APPOINTED BY THE CENTRAL GOVT.

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ACT NO 40 OF CENTRAL ACT

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

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

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

REASONED ORDER NO.51 DT 05./2.2012 PROCEEDINGS NO. 1383 OF 2013

SYAMA PRASAD MOOKERJEE PORT, KOLKATA
(ERSTWHILE BOARD OF TRUSTEES OF THE PORT OF KOLKATA)
-Vs-

M/s. Durlabhaji Bhurabhai Metalware Pvt. Ltd, (O.P)

F O R M - "B"

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

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that M/s. Durlabhaji Bhurabhai Metalware Pvt. Ltd,1, Bonfield Lane, Kolkata-700001 is in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

- 1. That the proceedings against O.P. is very much maintainable
- That O.P. cannot take the plea of waiver of Notice of demand for possession, taking the shield of acceptance of rent by SMPK.
- 3. That O.P. has failed to pay the dues/ charges as payable to SMPK in terms of SMPK's demand to fulfill the condition for grant of licence in favour of them in respect of the properties in question.
- That O.P. cannot take the plea of time barred claim by SMPK, taking the shield of Limitation Act.
- That O.P. has failed to bear any witness or adduce any evidence in support of its "Authorised Occupation".
- That O.P. cannot continue in occupation of the Public Premises in question without obtaining valid grant from the Port Authority and O.P's occupation has become "unauthorised" in view of Sec.2(g) of P.P. Act.
- That the notices demanding possession from O.P. vide SMPK's notice dated 10.09.2007 is valid, lawful and binding upon the parties.
- That O.P. is liable to pay damages for its wrongful use and enjoyment of the Port Property upto the date of handing over of clear vacant and unencumbered possession to SMPK.

PLEASE SEE ON REVERSE

By Order of :
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

PASSED BY THE STATE OFFICER
SYAMA PRASAD A CONTRUE PORT

06/12/2022

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APPOINTED BY THE CENTRAL GOVT.

A copy of the reasoned order No. 51 dated OS, /2. 2021 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. Durlabhaji Bhurabhai Metalware Pvt. Ltd, 1, Bonfield Lane, Kolkata-700001 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. Durlabhaji Bhurabhai Metalware Pvt. Ltd, 1, Bonfield Lane, Kolkata-700001 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. JS-4/1/A

Godown space msg.271.834 Sq.m or thereabouts is situated in the Trustees' Kolkata Jetty Shed No.1 which is situated on the west side of Circular Railway Track alongside Strand Road under the North Port Police Station within the presidency town of Kolkata. It is bounded on the North by the Trustees' godown, on the south by the Trustees' godown, on the east by the Trustees' open land used as common passage and on the west by the river Hooghly. Trustees' means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata).

Dated: 06.12,2022

Signature & Seal of 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
FASSED BY THE ESTATE OFFICER
SYAMA PRASAD COPY
HEAD ADDRES
OFFICE OF THE LOCKET OFFICE
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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.1383/R OF 2013 ORDER NO.51 DATED: 05./2.2022

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

Ey Order of : THE ESTATE OFFICER SYAMA PRASAD MOOKERJEE PORT

CERTIFIED COPY OF THE ORDER
FASSED BY THE ESTATE OFFICER
SYMMA PRASAD MERCHES FORT
HELD ASSISTANT
CERCE OF THE LD. ESTATE OFFICER

06/12/2022

SYAMA FRASAD MOUNDALE PURT

To M/s. Durlabhaji Bhurabhai Metalware Pvt. Ltd, 1, Bonfield Lane, Kolkata-700001.

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

AND WHEREAS, by written notice dated 30.07.2013 you are called upon to show cause on or before 18.09.2013 why an order requiring you to pay a sum of Rs.15,08,508/-(Rupees Fifteen Lakh eight thousand five hundred eight only) 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.15,08,508/-(Rupees Fifteen Lakh eight thousand five hundred eight only) upto the 30th day of September, 2007 to SMPK by 21.12.2022

gar.

PLEASE SEE ON REVERSE

CENTRAL OF STATE OF THE POWERS CONFERRED BY Sub-section (2A) of Section 7 of the said CENT 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. JS-4/1/A

WA PRASAD

Godown space msg.271.834 Sq.m or thereabouts is situated in the Trustees' Kolkata Jetty Shed No.1 which is situated on the west side of Circular Railway Track alongside Strand Road under the North Port Police Station within the presidency town of Kolkata. It is bounded on the North by the Trustees' godown, on the south by the Trustees' godown, on the east by the Trustees' open land used as common passage and on the west by the river Hooghly. Trustees' means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata).

