



SCAN

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

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

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

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

PROCEEDINGS NO.1630/D OF 2018
ORDER NO. 22 DATED: 07.11.2022

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

Estate Narain Chandra Ghosh represented by namely

1. Shri Ranjit Kr Ghosh,
 2. Smt. Pushpa Rani Ghosh,
 3. Smt. Sipra Ghosh,
 4. Smt. Manju Ghosh,
 5. Smt. Susama Ghosh,
 6. Shri Bonomali Ghosh &
 7. Smt. Ranubala Ghosh
- All of Dalal Pukur, Chakra Beriya, Shibpur,
Howrah- 711104.

AND

197, Netaji Subhas Road, Howrah,
West Bengal.

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

10.11.2022

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 12.07.2019 you are called upon to show cause on or before 29.07.2019 why an order requiring you to pay damages of Rs. 10,45,972.96 (Rupees Ten lakh forty five thousand nine hundred seventy two and paise ninety six only) for Plate No.HL-183 and Rs. 55,633.71 (Rupees Fifty five thousand six hundred thirty three and paise seventy one only) for Plate No.SF-150/3 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 the evidence produced by you;

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. 10,45,972.96 (Rupees Ten lakh forty five thousand nine hundred seventy two and paise ninety six only) for Plate No.HL-183 and Rs. 55,633.71 (Rupees Fifty five thousand six hundred thirty three and paise seventy one only) for Plate No.SF-150/3 respectively assessed by me as damages on account of your unauthorised occupation of the premises both for the period from 01.08.1983 to 02.06.2011 (both days inclusive) to SMPK by 25.11.2022.

PLEASE SEE ON REVERSE

: 2 :

In exercise of the powers conferred by Sub-section (2A) of Section 7 of the said Act, I also hereby require you to pay compound interest @ 6.90 % per annum on the above sum till its final payment being the current rate of interest as per the Interest Act, 1978.

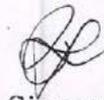
In the event of your refusal or failure to pay the damages within the said period or in the manner aforesaid, the amount will be recovered as an arrear of land revenue through the Collector.

SCHEDULE

Plate No. HL-183 & SF-150/3

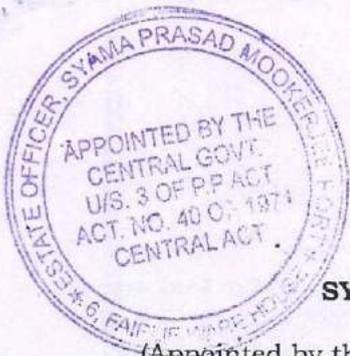
The said piece and parcel of land measuring about 677.449 Sq.mts. or thereabouts is situated at Ramkristopur, Howrah, Police Station, District and Registration District: Howrah. It is bounded on the North partly by the said Trustees' land leased to Howrah Flour Mills Ltd and partly by Bonbehari Bose Road, on the East by the said Trustees' strip of open land reserved as a margin of safety alongside the P.T.R Siding and on the South and West by the said Trustees' land leased to Howrah Flour Mills Ltd.
Trustees' means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata).

Date 10.11.2022



Signature & Seal of the
Estate Officer.

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



SCAN

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

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

(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)
Public Premises (Eviction of Unauthorized Occupant) Act 1971
OFFICE OF THE ESTATE OFFICER
6, Fairley Place (1st Floor)
KOLKATA - 700 001

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

Form " E "

PROCEEDINGS NO.1630/R OF 2018
ORDER NO.22 DATED: 07.11.2022

Form of order under Sub-section (1) and (2A) of Section 7 of the Public
Premises (Eviction of Unauthorised Occupants) Act, 1971.

To

Estate Narain Chandra Ghosh represented by namely

1. Shri Ranjit Kr Ghosh,
 2. Smt. Pushpa Rani Ghosh,
 3. Smt. Sipra Ghosh,
 4. Smt. Manju Ghosh,
 5. Smt. Susama Ghosh,
 6. Shri Bonomali Ghosh &
 7. Smt. Ranubala Ghosh
- All of Dalal Pukur, Chakra Beriya, Shibpur,
Howrah: 711104.

