues are related to each other on the question of maintainability of the proceedings.

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 unauthorised 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 unauthorised along with the prayer for order of eviction 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

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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**

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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:

"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:-

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**Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

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*"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".*

On **Issue No. II**, the decision of Hon'ble Calcutta High Court reported in 2002(1) CHN 641 (Otafallons Forwarders Pvt. Ltd. vs. Kolkata Port Trust) with reference to judgement of the Hon'ble Apex Court of India in Jiwan Das vs LIC reported in 1994 (Suppl) 3 SCC 694 is very important in deciding the authority of the Estate Officer under PP Act. Paragraph 15 of the said Judgement of Calcutta High Court reads as follows:-

*"The Statute herein has admittedly given a wide powers to the Public Authority under Public Premises Act, 1971 to determine the tenancy and it has already been held by the Supreme Court of India in case of Jiwan Das (supra) that it was not permissible to cut down the width of the powers by reading into it the reasonable and justifiable grounds for initiating actions for termination of tenancy. Authorities under the PP Act, 1971 are empowered to act in Public interest and entitled to determine the tenancy or leave or license before taking into action under Section 5 of the Act which has been specifically held in Jiwan Das (supra)"*

The provisions U/S 4 & 5 of the P.P Act deal with the procedure for eviction of unauthorised occupants and must be read together. It would be seen that prima facie satisfaction of

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SYAMA PRASAD MOOKERJEE PORT

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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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**VS**  
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the Estate Officer is a sine qua non for issuance of the Show cause notice. The scope of issuing Show Cause Notice and the legality of serving such Show Cause Notice was subject matter of discussion before the Hon'ble Delhi High Court in Safari Air Ways case. This judgement of Hon'ble Delhi High Court reported in AIR 1983 Del 347, is instrumental to decide the extent of Estate Officer's authority in issuing Show Cause Notice. **It was the case before Hon'ble Delhi High Court that the notice is required to be quashed on the ground that Estate Officer has not disclosed to them in the notice the material on which he has formed his opinion.** According to the judgement, the Estate Officer may form the opinion rightly or wrongly. But what is important is that he must give an opportunity to the persons in occupation of the Public Premises to show cause against the proposed order of eviction. In truth and substance, it is the opinion formed by the Estate Officer which becomes the subject matter of enquiry before him. The observation made by the Hon'ble Delhi High Court are as follows:

*"Safari Airways can show to the Estate Officer that the opinion formed by him is incorrect and that they are not liable to be evicted from the Public Premises. "Opinion" is different from "order". No eviction order is passed unless and until a show cause notice is issued to the occupant of public premises and unless he is heard. The question of formation of opinion by the Estate Officer and of the nature of materials before him loses all importance in view of the fact that Show Cause Notice gives full opportunities to the occupant to dispute the opinion, the facts and allegations against him in the enquiry which follows the service of notice. The petitioners are not entitled to ask this court to quash the notice or for that matter the proceedings themselves at their very threshold. The reason is that the notice gives them an opportunity to Show Cause against the proposed order of eviction. Before issuing Show Cause Notice U/S 4, Estate Officer has to form a tentative opinion. Opinion means estimation, not decision. If a man is to form an opinion he must form it himself of such reasons and grounds as seem good to*

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**Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

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Proceedings No. 1544, 1544/D of 2017 Order Sheet No. \_\_\_\_\_

**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

**M/S B.R. HERMAN & MOHATTA (INDIA) PVT. LTD.**

him. Those reasons may be good or bad. But, he does not arrive at a definite conclusion because he has not heard the affected party so far. There are no counter-allegations before him at the stage of formation of opinion. Invested as he is with quasi-judicial power he has to follow the principle of natural justice. He must hear the occupant and decide whether he is there on the premises with or without authority. Then he arrives at the decision. And his decision is appealable U/S 9 of the act to the District Judge. The appeal is a judicial re-hearing".

It is worthy to mention here that after amendment of the P.P. Act by the Amending Act of 2015 (Act No. 2 of 2015) the Estate Officer is empowered to issue Show Cause Notice u/s 4 of the Act upon receipt of information regarding unauthorised occupation of any Public Premises.

