



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

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

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

OFFICE OF THE ESTATE OFFICER

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

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

REASONED ORDER NO. 09 DT 12.07.2022
PROCEEDINGS NO. 1737 of 2019

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

-Vs-

SHRI PRABHAT KUMAR MUKHERJEE

F O R M - "B"

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

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that
Shri Prabhat Kumar Mukherjee of 67/39, Strand Road, Kolkata- 700 006 is in
unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

1. That the O.P. has failed and neglected to liquidate the occupational charges, in gross violation to the condition of lease as granted by SMPK to O.P.
2. That O.P. has practically admitted non-payment of dues of SMPK for the purported reasons of loss in his business for which SMPK is no way responsible and by making such statements, O.P. cannot evade his responsibilities of liquidation of dues of SMPK.
3. That O.P. has failed to produce any piece of evidence or document so as to defend the allegations by SMPK of unauthorized parting with possession, unauthorized constructions and encroachment into the Trustees' land.
4. That the O.P. was well aware about the expiration of its authority under Lease to hold/occupy the public premises in question and inspite of such knowledge failed to surrender possession of the premises to SMPK;
5. That the occupation of O.P. has become unauthorized in view of Sec.2(g) of the P.P. Act, 1971.
6. That the notice demanding possession dated 16.06.2017, as served upon O.P. is valid, lawful and binding upon the parties and O.P. is liable to pay damages for wrongful use and enjoyment of Port Property in question upto the date of handing over of clear vacant and unencumbered possession to the Port Authority.

By Order of :
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
12.7.2022
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Please see on reverse

:2:

A copy of the reasoned order No. 09 dated 12.07.2022 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 Shri Prabhat Kumar Mukherjee of 67/39, Strand Road, Kolkata- 700 006 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 Shri Prabhat Kumar Mukherjee of 67/39, Strand Road, Kolkata- 700 006 and all other persons concerned are liable to be evicted from the said premises, if need be, by the use of such force as may be necessary.

SCHEDULE

Plate no - SB 135/1 and SF 182

The said piece or parcel of land msg. 74.14 sq.m. or thereabouts situated at P.C. Tagore Ghat Cross Road, Kulpighat, Thana- Jorabagan. It is bounded on the **North** by the strip of open land alongside P.C. Tagore Ghat Cross Road, on the **East** by the Trustees' land occupied by Estate Atul Chandra Paul and Roti Ranjan Dey, on the **South** by the Trustees' land occupied by Chameli Debi Sinha and on the **West** by the Trustees' land occupied by Ram Kissen Singh.

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

Dated: 12.07.2022


Signature & Seal of the
Estate Officer.

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

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

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





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

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

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

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REASONED ORDER NO.09 DT 12.07.2022
PROCEEDINGS NO 1737/D of 2019

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
Shri Prabhat Kumar Mukherjee
67/39, Strand Road,
Kolkata- 700 006

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

And whereas by written notice dated 30.11.2021 you were called upon to show- cause on/or before 14.12.2021 why an order requiring you to pay a sum of Rs. 1,88,084/- (Rupees One Lakh Eighty Eight Thousand and Eighty Four Only) for Plate No. SB 135/1 and Rs 1,94,242/- (Rupees One Lakh Ninety Four Thousand Two Hundred Forty Two only) for Plate no. SF-182 being damages payable together with compound interest for unauthorised use and occupation 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 (2) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971, I hereby order you to pay the sum of Rs. 1,88,084/- (Rupees One Lakh Eighty Eight Thousand and Eighty Four Only) for Plate No. SB 135/1 and Rs 1,94,242/- (Rupees One Lakh Ninety Four Thousand Two Hundred Forty Two only) for Plate no. SF-182 for the period from 01.02.2016 to 30.06.2017 assessed by me as damages on account of your unauthorised occupation of the premises to Kolkata Port Trust, by 28th July, 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 by me from the official website of the State Bank of India) on the above sum with effect from the date of incurrance of liability, till its final payment in accordance with Notification Published in Official Gazette/s.