AND

197, Netaji Subhas Road, Howrah,
West Bengal.

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

10/11/2022

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

AND WHEREAS, by written notice dated 12.07.2019 you are called upon to show cause on or before 29.07.2019 why an order requiring you to pay a sum of Rs. 42,742.37 (Rupees Forty two thousand seven hundred forty two and paise thirty seven only) for Plate No.HL-183 & Rs.2,727.82 (Rupees two thousand seven hundred twenty seven and paise eighty two only) for Plate No.SF-150 being the rent payable together with compound interest in respect of the said premises should not be made;

AND WHEREAS, I have considered your objections and/or the evidence produced by you;

NOW, THEREFORE, in exercise of the powers conferred by sub-section (1) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971, I hereby require you to pay the sum of Rs. 42,742.37 (Rupees Forty two thousand seven hundred forty two and paise thirty seven only) for Plate No.HL-183 for the period from 31.03.1977 to 31.07.1983 (both days inclusive) and Rs.2,727.82 (Rupees two thousand seven hundred twenty seven and paise eighty two only) for Plate No.SF-150 for the period from 30.04.1979 to 31.07.1983 (both day inclusive) to SMPK by 25.11.2022

PLEASE SEE ON REVERSE



: 2 :

In exercise of the powers conferred by Sub-section (2A) of Section 7 of the said Act, I also hereby require you to pay compound interest @ 6.90 % per annum on the above sum till its final payment being the current rate of interest as per the Interest Act, 1978.

In case the said sum is not paid within the said period or in the said manner, it will be recovered as arrears of land revenue through the Collector.

SCHEDULE

Plate No. HL-183 & SF-150/3

The said piece and parcel of land measuring about 677.449 Sq.mts. or thereabouts is situated at Ramkristopur, Howrah, Police Station, District and Registration District: Howrah. It is bounded on the North partly by the said Trustees' land leased to Howrah Flour Mills Ltd and partly by Bonbehari Bose Road, on the East by the said Trustees' strip of open land reserved as a margin of safety alongside the P.T.R Siding and on the South and West by the said Trustees' land leased to Howrah Flour Mills Ltd. Trustees' 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
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

10.11.2022

Dated: 10.11.2022


Signature and seal of the
Estate Officer

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

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1630, 1630/R, 1630/D of 2018 Order Sheet No. 15

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
ESTATE NARAIN CHANDRA GHOSH (REPRESENTED BY LEGAL HEIRS)

FINAL ORDER

The instant Proceedings No. 1630/R & 1630/D of 2018 arose out of the application bearing No. Lnd. 2852/17/18/4522 dated 12.02.2018 filed by the Syama Prasad Mookerjee Port, Kolkata (Erstwhile Kolkata Port Trust/KoPT), hereinafter referred to as **SMPK**, the Applicant herein, praying for order for recovery of all dues damages, taxes, along with interest from **Estate Narain Chandra Ghosh represented by namely 1. Shri Ranjit Kr Ghosh, 2. Smt. Pushpa Rani Ghosh 3. Smt. Sipra Ghosh 4. Smt. Manju Ghosh 5. Smt. Susama Ghosh 6. Shri Bonomali Ghosh & 7. Smt. Ranubala Ghosh (O.P.)** herein.

The material facts of the case is summarized here under.

It is the case of SMPK that the O.P. came into possession of SMPK's land msg. 677.449 Sq.m situated at Ramkristopur, Howrah, Police Station-Howrah, Dist. Howrah, under Occupation No. HL.183 & SF.150/3 as short term monthly lessee and such lease was determined by SMPK vide its notice to Quit dated 15.06.1983 for not paying the rent and taxes by O.P. and also due the demise of original recorded lessee. However, O.P. neglected to quit, vacate and deliver up SMPK's land in vacant condition and continued their occupation over the subject public premises on and from 01.08.1983 unauthorisedly. Thereafter in an eviction drive, the possession of the said subject premises were taken over by SMPK on 02.06.2011 and put the same under lock and key in vacant condition. Now it is argued by SMPK that huge amount of rent/compensation/damages along with accrued interest is still due and recoverable from the O.P. for the respective Plates in question.