Dated: 06.12,2022

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 MILIONERUSE PORT

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

AMA PRAS Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA CENTRAL GO Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971

ACT NO 40 C Proceedings No.

012013

Order Sheet No.

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

MIS DURLABHATI VSHURABHAI METALWARE PUT. LZD

05,12,2022

FINAL ORDER

The instant proceedings No. 1383, 1383/R of 2013 arose out of an application being No. Lnd. 6/31/ II/07/3969A dated 12.10.2007 filed by Syama Prasad Mookerjee Port, Kolkata(erstwhile Kolkata Port Trust/KoPT), hereinafter referred to as 'SMPK', the applicant herein, praying for an order of eviction and recovery of dues/ damages/ compensation and other charges along with interest etc. against M/s Durlabhaji Bhurabhai Metalware Pvt. Ltd, hereinafter referred to as the 'opposite party'/'O.P.', herein, under relevant provisions of the Public Premises (Eviction of Unauthorised Occupant) Act 1971. The facts of the case is summarised here under.

O.P. was issued an Offer letter being No. Lnd. 6/31/II dated 21.01.2002 in terms of Final Order No.9 dated 03.01.2002 in connection with the Proceeding No.301 of 1999(Kolkata Port Trust vs M/s. Karam Chand Thapar & Bros. Ltd and M/s. Durabhaji Bhurabhai Metal ware Pvt. Ltd, Added Party) proposing grant of month to month licence with certain terms and conditions including payment of requisite sums in respect of godown space msg. about 271.834Sq.m. or thereabouts(under Plate No.JS-4/1/A) at Kolkata Jetty Shed No.1, Thana: North Port Police Station in the presidency town of Kolkata and O.P. violated the condition of such offer letter by defaulting in payment of such requisite amount along with mesne profit upto 31.12.2001 as a result of which such monthly licence was discarded.

It is the case of SMPK that as the O.P. has failed to accept the terms and condition of such offer letter dated 21.01.2002, SMPK made a demand for possession to O.P. and also made a request to O.P. to quit, vacate and deliver up the peaceful possession of the subject premises on 01.10.2007 in terms of a notice for demand of possession dated 10.09.2007. As the O.P. did not vacate the premises even after issuance of the said notice, the instant proceeding bearing no 1383, 1383/R of 2013 was initiated before the Forum for the eviction of the alleged unauthorized occupant,

By Order of : THE ESTATE OFFICER SYAMA PRASAD MOOKERJEE FORT

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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 51 1383/R Of 2013 Order Sheet No.

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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DEC 2022

seeking other reliefs. It is also the case of SMPK that as the O.P. has failed to deliver back possession after expiry of the period mentioned in the notice for demand of possession dated 10.09.2007 O.P's occupation is unauthorized and O.P is liable to pay compensation to SMPK.

This Forum of Law formed its opinion to proceed against O.P. under the relevant provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and issued show Cause Notices u/s 4 of the Act (for adjudication of the prayer for eviction) and u/s 7 of the Act (for adjudication of the prayer for realization of Rent etc.) as per the Rules made under the Act, both dated 30.07.2013 (vide order no. 04 dated 03.04.2013).

The O.P. appeared before this Forum through their Ld. Advocate and contested the case and filed several applications/ objections. It reveals from record that O.P. filed their reply to the Show Cause Notice on 05.09.2018. The O.P. also filed their Written Notes of Arguments on 01.04.2019, SMPK on the other hand, filed their rejoinder/comments dated 31.01.2019 in response to the reply to Show cause filed by O.P.

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

- 1) The application of the Port Authority for evicting the O.P. is not maintainable under law as well as fact.
- 2) The applicant SMPK has no locus standi to file and/or maintain the instant proceeding against O.P. The instant proceeding is an abuse of process of law.
- 3) The said application of the Port authority is concocted with same false and frivolous allegations and/or statement for having illegal gain from Ld' Estate Officer.

4) The said application is also barred by the law of limitation.