Please see on reverse

By Order of :
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
20127-2022
Deputy Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

:2:

A copy of the reasoned order no. 09 dated 12.07.2022 is attached hereto.

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.

SCHEDULE

Plate no - SB 135/1 and SF 182

The said piece or parcel of land msg. 74.14 sq.m. or thereabouts situated at P.C. Tagore Ghat Cross Road, Kulpighat, Thana- Jorabagan. It is bounded on the **North** by the strip of open land alongside P.C. Tagore Ghat Cross Road, on the **East** by the Trustees' land occupied by Estate Atul Chandra Paul and Roti Ranjan Dey, on the **South** by the Trustees' land occupied by Chameli Debi Sinha and on the **West** by the Trustees' land occupied by Ram Kissen Singh.

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

Dated: 12.07.2022


Signature and seal of the
Estate Officer.

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



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

Order, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

1737, 1737/D Of 2019 Order Sheet No. 11



BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA
VS
Shri Prabhat Kumar Mukherjee

09
12.7.2022

FINAL ORDER

The instant proceedings No. 1737 and 1737/D of 2019 arise out of the application bearing No. Lnd 7/63/II/17/2613 dated 18.08.2017, followed by the applications bearing No. Lnd 7/63/II/19/1374 and Lnd 7/63/II/21/3863 dated 30.07.2019 and 16.11.2021, respectively filed by Syama Prasad Mookerjee Port, Kolkata [erstwhile Kolkata Port Trust/ KoPT,] hereinafter referred to as 'SMPK', the applicant herein, under the provisions of the **Public Premises (Eviction of Unauthorised Occupants) Act, 1971** (hereinafter referred to as 'the Act') praying for Order of eviction and recovery of compensation charges/ damages, along with accrued interest in respect of the public premises, being the piece or parcel of land measuring about 74.14 sqm or thereabouts situated at P.C. Tagore Ghat Cross Road, Thana - Jorabagan Police Station, against **Shri Prabhat Kumar Mukherjee**, (hereinafter referred to as **O.P.**).

It is the case of SMPK that the O.P. became a long term lessee for a period of 15 years, w.e.f. 01.01.2001, without any option of renewal, in respect of the public premises under occupation plates no SB 135/1 and SF 182 and the lease was expired on 31.12.2015. It appears from records that the lease was thereafter not renewed by SMPK till the date the hearing of the matter was concluded. It is the case of SMPK that the O.P. has failed to pay the occupational charges of SMPK, unauthorisedly parted with the possession of the premises, erected unauthorised constructions upon the premises in complete violation of the terms and conditions of tenancy and in use of the premises for a purpose, in complete deviation of the permitted purpose of lease. It is further the case of SMPK that a notice demanding possession dated 16.06.2017 was issued by SMPK to O.P., who failed and neglected to vacate/ hand over the possession of the premises in terms of the said Notice demanding possession or notice to quit. SMPK has made out a case that O.P. has no right to occupy the premises after expiration of the lease in question on 31.12.2015, especially after issuance of the notice

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SYAMA PRASAD MOOKERJEE PORT
12-7-2022
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

1737, 1737/D of 2019 Order Sheet No. 12

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
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demanding possession dated 16.06.2017 and as such, the O.P. is liable to pay compensation charges/ damages to SMPK for its wrongful use and enjoyment of the port property in question.

After a careful perusal of the papers/ documents filed under the cover of said applications dated 18.08.2017, 30.07.2019 and 16.11.2021, this Forum formed its opinion to proceed against O.P. and issued 2 (two) no. of Show Cause Notices, both dated 30.11.2021 (vide Order No. 06 dated 16.11.2021) upon the O.P., u/s 4 and 7 of the Act, for adjudication of the prayer of eviction and recovery of damages/ compensation charges, respectively, as per the Rules made under the Act.