It appears from the record that O.P. has filed two Writ Petitions being W.P No. 20099(W) of 2011 and W.P.298 of 2013 before the Hon'ble High Court, Calcutta. One writ Petition being W.P No. 20099(W) of 2011 was filed inter alia challenging the taking over of land by SMPK and the



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

22
07.11.2022

10.11.2022

[Handwritten signature]

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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



Proceedings No. 1630, 1630/R, 1630/O of 2018 Order Sheet No. 16

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
ESTATE MARIN CHANDRA GHOSH (REPRESENTED BY LEGAL HEIRS)

2h

07.11.2022

By Order of:
THE ESTATE OFFICER,
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
Heal Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

20.11.2022

[Handwritten mark]

another writ Petition being W.P.298 of 2013 was filed inter alia challenging the process for allotment of such land on tender. It further appears that the writ petition being No.W.P.298 of 2013 was disposed of by Hon'ble High Court, Calcutta vide its order dated 26.03.2013 delivered by the Hon'ble Justice Dipankar Datta (as His Lordship then was) with a direction that the Tender Notice bearing Plate No.TN/13/1/41 should not be proceeded further until disposal of the earlier Writ Petition being W.P. 20099(W) of 2011 filed by the O.P. During the course of hearing although SMPK vide their application dated 17.06.2019 has submitted that such earlier Writ Petition filed by O.P. is still pending before the Hon'ble High Court, Calcutta however, neither of the parties have intimated about the order of stay in connection with the instant proceedings. As such I find no bar to proceed for disposal of the eviction proceedings etc. on its own merit in accordance with law.

This Forum being prima facie satisfied with the claim of SMPK has issued Notice/s to Show Cause dated 12.07.2019 (vide Order-05 dated 12.07.2019) upon the O.P. u/s 7 of the Public Premises (Eviction of Unauthorized Occupation) Act, 1971 to show cause as to why an order requiring to pay arrear rent/compensation together with interest should not be made against the O.P. The O.P. was also called upon to appear before this forum in person or through authorized representative capable to answer of material question connected with the matter along with the evidence which the opposite party intends to produce in support of this case.

The said notice/s were served through Speed Post as well as by hand delivery to all the recorded addresses of O.P. It appears from record that the Notice/s sent to 1st & 2nd mentioned legal heirs of O.P. through Speed Post returned undelivered to the Forum with an endorsement "insufficient address". However, the report of the Process Server dated

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. 1630, 1630/R, 1630/D of 20/8 Order Sheet No. 17

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
ESTATE NARAYAN CHANDRA GHOSH (REPRESENTED BY LEGAL HEIRS)

22

07.11.2022

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

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

10.11.2022

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22.07.2019, depicts that the said Notice was personally served upon one of the legal heirs of O.P on 22.07.2019 and affixation of such Notice/s were also made on the subject premises on 22.07.2019 at 2 P.M as per the mandate of the P.P Act. As O.P. did not turn up before the Forum, following the principles of natural justice, this Forum on 05.02.2020 made further attempt to serve the notice upon O.P. by directing SMPK to provide alternative address, if any, of the O.P. Thereafter SMPK vide their application dated 24.02.2020 filed two alternative addresses of O.P and accordingly notice/s were served upon both the alternative addresses of O.P. both by Speed Post and hand delivery. Intimation sent through Speed Post again returned undelivered to the Forum with a mark Left however, the Report of the Process Server depicts that such order dated 24.02.2020 was validly served upon O.P. personally and due affixation was also made once again on the subject premises in question.

The O.P. appeared before this Forum through their Ld. Advocate on 18.11.2020 and contested the case by filing several application/objections. It reveals from record that O.P. filed their reply to the Show Cause Notice/s on 18.01.2021. SMPK on the other hand, filed their comments dated 07.05.2021 in response to the reply to Show cause filed by O.P.