In view of the decision of the Hon'ble Delhi High Court and elaborate discussion on the scope of the power of the Estate Officers in issuing Show Cause Notice, I do not find any scope to discuss the matter further as all the questions regarding authority of the Estate Officer in issuing Show Cause Notice has been decided authoritatively by the Hon'ble Delhi High Court in the aforesaid judgement.

In view of the discussions above, the issues I and II are decided accordingly against O.P.

AS regards the **Issue No. III** i.e on the issue of violation of natural justice and principles of biasness, O.P. vide their reply to the Show Cause dated 03.07.2017 alleged that there is no provision in the P.P Act for this Ld' Authority(once the petition is filed) to entertain and/or call for the presence only of the representatives of the Petitioner- prior to issuing Show Cause Notice. Thus the issuance of Show Cause Notice by this Ld Authority and the entire Proceeding is irregular and bad in law. However, in my view, such allegation of O.P has no basis because as per the said Act prima facie satisfaction of the Estate Officer is a sine qua non for issuance of the Show cause notice and for such satisfaction Estate Officer can make number of queries to the Port Authorities although after amendment of the P.P. Act by the Amending Act of 2015 (Act

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**Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

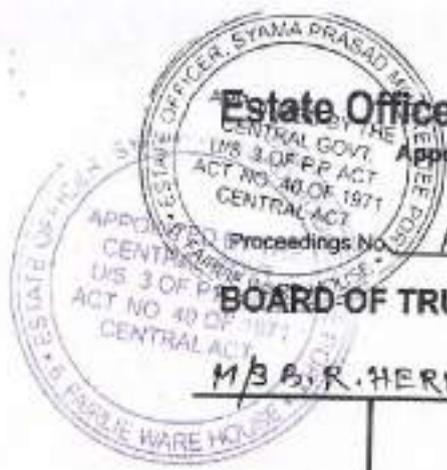
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**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

**VS**

**M/B. R. HERMAN & MOHATTA (INDIA) PVT. LTD.**



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No. 2 of 2015) the Estate Officer is now empowered to issue Show Cause Notice u/s 4 of the Act upon receipt of information regarding unauthorised occupation into any Public Premises but making quarrries to the representatives of Port before issuing Show Cause is an important tool in the hand of Estate Officers to conduct proceedings before the Forum. Moreover, the Estate Officer discharges his official function under the law. He acts as a tribunal and has no private interest. He cannot be said to be both the prosecutor and the judge. No material has been produced or no case has been made out by O.P as to how this forum of law is involved with any work relating to O.P's tenancy or related to any decision making process of the Port Authority to seek prayer for eviction against O.P etc. As such I do not find any merit to the submissions made on behalf of O.P in this regard.

With regard to **Issue No.IV**, I must say that question of maintainability of this proceedings on the ground of "Res-judicata" is very much fallacious as the facts and circumstances of the instant proceedings is very much away to consider the matter of Res-judicata under Civil Procedure Code (CPC). As per CPC, Res-judicata applies in cases where no court shall try any suit or issue in which the matter directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been substantially raised, and has been heard and finally decided by such court. None of the ingredients to constitute "Res-judicata" has any manner of application in the instant proceedings. Moreover, there is no decision by any competent court of law in respect of the subject matter of dispute before this Forum of Law. As such, I can unhesitatingly come to the conclusion for rejection of O.P's plea on the ground of Res-judicata as O.P's contentions are not at all supported by law.