The said Notices were sent through 'Speed Post' to the recorded addresses of O.P. However, the notices were returned undelivered by the Postal Department with the remark "not known". Be that as it may, it appeared from the Report of the 'Process Server' dated 07.12.2021, that hand delivery of such notices was made on the public premises on 07.12.2021. Additionally, affixation of such Notices were made on 07.12.2021, as per mandate of the Act, for a notice to all concerned about the pendency of the proceedings. On the day fixed for answering the show cause, the O.P. appeared through his Ld. Advocate by filing Vakalatnama and photocopies of Identity Cards (PAN card & Voter ID Card) of O.P./ Shri Prabhat Kumar Mukherjee in support of authorisation. It was reported that the O.P. had been "not well" and was not in position to represent his case on time and as such, adjournment for filing the reply to show cause was sought by the Ld. Advocate of O.P. Following the principles of natural justice that no one should be condemned unheard ('Audi Alteram Partem') a further opportunity was provided to the O.P. and the matter was adjourned. Finally, the Ld. Advocate for O.P. filed the reply to show cause on 11.01.2022 and intimated O.P.'s willingness to liquidate the dues of SMPK. Copy of the said reply was served upon SMPK, who was directed to file comments upon the said reply. Liberty was given to O.P. to approach the

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SYAMA PRASAD MOOKERJEE PORT
12.7.2022
The Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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



Proceedings No. 1737, 1737/D of 2019 Order Sheet No. 13

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

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12.7.2022

Estate Division, SMPK for liquidation of dues. SMPK filed their comments dated 16.02.2022 against the said reply of O.P. After advancing the aforesaid opportunities to the parties, the hearing of the matter was concluded and the parties were given liberty to file their respective written notes of arguments.

I have carefully considered the Reply to Show Cause dated 11.01.2022, filed by O.P./ Shri Prabhat Kumar Mukherjee. It is stated in the said Reply that O.P. suffered "huge loss" in his business, which he was doing with one 'Anglo Goldy Company' and the O.P. at present, is working hard for "business upliftment". It is further stated that O.P. has made huge payments to SMPK "till 29.11.2018" and is not in a position to liquidate the dues of SMPK at present, as the O.P. is facing "hard days" due to several lockdowns in State. It is contended by O.P. that as and when, the economic situation of O.P. will improve, the O.P. will liquidate the dues of SMPK. It is further alleged by O.P. that as the condition of the building was poor and it was in a position to harm anybody at anytime, renovation of the property has been made with the permission from KMC. However, the allegation of SMPK with regard to the "encroachment" has been denied by O.P. The other allegations of SMPK viz. unauthorisedly parting with the possession and change of purpose of lease by O.P., however, remained unanswered by O.P. in the said reply.

SMPK, on the other hand, in terms of their said comments dated 16.02.2022 has submitted that during a site inspection of the premises on 11.09.2014, it was found that the O.P. erected unauthorised structures by way of raising RCC measuring 77.24 sqm. and encroached an area about 6.343 sqm. It has further been submitted by SMPK that the O.P. was given permission to sublet a portion of the premises to M/s Swadeshi Oil Co. (measuring about 18.023 sqm) and M/s Hindusthan Oil Co. (measuring about 27.127 sqm) in terms of SMPK's letter dated 14.10.1995. In this regard, my attention has been invited in the application of SMPK dated

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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

737, 1737/D Of 2019 Order Sheet No. 14

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
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09
12.7.2022

16.11.2021, wherein it has been mentioned that during an inspection of the premises, barring the existence of office and godown of M/s. Swadeshi Oil Co., the existence of an ATM of Indian Overseas Bank was also found at the ground floor of the premises. Additionally, existence one 'Anglo Goldy Shipping and Logistics Pvt. Ltd.' was found of on the 1st floor of the premises. That apart, packing of sanitary pads was found to be operative in the 2nd floor of the premises. Whereas, the top floor of the premises was found under vacant condition. It is stated that dues with regard to the public premises in question has become huge and hence, the order of eviction and recovery of dues is required.

Now, while passing this Order I must say that I have satisfactorily heard the submissions/arguments advanced by the parties and carefully considered the papers/ documents/ evidence produced before this Forum. I, now proceed to deal with and decide the issues, point by point, in furtherance of the Notice to Show Cause dated 30.11.2021 issued by this Forum.