By Order of : THE ESTATE OFFICER SYAMA PRASAD MOOKERJEE PORT

CERTIFIED COPY OF THE ORDER PASSED BY THE ESTATE OFFICER SYAMA FRASAD N

OFFICE OF THE LD. ESTATE OFFICER SYAMA PRASAD MOOKERJEE PORT

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

Proceedings No. 1883, 1383/R, of 2013

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

WASE DURLABHAJI BHURABHAI METALWARE PYT, LTD.

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- 5) The said application is misconceived one and created with an intention to harass the Opposite Party of the instant case.
- 6) That the present Proceeding is not maintainable as the O.P. is not unauthorised occupant and as such the preconditions of initiation of any proceeding under P.P Act has not been satisfied in the present case in any manner.
- 7) In view of the Gazette Notification dated 29th January, 2019 the schedule property is vested with the State Government therefore, Port authority as well as the Estate Officer have no jurisdiction to proceed with the instant matter.
- 8) The only ground for eviction as appended in the said notice of eviction is default and at the time of inspection no breaches was found by SMPK authority as such O.P is not required to travel beyond the ground of default.
- A lump sum amount is lying in the suspense account maintained by SMPK against the premises.
- 10) The show Cause notice/s does not and cannot have any reasonable nexus or live-link with the purported application and the proceeding cannot be initiated on the basis of such an old application. Thus the present proceeding is without any foundation and has no basis.
- 11)Inspite of several objections and/or prayer for reconciliation by O.P., SMPK authority malafiedly denied inspection of their accounts and relevant documents thereto.
- 12) The SMPK authority has regularized the tenancy upon accepting the rents as such O.P. is not a defaulter in respect of the said premises.

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13) That the O.P. was paying monthly rent to SMPK and the said rent was duly accepted by SMPK hence, the said eviction notice for termination of entire relationship between the parties have no legal stand and/or wing and the occupation of O.P. cannot be termed as unauthorized.

THE ESTATE OFFICER
SYANA PRASAD MOOKERJEE CONT

FASSED BY THE ESTATE SYAMA PRASADALISM

CFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Proceedings No. 1383 / R of 20/3 Order Sheet No.

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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14) The SMPK authority whimsically increased the rent amount upto 5% to 6% from the existing rent within a period of 12 months twice for which they have not submitted any explanation before the Estate Officer and no copy of such explanation was also served upon O.P.

15) No explanation was also given by SMPK authority for justification of charging higher amount than the rent amount and no copy of the same was served upon the O.P.

16) Interest charged by SMPK for the arrear dues is exorbitant and is also contrary to the provision of Section 7(2A) of the Public premises (Eviction of Unauthorised Occupants) Act, 1971.

Referring to the above contentions, M/s Durlabhaji Bhurabhai Metalware Pvt. Ltd /O.P. has prayed for dismissal of the instant proceedings in limini.

SMPK, the petitioner, denying the claim of O.P. argued that SMPK has issued Notice of demand for possession and instituted Proceeding against O.P. claiming mesneprofit/ compensation charges within 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. It is further pointed out 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. The subject Plots are not at all within the domain of the Gazette Notification dated 29.01.2019 as such the statement made by O.P. are only to mislead the Ld' Forum in passing a favourable order and also for perpetrating the miscarriage of justice.

Heard the rival arguments from both the sides and considered all the documents placed before me including SMPK's Notice of demand for possession dated 10.09.2007, petition dated

By Order of : THE ESTATE OFFICER SYAMA PRASAD MOOKERJEE PORT

PASSED BY THE ESTATE OFFICER SYAMA PRASAD MODKERJEE FORT

OFFICE OF THE LD. ESTATE OFFICER SYAMA PRASAD MOOKERJEE PURT

06/12/2022

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

Proceedings No. 1383, 1383/R of 20/3

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

MIS, DURLABHAJI VSHURABHAI METALWARE PUT, LAD.