The main contentions of O.P. can be summarized as follows:-

- 1) Licence was granted to Trust Estate Narayan Chandra Ghosh in respect of Plate No.HL.183 & SF-150/3 therefore, the instant Proceedings against O.P. is not maintainable in law.
- 2) No Notice to quit was served upon the Trust Estate Narayan Chandra Ghosh and/or upon these objectors thus the question of unauthorised

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. 1630, 1630/R, 1630/D of 2018 Order Sheet No. 18

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
ESTATE NARAYAN CHANDRA GHOSH (REPRESENTED BY LEGAL HEIRS)

2/2

07.11.2022

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

10.11.2022

occupation by these objectors does not arise in this instant case.

- 3) The Claims of SMPK for damages and/or rent for the period covered by Show Cause Notice/s are barred by law of limitation. 3 years have already been elapsed from the date of filing their applications.
- 4) Estate Narayan Chanda Ghosh was/is the trust Estate represented by Trustees and the legal heir mentioned in the Show Cause notice were/are not Trustees of such Trust Estate thus the alleged claim against such legal heirs is also not maintainable in law, therefore the instant Show Cause notice be dropped/dismissed.
- 5) SMPK's claim for arrear rent as alleged in those Show Cause Notice/s were/are not payable by O.P. and thus such claim of rent/damages should be dismissed with cost.

SMPK, the petitioner, denying the claim of O.P. argued that a month to month lease was granted to O.P since 1924 in respect of the public premises in question and tenancy was terminated vide its ejection Notice dated 15.06.1983 w.e.f 01.08.1983 and despite of such termination O.P continued their occupation without tendering any occupational charges therefore, Proceeding against O.P. was instituted by SMPK claiming rent and compensation charges. Such claim of SMPK is within the legitimate period therefore, Limitation Act has no application on the proceedings before the quasi-judicial authority like this Forum and the proceedings is very much maintainable. Further it is argued by SMPK, that the rate and charges as fixed by the SMPK are not fixed whimsically however, such rate and charges are time to time fixed by the Tariff Authority of Major Ports therefore, O.P. cannot deny their liability to pay such rate, charges and interest according to the notification published by the Tariff Authority of Major Ports.

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. 1630, 1630/R, 1630/D of 4018 Order Sheet No. 19

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

ESTATE MARIAN CHANDRA GHOSH (REPRESENTED BY LEGAL HEIRS) VS

mh

07.11.2022

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

Head Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

10.11.2022

(Signature)

Now, while passing the Final Order, after carefully considered the documents on record and the submissions of the parties, I find that following issues have come up for my adjudication:-

- I) Whether the instant proceedings against the O.P. is maintainable or not;
- II) Whether the Notice issued by the Estate Officer u/s 7 of the Act is maintainable or not;
- III) Whether the plea taken by O.P. regarding "non-service of notice to Quit" dated 15.06.1983 has got any merit for determination of the points at issue or not;
- IV) Whether O.P. has defaulted in making payment of rental dues to SMPK or not;
- V) Whether the O.P. can take the plea of time barred claim;
- VI) Whether O.P. is liable to pay damages, as claimed by SMPK, or not;

As regards the **issue no.I**, I must say that the properties owned and controlled by the Port Authority has been declared as "public premises" by the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and Section-15 of the Act puts a complete bar on Court's jurisdiction to entertain any matter relating to eviction of unauthorized occupants from the public premises and recovery of rental dues etc. SMPK has come up with an application for order of recovery of rental dues & compensation charges etc against O.P. on the ground of non-payment of the same in respect of the premises in question. So long the property of the Port Authority is coming under the purview of "public premises" as defined under the Act, adjudication process by serving Show Cause Notice u/s 7 of the Act is very much maintainable and there

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. 1630, 1630/R, 1630/D or 2018 Order Sheet No. 20

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
ESTATE MARTIN CHANDRA GHOSH (REPRESENTED BY LEGAL HEIRS)

22

07.11.2022

By Order of:
THE ESTATE OFFICER
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SYAMA PRASAD MOOKERJEE PORT

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

10.11.2022

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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. The Issue no. I is therefore decided accordingly.