With regard to non-payment of occupational charges, I have considered the statement of account in respect of the premises dated 08.07.2019, as filed by SMPK under the cover of its application dated 30.07.2019. It appears from the said statements of account that no payment has been made by the O.P. all throughout the years, barring a few random payments made in the year 2017 and 2018. In fact, the non-payment of occupational charges has practically been admitted by the O.P. through its reply to show cause dated 11.01.2022. The statement of accounts maintained by a statutory authority/ SMPK in its usual course of business has definite evidentiary value, unless challenged with fortified documents/evidences etc, ready to bear the test of legal scrutiny. During the course of hearing, I am given to understand by SMPK that the rent as well as mesne profit/compensation/damages charged from time to time is based on the rates notified by the Tariff Authority for Major Ports (TAMP) in the Official Gazette,

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12.7.2022
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

APPOINTED BY THE
CENTRAL GOVT.
OF INDIA
PROCEEDINGS No.
NO. 40 OF 1971
CENTRAL ACT

1737, 1737/D of 2019 Order Sheet No. 15

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

Shri Prabhat Kumar Mukherjee

09
12.7.2022

which is binding on all users of the port property and non-payment of dues by O.P. appears to be established, as discussed above. The O.P. in its reply dated 11.01.2022 has requested this forum to extend co-operation "in bad times" as the O.P. is reportedly not in a position to liquidate the dues of SMPK. The O.P. requested for 6 months time for liquidation of the dues of SMPK. However, SMPK in response to O.P.'s submission pressed for an order of eviction. Now, I must mention here that being empowered to discharge functions under provisions of the Public Premises Act, this forum is bound to adjudicate matters within four corners of the Act and grant of time for liquidation of dues of SMPK at a time, when eviction has already been drawn up on the self same ground of non-payment by O.P. and there is no element of consent on the part of SMPK, being the landlord of the premises, for such grant of extensions, any Order, if passed, by the Forum granting time, would be beyond the scope and purview of the Act. Definitely, SMPK has its revenue involved in the premises in question and non-payment of dues by the O.P. appears to have been established, causing loss to the public exchequer, I am afraid that the emotional appeal of O.P. as submitted through its reply, would not come to actual rescue of O.P. This Forum has nothing to give cognizance on these issues; for, the O.P., was well within its right and decision, to relocate to another location after handing over the premises to the Port Authority, 'had the situation turned so grim and commercially unlucrative. The conduct of the O.P. suggests that it has definite business interest woven in its area of occupation, which cannot be allowed to thrive at the cost of the public exchequer.

With regard to the issue of unauthorized parting with possession made by O.P. to different entities, which are reportedly in use and occupation of the premises, it is the case of SMPK that one 'Anglo Goldy Shipping and Logistics Pvt. Ltd.' was found to be operating on the 1st floor of the premises. I find mention of 'Anglo Goldy Company' in the reply to show cause filed by the O.P. It has been

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SYAMA PRASAD MOOKERJEE PORT
12.7.2022
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1737, 1737/D Of 2019 Order Sheet No. 16