05.12.2022

12.10.2007. SMPK's application dated 04.06.2014, 09.07.2014, 03.09.2014, 08.07.2015, 09.12.2015, 20.04.2016, 18.01.2018, 21.02.2018, 06.08.2019, Inspection Report along with joint Minutes of the Inspection dated 21.07.2015, Statement of Accounts (04.10.2012, 23.07.2014, 08.07.2015. 31.01.2019). O.P.'s applications dated 23.10.2013. 28.10.2013, 30.10.2013. 06.12.2013, 02.12.2013, 11.12.2013, 09.04.2014, 23.07.2014. 06.05.2015. 14.05.2015, 22.05.2015, 04.06.2015, 10.06.2015. 12.06.2015, 24.06.2015. 08.07.2015. 14.01.2016. 08.06.2016, 20.12.2017, 06.02.2018 12.03.2019 Applications of O.P's Advocate dated 22.12.2015, 02.02.2016 & 19.02.2016, O.P's application(undated) for direction upon SMPK to produce paper relating to payment in the said Account, O.P's reply/ written Objection to show cause notice filed on 05.09.2018, SMPK's comment/rejoinder dated 31.01.2019 & O.P.'s written notes of argument dated 01.04.2019.

After careful consideration of all relevant papers/documents as brought before me in course of hearing and after due consideration of all the submissions/ arguments made on behalf of the parties, I find that following issues have come up for my adjudication:-

- (i) Whether the instant proceeding is maintainable or not;
- (ii) Whether the present proceeding is maintainable in view of the State of W.B Gazette Notification being No.45-JL/JD/L/16M-11/2018 dated 29th January 2019 or not;
- (iii) Whether the eviction proceedings could be termed as invalid due to delay in issuing the notice to Show Cause after filing of the instant proceeding on 12th October, 2007 or not;
- (iv) Whether O.P. can take the shield of time barred claim under Limitation Act to contradict the claim of SMPK on account of rental dues or not;

By Order of : THE ESTATE OFFICER SYAMA PRASAD MOOKERJEE POPT

CERTIFIED COPY OF THE ORDER FASSED BY THE ESTATE OFFICER SYAMA PRASAD NICOKERJEE PURT

OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

06/12/2022

Solv

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Proceedings No. 1383 1383/R of 2013 Order Sheet No.

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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(v) Whether SMPK's claim on account of interest for delayed payment is sustainable and if so, to what extent such claim on account of interest is sustainable;

METALWARE

- (vi) Whether the plea taken by O.P. about waiver of Notice of demand for possession dated 10.09.2007 by the SMPK, has got any merit or not;
- (vii) Whether O.P. is at all holding or enjoying the Public Premises on the basis of a valid grant from the Port Authority or not;
- (viii) Whether SMPK's notice demanding possession from O.P. by the Port Authority dated 10.09.2007 is valid and lawful or not;
- (ix) Whether O.P. is liable to pay damages for unauthorized use and enjoyment of the Port Property or not;

Issues No. i & ii are taken up together for convenient discussion, I must say that the properties owned and controlled by the Port Authority has been declared as "public premises" by the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and Section-15 of the Act puts a complete bar on Court's jurisdiction to entertain any matter relating to eviction of unauthorized occupants from the public premises and recovery of rental dues and/or damages, etc. SMPK has come up with an application for declaration of O.P's status as unauthorized occupant in to the public premises with the prayer for order of eviction, recovery of licence fees/rental dues and compensation/ damages etc. against O.P. on the ground of termination of authority to occupy the premises as earlier granted to O.P. in respect of the premises in question. So long the property of the Port Authority is coming under the purview of "public premises" as defined under the Act, adjudication process by serving Show Cause Notice/s u/s 4 & 7 of the Act is very much maintainable and there cannot be any question about the maintainability of proceedings before this Forum of Law. In fact, proceedings before this Forum of Law is not statutorily barred unless there

By Order of :
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MC DKERJEE PORT

OFFICE OF THE LD. ESTATE OFFICER
SHAMA PRASAD MOOKEFJEE PORT

06/12/2022

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

Proceedings No._

1383, 1383/R OF

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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is any specific order of stay of such proceedings by any competent court of law.

As regards the issue of Gazette Notification being No.45-JL/JD/L/16M-11/2018 of State of W.B. dated 29th January 2019 as annexed by O.P with the application dated 12.03.2019, I must say that such notification is of no effect today because being aggrieved by the said Notification dated 29.01.2019, SMPK has preferred a Writ Petition being W.P. No. 74 of 2019 before the Hon'ble Calcutta High Court and Hon'ble High Court has already vide its Judgement dated 10.08.2020 allowed such W.P. No 74 of 2019 by setting aside such Notification dated 29th January 2019 with the following observations:-

".... A) that the original notice dated 25th October, 2018 was both subject and purpose specific.