With regard to **issue no. II**, I do not find any argument on behalf of O.P., save and except statement against issuance of notice/s u/s. 7 of the Act. It is my considered view based on careful consideration of the materials brought before me that SMPK's case needs to be adjudicated by way of issuing Show Cause Notice/s for initiation of proceedings under the relevant provisions of the Act and Rules made thereunder. Port premises being public premises as defined under the Act, I have definite jurisdiction to entertain the matters relating to the prayer for order of recovery of arrear rental dues/damages etc. as per provision of the Act. No right has been taken away from O.P. by way of issuing Show Cause Notice/s. In fact, to start with the adjudication process as envisaged under the Act, issuance of Show Cause Notice/s is a sine-qua-non. One cannot go beyond the statutory mandate of an enactment (P. P. Act) which provides a complete code for adjudication of any matter before this Forum of Law. Formation of opinion to proceed against O.P. on the basis of the materials connected with the occupation of O.P. cannot be blamed without establishing irregularity, if any, under the statutory mandate. In such a situation, I do not find any merit to the submissions/statement on behalf of O.P. in this regard and as such, the issue is decided against O.P.

Regarding **issue no. III**, i.e. on the question of non-service of notice, determining O.P.'s tenancy under short term monthly lease by ejection notice dated 15.06.1983 I must say that "Any notice required to be given to the lessees hereunder may be served on the lessees by sending the

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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(Eviction of Unauthorised Occupants) Act 1971

APPOINTED BY THE
CENTRAL GOVT.
U/S 3 OF THE
ACT. NO. 40 OF 1971
CENTRAL GOVT.

Proceedings No. 1630,1630/R,1630/D of 2018 Order Sheet No. 21

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

ESTATE KARIN CHANDRA GHOSH (REPRESENTED BY LEGAL HEIR) VS

22

07.11.2022

By Order of:
THE ESTATE OFFICER
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SYAMA PRASAD MOOKERJEE PORT

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

10.11.2022

same through the post addressed to them at the address abovementioned and shall be deemed to have been duly served to them on the day next subsequent to the day on which it was posted."

It is claimed by SMPK that notice has been served "**Under Certificate of Posting**" at the recorded address of O.P. at that point of time. Keeping in view of the fact that notice dated 15.06.1983 was served in proper address, I am inclined to accept that notice was served properly by SMPK. Moreover, a notice served in official course of business cannot be ignored by mere statement against sufficiency of serving such notice. Therefore, the issue is decided in favour of Port Authority.

Issues No.IV & V are taken up together for convenient discussion. O.P. vide their reply to the Show Cause dated 18.01.2021 denied their dues on account of rent however it appears from the record that at the time of vacating the possession, there were arrear rental dues/ charges and also interest for delayed payment payable by O.P. Further the comprehensive Statement of Accounts dated 20.05.2019 as filed by SMPK in respect of said occupation, also clearly indicates the huge dues on the part of the O.P. In my view, such statement maintained by the statutory authority in the usual course of business has definite evidentiary value, unless challenged by any of the concerned/interested parties with fortified documents/evidences etc, ready to bear the test of legal scrutiny. During the course of hearing, I am given to understand by the Port Authority that the rent charged from time to time is based on the rates notified by the Tariff Authority for Major Ports (TAMP) in the Official Gazette, which is binding on all users of the port property. In my view, the breach committed by the O.P. is very much well established in the facts and circumstances of the case and O.P. must have to suffer the



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. 1630, 1630/R, 1630/b of 2018 Order Sheet No. 22

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

ESTATE MARIAN CHANDRA GHOSH (REPRESENTED BY LEGAL HEIRS) VS

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07.11.2022

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

20.11.2022

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consequences, following due applications of the tenets of law. In my view, the conduct of the O.P. does not inspire any confidence and I am not at all inclined to protect O.P. even for the sake of 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 deny such payment of requisite charges as mentioned in the Schedule of Rent Charges. In the aforementioned circumstances, being satisfied as above, I have no hesitation to uphold the claim of the Port Authority.