**Issue No. V & VI** are taken up together for convenient discussion. It is the case of O.P. that they have vacated the

**Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

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**VS**  
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premises long back and are not in possession of the Public Premises presently as such they are not liable to make payment towards dues and/or charges as claimed by SMPK. It is also the case of O.P. that O.P. is not bound to pay the time barred claim of SMPK. As per law a lessee is bound to deliver back possession of the premises to its lessor in its original condition after expiry of the lease period or after determination of the lease etc. as the case may be. Mere writing of letter communicating any intention to surrender possession or informing the status of the property does not necessarily mean that the property has been actually surrendered to SMPK and SMPK had taken over possession of such property upon such surrender. The written objection of O.P. also does not disclose any commitment or assurance from the part of SMPK regarding acceptance of possession of said property. According to O.P., (written Notes of Arguments of O.P. filed on 15.07.2019) much prior to the year 2000 O.P. had vacated the premises and since then the SMPK is obliged to take care of the possession of the demised land. O.P. by their own averments stated that it has no connection with M/s. Joy Durga Company neither it has inducted the said company and nor parted with possession of said premises or any part thereof or received any money in terms of rent or otherwise from them (M/s. Joy Durga Company). As per law, O.P. has failed to make out any case in support of their contention regarding vacating/ surrendering of the premises to SMPK and in my considered view, O.P. is still under possession of the premises as possession of the premises has not yet been surrendered or vacated in favour of SMPK. Now the question of application of Limitation Act in connection with "time barred claim" is required to be decided with all its seriousness.

The Limitation Act is applicable for Civil Courts to try suits unless barred by some other Act. Se.9 of the Civil Procedure Code reads as follows:

"The courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting

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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. 1544, 1544/D or 2017 Order Sheet No. 76

## BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/s. B.R. HERMAN & MOHATTA <sup>YS</sup> (INDIA) PVT. LTD.



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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 U/s 15 of the P.P. Act 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. 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 I am 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 most celebrated judgment reported in AIR 1972 Tripura 1 (Hemchandra 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.

In order to appreciate the stands taken on behalf of the parties in dispute, it would be expedient to go into the statutory provisions of the Civil Procedure Code, Limitation Act and P.P. Act. It has been argued on behalf of SMPK that the Articles under Limitation Act are applicable to Suit only. To my understanding Civil Suits are tried by the Courts as per the Civil Procedure Code and proceedings before this Forum of

*[Signature]*

# Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/S B.R. HERMAN & MOHANTA <sup>VS</sup> (INDIA) PVT. LTD.

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 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. In view of the discussion above, 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 not a Civil Court to be governed by the Civil Procedure Code. Hence the issues are decided in favour of SMPK.

As regards the **Issue No.VII**, SMPK's allegation of non-payment of dues /charges by the O.P. does appear to have merit. O.P. vide their Written Notes of Arguments dated 26.07.2019 claimed that as O.P. had never enjoyed the possession of such demised premises they are no way liable to make payment of demand raised by SMPK however, the paper/documents produced on behalf of O.P., are not sufficient to contradict/dispute the claim of SMPK. In course of hearing, SMPK not only confirmed their claim on account of damages but also asserted their right to claim interest for

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10.06.2022

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

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SYAMA PRASAD MOOKERJEE PORT

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. 1544, 1544/D of 2017 Order Sheet No. 78

## BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

**VS**  
**M/S. B. R. HERMAN & MOHATTA (INDIA) PVT. LTD.**



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10.06.2022

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  
DATE: 10/06/2022  
OFFICE OF THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

delayed payment. The O.P. on the other hand merely disputed the claim of the Port Authority without coming out with any material particulars. The O.P. did not bother to pay the said amounts as well. In my view, the conduct of the O.P. does not inspire any confidence and I am not at all inclined to protect the occupation of the O.P. even for the sake of natural justice. In 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 claim continuance of its occupation without making payment of requisite charges as mentioned in the Schedule of Rent Charges.

The charges claimed on account of damages is on the basis of the SMPK's Schedule of Rent Charges as applicable for all the tenants/occupiers of the premises in a similarly placed situation and such Schedule of Rent Charges is notified rates of charges under provisions of the Major Port Trusts Act 1963(now Major Port Authorities Act, 2021) as time to time amended. Thus the issue is decided in favour of SMPK.

The SMPK's claim on account of interest involves mixed question of fact and law as well. It is the case of SMPK that claim of interest for delayed payment is in accordance with the Schedule of Rent Charges which has been published in the Official Gazette as per provision of the Major Port Trusts Act 1963(Now Major Port Authorities Act-2021), after obtaining sanction of the Central Govt. as per provision of the said Act. The notification published under Authority of Law has statutory force of law and O.P. cannot deny the claim of SMPK on the strength of such notification. It is contended that continuing in occupation of the public premises must necessarily mean that O.P. is under legal obligation to pay SMPK's demand as per the Schedule of Rent Charges. It is my considered view that payment of interest is a natural fall out and one must have to pay interest in case of default in making payment of the principal amount due to be payable.