B) That the contents of the original notice dated 25th October, 2018 had the effect of enticing the Board to take a legal position qua Municipal Premises number 68 and 69 comprising in all 12 Bighas and 7 Cottahs of land.

C) In a well thought out manoeuvre by the State respondents the Board was allowed to hold on its position over a Lot A, while, simultaneously unleashing the provisions of the 2012 Act declaring the surprise Board to be a persona non grata qua Lots B1 and B2.

D) Finding itself outmanoeuvre, the Board has pressed this action by claiming title also in respect of several properties in Lots B1 and B2 in respect of which neither the KMC has measured not declared the Municipal Premises No. to fulfill the conditions precedent of an inquiry inherent in the 2012 Act.

E) The KMC decided to aid the arbitrary state action by failing to identify and/or correlate the Municipal Premises Nos. of the property in issue with its corresponding area/ boundary.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

CERTIFIED COPY OF THE ORDER PASSED BY THE ESTATE OFFICER SYAMA PRASADAMO OKERJES 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

APPOINTED BY THE (Eviction of Unauthorised Occupants) Act 1971

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In the backdrop of the above discussion, this Court is persuaded to interdict the passage of the Royal Horse. This Court finds the action impugned of the Respondents to the foundationally flawed and accordingly sets it aside......"

In view of the authoritative decisions as cited above, I have no hesitation in my mind to decide the issues in favour of the Port Authority.

Regarding issue No. iii, no case has been made out by O.P. as to how the delay, if any, in proceeding with the matter on the basis of the application dated 12.10.2007 as filed by the Port Authority could be considered as an embargo to proceed with the matter under the relevant provisions of the Act. It reveals from record that Application of SMPK before this Forum of Law was filed on 12.10.2007 and this Forum of Law formed its opinion to proceed against O.P. by issuing Show 30.07.2013(vide order No.4 Notice on Cause 03.04.2013). As Limitation Act has no application to the proceedings before this Forum of Law as it is not a Civil Court, Hence, there is no legal bar to proceed against O.P. on the basis of the said application of the Port Authority dated 12.10.2007.

Issue No. iv, i.e on the question of time barred claim of SMPK on the issue of "limitation" and applicability of Limitation Act-1963, I have carefully considered all the submissions/arguments made on behalf of O.P. before the Forum. It is the case of O.P. that SMPK's claim against O.P. is hopelessly barred by applying the Law of Limitation, 1963. However, as per settled law, 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 P.P. Act puts a complete bar in 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. Hence, the issues is decided against O.P.

By Order of :
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

06/12/2022

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

U/S Proceedings No. ACT NO 41107 97

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05.12.2022

With regard to issue No. v, I must say that the plea taken by O.P. for denial of SMPK's claim on account of interest is required to be adjudicated seriously as the issue involves mixed question of fact and law as well. It is the case of Kolkata Port Trust (read as SMPK) that claim of interest for delayed payment is in accordance with the Schedule of Rent Charges as per provision of the Major Port Trusts Act 1963, after obtaining sanction of the Central Govt. as per provision of the said Act. It is contended that 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 also contended that continuing in occupation of the public premises must necessarily mean that O.P. is under legal obligation to pay such charges on account of interest also in case of failure to pay SMPK's demand as per Schedule of Rent Charges. It is, however, the contention of O.P. that Interest charged by SMPK for the arrear dues is exorbitant and is also contrary to the provision of Section 7(2A) of the Public premises(Eviction of Unauthorised Occupants) Act, 1971. I have duly considered the submissions/ arguments made on behalf of the parties. 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. Needless to mention that one of the basic conditions of licence that the licencee/ O.P. is liable to pay licence fees rents in timely manner to the licensor SMPK and any breach in such terms shall invariably attract the penal charges by way of interest. All canons of law permits charging of interest if payments are being made in delayed fashion. O.P cannot deny such liability of payment of interest as it has failed to pay the principal amount due to be payable by him more so this forum has no power in the matter of waiver of interest for which O.P has to pray before proper Authority of SMPK. As such, I have no hesitation to decide the issue in favour of SMPK and I have no bar to accept the claim of SMPK on account of Interest accrued for delayed payment.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE FORT

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SYAMA PRASAD MODER PORT

OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

06/12/2022

John

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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However, as regards the extent of such claim of interest, I am very much convinced by O.P's submission. In my view, this Forum must exercise the power mentioned in Sec. 7 (2-A) of the P.P. Act, 1971 as amended in the year 2015, which mentions that interest is to be charged as per the current rate of interest within the meaning of the Interest Act, 1978. The relevant portion of the amended Section 7 of the PP Act is reproduced below:-

> "Section 7 - Power to require payment of rent or damages in respect of public premises

(2A) While making an order under sub-section (1) or sub-section (2), the estate officer may direct that the arrears of rent or, as the case may be, damages shall be payable together with compound interest at such rate as may be prescribed, not being a rate exceeding the current rate of interest within the meaning of the interest Act, 1978."