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

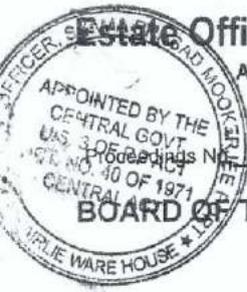
VS
Shri Prabhat Kumar Mukherjee

09
12.7.2022

submitted by the O.P. that one Mr. Sunil Kumar Rai, reportedly the Director of the said company is helping O.P. to push his business for a long term. Now, the question arises as to the precise authority under which the entity viz. Anglo Goldy Shipping and Logistics Pvt. Ltd.' or 'Anglo Goldy Company' has been functioning at the premises. During the course of the proceedings, though ample opportunities have been provided to the parties to file documents/ evidence in support of their contentions, not a single piece of paper, establishing the connection of O.P. with the said above-named company has been filed by the O.P. till date. As per the established tenets of law, a mere and perfunctory denial by O.P., of the charge of a breach brought against it by SMPK, without evidentiary support, does not stand the test of legal Scrutiny. No piece of evidence has been produced by the O.P. to contradict or rebut the evidence produced by SMPK. Further, no comment has been received from O.P. regarding the alleged existence of said ATM of Indian Overseas Bank at the ground floor of the premises. I cannot appreciate the state of affairs prevailing in the public premises in question. I am of the view that the public premises is being used only for the purpose of making unlawful gains by depriving the statutory authority vis-à-vis the exchequer. In my view, the ground of unauthorised parting with possession is proved against O.P. and it cannot escape the consequences of such unauthorised acts on its part.

With regard to the issue of unauthorised constructions on the premises, SMPK on its Sketch Plan being no. 9322 -K dated 11.09.2014, has submitted that O.P. made unauthorised construction of an area of 74.14 Sq.m as RCC structure. The O.P. vide its reply dated 11.01.2022 has submitted that the building/ premises was renovated with the permission of KMC, as the same was reportedly in a dilapidated condition. However, the O.P. did not produce any approval from SMPK's office, deemed, as per agreement, for renovation of structure in SMPK's premises. During the course of instant proceeding, no contrary, substantial and

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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

1737, 1737/D of 2019 Order Sheet No. 17

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
Shri Prabhat Kumar Mukherjee

09
12.7.2022

bankable piece of evidence to SMPK's allegation of unauthorised erection of structure has been furnished from O.P's end, barring the statement of O.P. regarding renovation of structure as per approval of KMC. I find from extant records that SMPK, in terms of the communication dated 11.11.2014, has been addressing the O.P. with the request to remove the unauthorised construction, but no such confirmation/assurance as to the affirmative/corrective action taken by O.P. has been submitted before this forum. In my view, it is clearly indicative that O.P. having carried out such activities of unauthorised construction during the continuance of the long term lease, without adhering to the conditions of the lease. As such, I am not inclined to accept the submission of O.P. that it is not guilty of the breach of unauthorised construction and I am firm in holding that the O.P. has carried out unauthorised construction without having the authority under law. Thus, the issue of unauthorised construction is decided against O.P.

With regard to the issue of encroachment, a mere denial came from O.P.'s side that no such activity has been made by them. As per records, the allegation of SMPK regarding encroachment was known to O.P., at least in the year 2014, after the communication of SMPK dated 11.11.2014 was issued to them, and SMPK's notice to quit dated 16.06.2017 clearly speaks for carrying out encroachment. At least from records, I do not find any positive gesture on the part of O.P. on the issue of encroachment. Continued silence on the part of O.P. on the issue of encroachment drives me to come into conclusion that SMPK's contention regarding encroachment on the public premises has certain element of truth. I am not at all satisfied with mere denial of charge on the part of the O.P. No evidence has been laid on behalf of O.P. to contradict SMPK's contention with regard to encroachment and as such, I have to decide the issue in favour of SMPK.

On the issues of change of purpose of lease, the O.P. preferred to remain silent. Nothing has come out, regarding change of purpose

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12.7.2022
By Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1737, 1737/A Of 2019 Order Sheet No. 18

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
Shri Prabhat Kumar Mukherjee

which deserves any consideration. Such being the case, it is very difficult to infer about the change of purpose of lease by O.P.

Admittedly a long term lease for the period of 15 years w.e.f. 01.01.2001 had been granted to O.P. and the same was expired on 31.12.2015. Thus the authority of O.P. came to an end with expiry of the said long term lease given to O.P. During the course of hearing, a forceful argument has been made from the end of SMPK to get back the possession of the premises after such expiry of the long term lease and SMPK was free to take action against O.P. by resorting to appropriate recourses of law, to get back the possession of the premises. It is submitted that SMPK is lawfully entitled to protect their legal right as landlord, so that nobody can continue to unauthorisedly occupy the said premises under the plea of 'consented occupation'. I find no element of consent on the part of SMPK authority in the form of expression of its assent for continuance in such occupation by O.,P. after the expiry of the period of long term lease.