# 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.

1544, 1544/D of 2017 Order Sheet No. 79

## BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S B.R. HERMAN & MOHATTA (INDIA) PVT. LTD.

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For occupation and enjoyment of Port property, the charges leviable upon the tenants/occupiers are based on the Schedule of Rent Charges as applicable for a tenant/occupier in respect of respective zone as indicated in such Schedule of Rent Charges. Every tenant/occupier of the Port property is under obligation to pay such charges for occupation and it has been specifically mentioned in the different Schedules of Rent Charges as were notified from time to time. I am firm in holding that such notifications have a statutory force of law and tenants/occupiers cannot deny the charges on account of interest as per notification in the Official Gazette until such rate of interest is modified/enhanced by further notification/s.

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

**Issue No. VIII & IX**, are also taken up together for convenient discussion as the issues are related with each other and each issue has direct impact over the other. M/s Joy Durga Company and Bimal Kheria C/o M/s Bhagwati Steelments (P) Ltd both the Added Party(A.P) vide their Application dated 24.01.2018 and 04.08.2017 claimed themselves as bonafide tenant under M/s. B.R. Herman & Mohatta(India) Pvt Ltd. It is the specific submission of M/s Joy Durga Company that since the year 2000 they are enjoying tenancy in respect of the Port Property in question at 108, Foreshore Road, Ramkrishtopur, Howrah at monthly rental of Rs.10,000/- .In support of their contention subsequently a letter dated 31.01.2000 issued by O.P along with the copy of rent receipts, trade licences Electric bill are also produced by A.P. However, O.P. denying such contentions submitted that they never inducted any person or M/s Joy Durga Company into tenancy or sub-tenancy and the document(Letter dated 31.01.2000) on the basis of which M/s. Joy Durga Company is affirming their tenancy is also false, fabricated and manufactured. The said letter neither contains any reference number nor any seal or Stamp of B.R Herman or accompanys any Board Resolution. I have duly considered the submission of such Added Party and O.P. and After carefully considering the submissions it appears to me that such document relied upon by A.P. leaves sufficient scope of doubt

Q

**Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA**Appointed by the Central Govt. Under Section 3 of the Public Premises  
(Eviction of Unauthorised Occupants) Act 1971Proceedings No. 1544, 1544/D of 2017 Order Sheet No. 80**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA****M/s. B.R. HERMAN & MOHANTA (INDIA) PVT. LTD.**  
**VS**41  
10.06.2022By Order of:  
**THE ESTATE OFFICER**  
SYAMA PRASAD MOOKERJEE PORTCERTIFIED COPY OF THE ORDER  
PASSED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
*[Signature]*  
OFFICE OF THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

and further no paper/document in connection with creation of sub-tenancy and sanction from SMPK for creation of such sub-tenancy, has been produced by the Added party therefore, it is difficult for the Forum to form any opinion to this effect. To constitute subletting, there must be a parting of legal possession, i.e possession with the right to include and also right to exclude others and whether in a particular case there was subletting or not was a substantially a question of fact. The mere act of letting other persons into possession by the tenant and permitting them to use the premises for their own purposes, is not, so long as he retains the legal possession himself a breach of covenant. However, this ruling of the Supreme Court in Shalimar Tar Product Ltd vs H.C Sharma(1988) 1 SCC 70 is not applicable in this instant case because O.P has specifically submitted in their reply as well as in the application dated 18.07.2019 that they have never inducted any person or the added parties into tenancy or sub tenancy. Therefore, the status of M/s. Joy Durga Company and all other added parties are nothing but an unauthorised Sitting Occupants. In my view prolonged enjoyment of a vital public premises at a prime location by M/s. Joy Durga Company or other sitting occupants cannot deserve any protection of law.

Further for sake of argument if I accept the Added Party as Subtenant of O.P such claim of the Added parties also cannot sustain because a sub-tenant like A.P. cannot claim better treatment/right than the right available by O.P. as lessee. In other words A.P. can at best assert its right whatever the nature it may be through the subsisting right of O.P. as lessee and in the event the right of lessee/O.P. is no more in existence/determined, A.P. as sub-tenant has no right at all in respect of the property in question. In the facts and circumstances of the case A.P. has no right to hold the property in the event of determination of lease hold interest of O.P.