It may be noted that the words "compound interest" in the subsection (2A) above were substituted by the said Notification for the original words "simple interest". I must mention that I am not convinced with the submission of SMPK that the rate notified by the TAMP, should be applied in the instant case. For the purpose of determining the current rate of interest within the meaning of the Interest Act, 1978, I have gone through the website of the State Bank of India as well as the Reserve Bank of India, and in my view, the rate of 6.90 % (compound interest) is applicable as the same is the present highest rate of interest as mentioned in the Interest Act, 1978.

In view of the discussion as above, having regard to the conduct of O.P., it is my considered view that natural justice will prevail, if O.P. is allowed to pay the amount of interest due at the above rate of 6.90%.

THE ESTATE OFFICER SYAMA PRASAD MOOKERJEE PORT

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

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As regards the issue No.vi, O.P. vide their reply dated 05.09.2018 submitted that the O.P. was paying monthly rent to SMPK and the said rent was duly accepted by SMPK hence, the said eviction notice for termination of entire relationship between the parties have no legal stand and/or wing and the occupation of O.P. cannot be termed as unauthorized. However, in my view, mere acceptance of occupational charges during pendency of the eviction proceedings does not confer any better right to O.P. and it does not amount to waiver of Notice of demand for possession. As per law, in order to constitute a waiver of Notice of demand for possession, O.P. must have to prove that SMPK by accepting such charges had intended to treat the tenancy as subsisting. In absence of any such intention on the part of SMPK being proved, mere acceptance of an amount tendered by O.P. during pendency of the proceedings can't be said to be a "waiver" on the part of SMPK. In the present case in hand SMPK actively prosecuted the proceedings for ejectment against O.P. and as such it cannot be an accepted proposition that the Notice of demand for possession is infructous by any sense of law.

In view of the discussion above the issue is decided in favour of SMPK.

Decisions against the foregoing paragraphs must dominate the issues Nos. vii, viii & ix and as such all the issues are taken up together for discussions. It is evident from record that SMPK had issued an offer letter bearing No. Lnd./6/31/II dated 21.01.2002 to O.P. with certain terms and condition but without accepting the terms and condition of such offer letter O.P. continued occupation into the port property. In my view Pre-condition for offer for grant of licence to O.P. was duly communicated to O.P. and without performing requisite formality O.P. was holding the property/s in question without having any valid grant from SMPK's side. The act of holding Public Premises by O.P. without having any valid grant from SMPK/Land Lord's side is inexplicable. An occupier like O.P. cannot dictate the terms and conditions for grant of

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PCPT

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OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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John

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA AMA PRAS Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971 61 2013 Order Sheet No. 383, 1383/R of Proceedings No. BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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licence/allotment in favour of them and SMPK has every right to impose conditions for grant of licence /allotment in favour of anybody like O.P.

I have deeply gone into the submissions/arguments made on behalf of the parties in course of hearing. question/principle of law in dealing with a regular tenant under lease or licence is very clear for determination of rights * & liabilities of an occupant/tenant under lease or licence. As per Transfer of Property Act, a lease of immoveable property determines either by efflux of time limited thereby or by implied surrender or on expiration of notice to determine the lease or to quit or of intention to quit, the property leased, duly given by one party to another. The principle of Indian Easement Act applies to the grant of licence and a valid "licence holder cannot claim its occupation as "authorized occupation" after revocation of such licence. Here, no formal/normal tenancy has been created either under lease or under licence in favour of O.P. in respect of the properties in The Port Authority by service of notice dated question. 10.09.2007 demanded possession of the Public Premises in question from O.P. and O.P. failed to handover possession to SMPK in terms of the requisition made on behalf of the Port Authority. SMPK did not recognize O.P. as tenant by way of issuing regular rent demand note/bill and intended to get back possession of the premises. On evaluation of the factual aspect involved in this matter, I am firm in holding O.P's occupation as "unauthorised occupation" 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 Public Premises. In fact no case has been made out by O.P. as to how they can continue in occupation without valid grant from the Port Authority.