On the question of time barred claim of SMPK on "limitation", opposing submissions have received my due attention. It is the case of O.P. that SMPK's claim against O.P. is time barred. However, I have come across a decision of the Madhya Pradesh High Court in AIR 1980 MP 196(DB) wherein it was decided that Limitation Act has no application to the proceedings before the Estate Officer as it is not a Court to be governed by the Civil Procedure Code, keeping in view the bar under Sec.15 of the P.P. Act. Admittedly, O.P. has accepted the Jural relationship between SMPK and itself that is to say as debtor. In my view a combined reading of the relevant provisions of the Limitation Act read with the provision of the Indian Contract Act leaves no room for doubt that O.P. has specifically acknowledged its dues/charges for occupation into the Port property while acknowledging the jural relationship between the parties as debtor and as such cannot take the plea of time barred claim. The situation in which the Hon'ble Apex Court delivered its judgment has drastically changed upon amendment of the Public Premises Act, 1971 with the introduction of Sec.15 of the Act. The Apex Court delivered its judgment in New Delhi Municipal Corporation case on Public Premises Act 1958.

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

ESTATE MARIY CHANDRA GHOSH VS (REPRESENTED BY LEGAL HEIRS)

lh

07.11.2022

By Order of:

**THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT**

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PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Head of Office of the Estate Officer
SYAMA PRASAD MOOKERJEE PORT

10.11.2022

wherein Sec.15 regarding taking away of jurisdiction of all Courts into the matters concerning the public premises was not there. The Public Premises Act 1971 has come into force after eliminating all constitutional infirmities. At the time of the Apex Court judgment, the 1958 Act was in force being the Public Premises (Eviction of Unauthorized Occupants) Act, 1958. This Act gave a choice of procedure to the Government. The fact that a contradictory process could be followed led to repeal of the 1958 Act and enactment of the Public Premise (Eviction of Unauthorized Occupants) Act 1971 which introduced Sec. 15 with the object of making the Act constitutionally valid and not violative of Article 14 of the Constitution of India. The Limitation Act is applicable for Civil Courts to try suits unless barred by some other Act. Sec.9 of the Civil Procedure Code reads as follows:

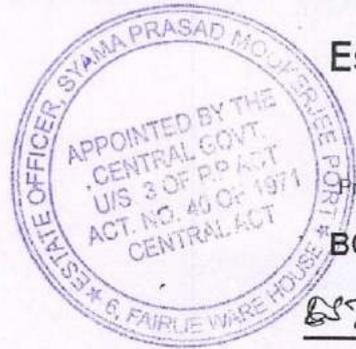
“The courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.”

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

The Limitation Act has no application in the proceedings before the Estate Officer which is not a Civil Court, governed by the Civil Procedure Code. Sec. 15 of the Act puts a complete bar on entertaining any matter before the

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

ESTATE NARIN CHANDRA GHOSH VS REPRESENTED BY LEGAL HEIRS

22

07.11.2022

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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SYAMA PRASAD MOOKERJEE PORT

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

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Civil Court in respect of Public Premises. I am firm in holding that Limitation Act has its no application in the instant case and the Division Bench judgment of Madhya Pradesh High Court has its applicability in all sense of law.

In my understanding Civil Suits are tried by the Courts as per the Civil Procedure Code and proceedings before this Forum of Law are guided by the P.P. Act which provides a code for adjudication of matters relating to public premises. However, Civil Procedure Code has only a limited application to the proceedings before the Estate Officer in-as-much-as that an Estate Officer shall for the purpose of holding an enquiry under the P.P. Act, have the powers as are vested in a Civil Court under the Code of Civil Procedure while trying a suit in respect of 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 Office under P.P. Act enjoys a very restricted power of CPC in terms of the Order-XVI, Rules 1 to 21 of the Civil Procedure Code (CPC) and Order- XI, Rule 12 to 21. No doubt the Estate Officer has been given power as vested in a Civil Court under CPC for the limited purpose of holding enquiry under the P.P. Act. Yet it is not a court to be governed by the Civil Procedure Code. As per CPC, the courts shall have jurisdiction to try all suits of a civil nature, excepting suits for which their cognizance is either expressly or impliedly barred.