*[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

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**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

**VS**  
**M/S B.R. HERMAN & MOHANTA (INDIA) PVT. LTD.**

41  
10.06.2022

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
KOLKATA  
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SYAMA PRASAD MOOKERJEE PORT  
OFFICE OF THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

**Issue No. X** i.e creation of unauthorized sub-tenancy or unauthorised parting as alleged on behalf of SMPK also received the due attention of the Forum as the substantial question of law is involved in this issue. In course of hearing, it is submitted on behalf of SMPK that O.P. has unauthorisedly parted with possession of the Public Premises by way of inducting unauthorized sub-tenant in gross violation to the condition of tenancy under long term lease. In support of their contention SMPK filed application dated 14.12.2017 and it appears from such application that an inspection of the subject public premises was held on October 2014 and from such inspection like other unauthorised entities a hoarding in the name of M/s Joy Durga Co. was found outside a godown which was used by them for more than 10 years. In my view, existence of such numerous Companies in the subject occupation of O.P. is nothing but an unauthorised parting and such parting with possession was made by O.P. without the permission of Port Authority. Thus mere claim on behalf of O.P that they have never inducted M/s. Joy Durga Company etc., is in my view not sufficient to defend this type of serious allegations. 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 SMPK or invite Port Authority for instant Joint Inspection for verification of such claim. As such it is very difficult to accept the mere claim of the O.P which is bereft of any cogent reason. Moreover, induction of a third party without the approval of SMPK is also against the spirit of tenancy.

Discussions against the foregoing issues must dominate the **Issues no. XI and XII**, leading to the conclusion that the notice to quit dated 12.03.1970 read with vacation notice dated 19.05.2014 as issued by the Port Authority, demanding possession from O.P. is very much valid, lawful and binding upon the parties. I have deeply gone into the submissions/arguments made on behalf of the parties in course of hearing.

Q

# 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. 1544, 1544/D of 2017 Order Sheet No. 82

## BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/S B.R. HERMAN & MOHATTA (INDIA) PVT. LTD. VS

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10.06.2022

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

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 become unauthorized occupant into such public premises. 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 undoubtedly determined by the Port Authority by due service of notice to quit read with vacation Notice dated 19.05.2014 and institution of proceedings against O.P. by SMPK is a clear manifestation of Port Authority's intention to get back possession of the premises. In such a situation, I have no bar to accept SMPK's contentions regarding determination of lease by notice dated 12.03.1970, on evaluation of the facts and circumstances of the case. "Damages" are like "mesne profit" that is to say the profit arising out of wrongful use and occupation of the property in question. I have no hesitation in mind to say that after expiry of the period as mentioned in the said notice to Quit dated 12.03.1970 read with vacation notice dated 19.05.2014, O.P. has lost its authority to occupy the public premises, on the evaluation of factual aspect involved into this matter and O.P. is liable to pay damages for such unauthorized use and occupation. To come into such conclusion, I am fortified by the decision/ observation of the Hon'ble Supreme Court in Civil Appeal No.7988 of 2004, decided on 10<sup>th</sup> 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

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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**

**M/S B.R. HERMAN & MOHASTA (INDIA) PVT. LTD.**

**VS**

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10.06.2022

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. ....

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

The Port Authority has a definite legitimate claim to get its revenue involved into this matter as per the SMPK's Schedule of Rent Charges for the relevant period and O.P. cannot claim continuance of its occupation without making payment of requisite charges as mentioned in the Schedule of Rent Charges.