Further, 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 tenancy granted to O.P. was undoubtedly determined by efflux of time, as has been admitted by O.P. in terms of its reply to show cause dated 11.01.2022 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.

Decisions against the foregoing paragraphs will certainly lead to the conclusion that the breaches as claimed by SMPK is very much

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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.
Under Proceedings No. _____
ACT. NO. 90 OF 1971

1737, 1737/D of 2019 Order Sheet No. 19

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

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established against the O.P. and the issue have been decided accordingly.

Now, the 'Damages'/ 'Compensation Charges' 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 of lease, 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/ Compensation Charges for such unauthorized use and occupation.

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. 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. I have no hesitation to observe that O.P.'s act in continuing occupation is unauthorized and the 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.

NOW THEREFORE, in view of the above, I am left with no other alternative but to issue the order of eviction u/s 5 of the Act against O.P. for the following reasons/grounds:

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OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

09
12.7.2022.





Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Appointed by the Central Govt. Under Section 3 of the Public Premises
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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
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1. That the O.P. has failed and neglected to liquidate the occupational charges, in gross violation to the condition of lease as granted by SMPK to O.P.
2. That O.P. has practically admitted non-payment of dues of SMPK for the purported reasons of loss in his business for which SMPK is no way responsible and by making such statements, O.P. cannot evade his responsibilities of liquidation of dues of SMPK.
3. That O.P. has failed to produce any piece of evidence or document so as to defend the allegations by SMPK of unauthorized parting with possession, unauthorized constructions and encroachment into the Trustees' land.
4. That the O.P. was well aware about the expiration of its authority under Lease to hold/occupy the public premises in question and inspite of such knowledge failed to surrender possession of the premises to SMPK;
5. That the occupation of O.P. has become unauthorized in view of Sec.2(g) of the P.P. Act, 1971.
6. That the notice demanding possession dated 16.06.2017, as served upon O.P. is valid, lawful and binding upon the parties and O.P. is liable to pay damages for wrongful use and enjoyment of Port Property in question upto the date of handing over of clear vacant and unencumbered possession to the Port Authority.

Accordingly, I sign the formal order of eviction under Sec. 5 of the Act as per Rules made thereunder, giving 15 days' time to O.P. 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 as their occupation into the Public Premises is/are unauthorised in view of sec. 2(g) of the Act. 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

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2019

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

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09
12.7.2022

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. 1,88,084/- (Rupees One Lakh Eighty Eight Thousand and Eighty Four Only) for Plate No. SB 135/1 and Rs 1,94,242/- (Rupees One Lakh Ninety Four Thousand Two Hundred Forty Two only) for Plate no. SF-182 for the period from 01.02.2016 upto 30.06.2017 are due and recoverable from the O.P. by Port Authority on account of compensation dues/ damages/ mesne profit and O.P. must have to pay the dues to SMPK on or before 28th July, 2022.

Such dues shall attract 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 the State Bank of India) from the date of incurrence of liability, till the liquidation of the same, as per the adjustment of payments, if any made so far by O.P., in terms of SMPK's books of accounts.

I sign the formal orders u/s 7 of the Act.

I make it clear that SMPK is entitled to claim damages against O.P. for unauthorized use and occupation of the public premises right upto the date of recovery of clear, vacant and unencumbered possession of the same in accordance with Law, and as such the liability of O.P. to pay damages extends beyond 30.06.2017 as well, till such time the possession of the premise continues to be under the unauthorized occupation with the O.P. SMPK is directed to submit a statement comprising details of its calculation of damages after 30.06.2017, indicating therein, 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 the 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 pay the amounts to SMPK as aforesaid, Port Authority is entitled

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to proceed further for recovery of its claim in accordance with
law.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL

(Sayam Sinha)
ESTATE OFFICER

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

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Head Assistant
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SYAMA PRASAD MOOKERJEE PORT

09
12.7.2022.