There is no scope for interpretation with regard to jurisdiction of the Civil Court in respect of the matters specified under P.P. Act against the legislative mandate u/s.15 of the P.P. Act read with Sec.9 of CPC. As it is abundantly clear that Estate Officer, the Adjudicating Authority under the P.P. Act is not a Civil Court to be governed by the Civil Procedure Code, the proceedings

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

ESTATE NARIN CHANDRA SHOSH (REPRESENTED BY LEGAL HEIRS)

22

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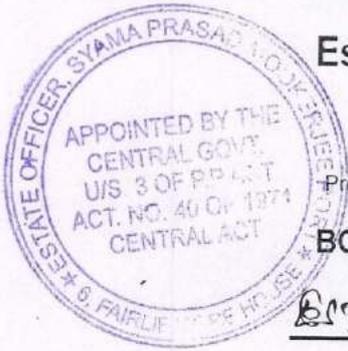
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SYAMA PRASAD MOOKERJEE PORT

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before the Estate Officer cannot be considered under law to be a suit or proceedings under the CPC. As such, I am firm in holding that Limitation Act has no application in the instant case. The Division Bench judgment of Madhya Pradesh High Court reported in AIR 1980 MP 196 (D.B) (L.S. Nair -VS-Hindusthan Steel Ltd. & Ors.) has its applicability in all sense of law. In this connection 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. It is my considered view that the contention with regard to "limitation" on behalf of O.P. is applicable in case of Civil suit before the Civil Court to be governed by CPC not before this Forum of Law, which is a quasi-judicial authority under P.P. Act which provides a complete code. More specifically, Limitation Act has its application for suits to be governed under CPC. Hence, the issue is decided in favour of SMPK. I am firm in holding that this Forum of Law is very much competent under law to adjudicate the claim of SMPK against O.P. and Limitation Act has no application to the proceedings before the Estate Officer which is a quasi-judicial authority under P.P. Act and neither a Civil Court to be governed by the Civil Procedure Code nor a "court" within the scheme of the Indian Limitation Act.

Issue of Compensation/damages as arises out in **issue No VI** also received the due attention of the Forum. It is seen that O.P. continued in possession of the public premises even after determination of the lease w.e.f 01.08.1983 and subsequently in an eviction drive possession of the subject land was taken over by SMPK on 02.06.2011 and no reason



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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

ESTATE MARIN CHANDRA GHOSE (REPRESENTED BY LEGAL ADVISORS) VS

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SYAMA PRASAD MOOKERJEE PORT

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or evidence has been brought forth by the O.P. as to how its occupation from 01.08.1983 to 02.06.2011 could be termed as "authorised occupation" in the absence of any renewal of the lease in question. Therefore, I have no hesitation in holding that The possession of the public premises by the O.P. from 01.08.1983 till 02.06.2011, therefore, is nothing but "unauthorized occupation" within the meaning of sec 2 (g) of the P.P. Act, 1971, which reads as under:

"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."

For occupation and enjoyment of a Public Premises one must have to pay requisite charges for occupation. Discussion against the foregoing paragraphs will certainly lead to the conclusion that the ejection notice dated 15.06.1983 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. The properties of the Port Trust (read as SMPK) are coming under the purview of "public premises" as defined under the Act. The lease granted to O.P. was doubtlessly determined by Port Authority by way of valid notice to Quit dated 15.06.1983 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 the lease, on evaluation of the facts and circumstances of the case. "Damages" are like "mesne profit" that is to say the profit arising out of



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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

ESTATE MARIAN CHANDRA GHOSH (REPRESENTED BY LEGAL HEIRS)

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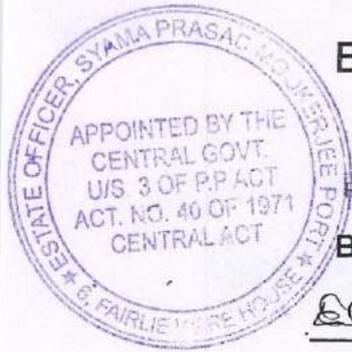
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wrongful use and occupation of the property in question. I have no hesitation in mind to say that right from the date of expiry of the quit notice, O.P. has lost its authority to occupy the public premises, on the evaluation of factual aspect involved 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 10th December 2004, reported (2005)1 SCC 705, para-11 of the said judgment reads as follows-