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

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SYAMA PRASAD MOOKERJEE PORT  
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SYAMA PRASAD MOOKERJEE PORT  
OFFICE OF THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

2

# 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. 1544, 1544/D of 2017 Order Sheet No. 84

**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

**M/S B.A. HERMAN & MOHANTA (INDIA) PVT. LTD.**

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10.06.2022

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 SMPK that the charges claimed on account of damages is on the basis of the SMPK's Schedule of Rent Charges as applicable for all the tenants/occupiers of the premises in a similarly placed situation and such Schedule of Rent Charges is notified rates of charges under provisions of the Major Port Trusts Act 1963. In my view, such claim of charges for damages by SMPK is based on sound reasoning and should be acceptable by this Forum of Law. As per law, when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract to be likely to result from the breach of it. 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 issues are decided in favour of SMPK. I have no hesitation to observe that O.P.'s act in continuing occupation is unauthorized and O.P. is liable to pay damages for unauthorized use and occupation of the Port property in question upto the date of delivering vacant, unencumbered and peaceful possession to SMPK. With this observation, I must reiterate that the ejection notice, demanding possession from O.P. as stated above has been validly served upon O.P. in the facts and circumstances of the case and such notice is valid, lawful and binding upon the parties. In view of the discussions above, the issues are decided in favour of SMPK.

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

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

**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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Proceedings No. 1544, 1544/D of 2017 Order Sheet No. \_\_\_\_\_

**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

**VS**

M/s B.R. HERMAN & MOHATTA (INDIA) PVT. LTD.

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 SMPK and the Notice/s issued by this Forum are in conformity with the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act 1971.
2. That in gross violation of the terms and conditions of the subject lease, O.P has defaulted in making payment the dues/damages and taxes payable to SMPK.
3. That O.P. have unauthorisedly parted with possession of the Public Premises and failed to vacate the premises upon determination of the period as mentioned in the notice to quit dated 12.03.1970 as issued by the Port Authority.
4. That O.P. cannot take the plea of time barred claim by SMPK, taking the shield of Limitation Act.
5. That O.P's contention regarding vacating of the premises is not supported by law.
6. That A.P. has got no right to hold the property after determination of lease (which was granted by the Port Authority in favour of O.P.) by service of notice to quit dated 12.03.1970 read with vacation notice dated 19.05.2014.
7. That O.P. cannot take the plea of res judicata to defeat the claim of SMPK.
8. That no case has been made out on behalf of O.P. as to how its occupation in the Public Premises could be termed as "authorised occupation" after issuance of notice dated 12.03.1970 read with vacation Notice dated 19.05.2014, demanding possession by the Port Authority.
9. That O.P. has failed to bear any witness or adduce any evidence in support of their contention regarding "authorised occupation" and O.P's occupation has

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10.06.2022

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

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

Q



# 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. 1544, 1544/D of 2017 Order Sheet No. 86

## BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

**VS**  
M/s B.R. HERMAN & MOHATTA (INDIA) PVT. LTD.

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10.06.2022

become unauthorized 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, Department is directed to draw up 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.3,67,01,838.30 (Rupees Three Crore sixty seven Lakh one thousand eight hundred thirty eight and paise thirty only) for the respective Plate in question for the period 01.01.1971 to 31.10.2014(both day inclusive) is due and recoverable from O.P. by the Port authority on account of damages/ compensation for unauthorized occupation and O.P. must have to pay such dues to SMPK on or before ~~29.06.2022~~ 29.06.2022. At the same time the unauthorised occupants who are occupying such public premises also should not be allowed to wash off their hand from the liability of making payment for their unauthorised occupation into the subject premises in question. Accordingly O.P. may be made liable to pay such dues jointly and severally with other unauthorised sitting occupants from the date of incurrance of such liability upto the date of taking over possession.

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

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

*[Signature]*  
Head Assistant  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

*[Handwritten mark]*



**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

1544, 1544/D of 2017 Order Sheet No. 87

**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

**M/S B.R. HERMAN & MOHATTA (INDIA) PVT. LTD,**

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10.06.2022

It is clarified that such dues will 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 SMPK's books of accounts. I sign the formal order u/s 7 of the Act.

I make it clear that SMPK is entitled to claim further damages against O.P. and other sitting occupants 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. and other Sitting Occupants to pay damages extends beyond 31.10.2014 as well, till such time the possession of the premises continues to be under the unauthorised occupation with the O.P. and other such unauthorised persons. SMPK is directed to submit a statement comprising details of its calculation of damages after 31.10.2014, 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

  
(Satyabrata Sinha)  
ESTATE OFFICE

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

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