"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 demanding

by Order of : THE ESTATE OFFICER 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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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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possession dated 10.09.2007 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 such conclusion, I am fortified 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.

undoubtedly, a tenancy under lease is governed by the provisions of the Transfer of Property Act 1882 and a tenancy under licence is governed by the provisions of the Indian Easement Act. There is no scope for denial of the same. The principle followed by the Hon'ble Apex Court of India is still an accepted principle of law for considering any matter with regard to damages. In the facts and circumstances of the case there was no licence because O.P. has failed to accept the terms and condition of Offer Letter dated 21.01.2002 therefore, O.P's occupation may not be considered as authorised.

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

By Order of THE ESTATE OFFICER SYAMA PRASAD MOOKER, EL FORT

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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. Now the occupation of O.P is determined by the landlord by a notice, it's 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 such notice demanding possession is issued. 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 monthly licence.

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.

In the instant case there was no consent on the part of the Port Authority either by way of accepting rent from O.P. or by any other mode, expressing the assent for continuance in such occupation after expiry of the period as mentioned in the notice demanding possession. 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. To take this view, I am fortified by the Apex Court judgment report 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

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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Appointed by the Central Govt. Under Section 3 of the Public Premises
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05.12.2022

for use and occupation of the premises, an amount equal to the monthly rent payable by the tenant. 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. 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 Notice of demand for possession, demanding possession from O.P. as stated above have been validly served upon O.P. in the facts and circumstances of the case and such notices are valid, lawful and binding upon the parties. In view of the discussions above, the issues are decided in favour of SMPK.

NOW THEREFORE, I do not find any alternative but to allow the prayer of SMPK for issuance of order of eviction u/s 5 of the Act for the following reasons/grounds:

- That the proceedings against O.P. is very much maintainable
- That O.P. cannot take the plea of waiver of Notice of demand for possession, taking the shield of acceptance of rent by SMPK.
- That O.P. has failed to pay the dues/ charges as payable to SMPK in terms of SMPK's demand to fulfill the condition for grant of licence in favour of them in respect of the properties in question.
- That O.P. cannot take the plea of time barred claim by SMPK, taking the shield of Limitation Act.
- That O.P. has failed to bear any witness or adduce any evidence in support of its "Authorised Occupation".

By Order of ;
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE FORT

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PASSED BY THE ESTATE OFFICER
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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 65 2013 Order Sheet No. 1383/R OF

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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Proceedings No.

- 6. That O.P. cannot continue in occupation of the Public Premises in question without obtaining valid grant from the Port Authority and O.P's occupation has become "unauthorised" in view of Sec.2(g) of P.P. Act.
- 7. That the notices demanding possession from O.P. vide SMPK's notice dated 10.09.2007 is valid, lawful and binding upon the parties.
- 8. That O.P. is liable to pay damages for its wrongful use and enjoyment of the Port Property upto the date of handing over of clear vacant and unencumbered possession to SMPK.

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 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 SMPK's claim upto 30th September 2007 for Rs.15,08,508/-(Rupees Fifteen Lakh eight thousand five hundred eight only) in respect of Plate No. JS-4/1/A) is due and recoverable from O.P. by the Port authority on account of rental dues and O.P. must have to pay such dues to SMPK on or before 21:12:20:12 Such dues 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.

By Order of THE ESTATE OFFICER SYAMA PRASAD MOOKERJEE PORT

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OFFICE OF THE LD. ESTATE OFFICER SYAMA PRASAD MOOKERJEE PORT

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

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05.12.2022

In course of hearing, I find that SMPK has made out an arguable claim against O.P., founded with sound reasoning. I make it clear that SMPK is entitled to claim damages against O.P. for unauthorized use and occupation of the public premises upto the date of recovery of clear, vacant and unencumbered possession of the same in accordance with Law and SMPK is entitled to claim interest upon such dues/charges. SMPK is accordingly directed to submit a statement comprising details of its calculation of damages indicating therein the details of the rate of such charges together with the basis on which such charges are claimed against O.P. for my consideration for the purpose of assessment of 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

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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