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

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 lease was doubtlessly determined by a valid notice to quit, 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



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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

ESTATE NARIN CHANDRA GHOSH (REPRESENTED BY LEGAL HEIRS) VS

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premises, once the lease was determined. 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. It has been held by the Hon'ble Apex Court of India that a person continuing in possession of the premises after termination, withdrawal or revocation of license/lease continues to occupy it as a trespasser or as a person who has no semblance of any right to continue in occupation of the premises. Such person by no stretch of imagination can be called a licensee/ lessee. 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 the landlord to receive each month by way of compensation for use and occupation of the premises, an amount equal to the monthly rent payable by the tenant. In my view, the case in hand is very much relevant for the purpose of determination of damages upon the guiding principle as laid down by the Hon'ble Apex Court in the above case. In course of hearing, it is submitted on behalf of 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. It is also submitted with argument that such notified rates of rent (Rent Schedule) has been upheld by the Hon'ble High Court Calcutta and the Hon'ble Apex Court as well and that any dispute/question relating to unreasonableness/ arbitrariness with regard to enforceability of such notified rates of rent charges, is

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

ESTATE NARIN CHANDRA GHOSH VS. (REPRESENTED BY LEGAL HEIRS)

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SYAMA PRASAD MOOKERJEE PORT

10.11.2022

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beyond the jurisdiction/scope of this forum of law. 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 determination of the lease in question in its original condition. In fact O.P. cannot claim differential treatment from other occupier/user of the Port Property for making payment of charges in terms of the notification/s in a similarly placed situation. I am of the considered view that OP cannot repudiate the claim of SMPK towards damages for wrongful occupation after expiry of the lease in question. In view of the foregoing, I am of the considered view that the claim of the Port Authority regarding the damages cannot be said to be arbitrary or unreasonable.

In fact, I have nothing to disbelieve in respect of SMPK's claim against O.P. as per statement of accounts maintained regularly in SMPK's office in regular course of business.

Further regarding the Trust Estate, I do not find in the record any sufficient material from opposite party to arrive at a proper conclusion therefore, I am not convince by O.P's submission.

NOW THEREFORE, I think it is a fit case for issuance of order for recovery of rent and damages u/s 7 of the Act as prayed for on behalf of SMPK. I sign the order as per rule made under the Act, giving time upto 25.11.2022 for payment of rent of Rs. 42,742.37 (Rupees Forty two thousand seven hundred forty two and paise thirty seven

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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Proceedings No. 1630, 1630/R, 1630/D or 2018 Order Sheet No. 30

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

ESTATE NARLAP CHANDRA GHOSH (REPRESENTED BY LEGAL HEIRS)
VS

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07.11.2022

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

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SYAMA PRASAD MOOKERJEE PORT

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20.11.2022

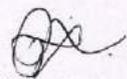
only) for Plate No.HL-183 for the period from 31.03.1977 to 31.07.1983(both days inclusive) & Rs.2,727.82(Rupees two thousand seven hundred twenty seven and paise eighty two only) for Plate No.SF-150 for the period from 30.04.1979 to 31.07.1983(both day inclusive) to SMPK by O.P.

I also sign the order as per rule made under the Act, giving time upto 25.11.2022 for payment of damages of Rs. 10,45,972.96(Rupees Ten lakh forty five thousand nine hundred seventy two and paise ninety six only) for Plate No.HL-183 and Rs. 55,633.71(Rupees Fifty five thousand six hundred thirty three and paise seventy one only) for Plate No.SF-150/3 both for the period from 01.08.1983 to 02.06.2011(both day inclusive) to SMPK by O.P.

Such aforesaid dues, in terms of Section 7 (2-A) of the PP Act, 1971, attract compound interest @ 6.90 % per annum, which is the current rate of interest as per the Interest Act, 1978 (as gathered by me from the official website of the State Bank of India) from the date of incurrence of liability, till the liquidation of the same, as per the adjustment of payments, if any made so far by O.P., in terms of SMPK's books of accounts.

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 to proceed further in accordance with Law. All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL


(Rahul Mukherjee)
ESTATE OFFICER

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