

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

REASONED ORDER NO.92 DT 19-01-2023
PROCEEDINGS NO. 197 OF 1993

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

-Vs-

M/s. Makhan Lall Dey & Sons 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

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
19-01-23
Head Ass.
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that
M/s. Makhan Lall Dey & Sons Pvt. Ltd, D/15, Jagannath Ghat Godown, Strand
Road, Calcutta-700007 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.
2. That O.P. has no right whatsoever to claim direct tenancy from Port Authority in respect of the subject premises in question.
3. That you have failed to liquidate the rental dues/charges as claimed by the Port Authority at the time of issuance of ejection notice.
4. That O.P. has failed to bear any witness or adduce any evidence in support of its occupation as "Authorised Occupation".
5. That O.P. has got no right to hold the property after determination of lease (which was granted by the Port Authority in favour of O.P.) by service of notice to quit dated 01.03.1982.
6. That the notice to quit dated 01.03.1982 as issued to O.P. by the Port Authority is valid, lawful and binding upon the parties and O.P. is liable to pay damages for unauthorized use and enjoyment of the Port property in question up to the date of handing over of clear, vacant and unencumbered possession to SMPK.

PLEASE SEE ON REVERSE



(2)

A copy of the reasoned order No. 92 dated 19.01.2023 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. Makhan Lall Dey & Sons Pvt. Ltd, D/15, Jagannath Ghat Godown, Strand Road, Calcutta-700007** 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. Makhan Lall Dey & Sons Pvt. Ltd, D/15, Jagannath Ghat Godown, Strand Road, Calcutta-700007** 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. CG-36/A

Compartment No.D/15, Measuring 62.710 Sq. metres or thereabouts of the Trustees' Godown known as Jagannath Ghat Godown.

Dated:

24 JAN 2023


Signature & Seal of
Estate Officer.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
24.01.23
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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. 197 Of 1993 Order Sheet No. 66

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/s - MAKHAN LALL DEY & SONS PVT LTD (O.P.)

FINAL ORDER

The factual matrix involved in this matter is required to be put forward in a nutshell for clear understanding and to deal with the issues involved. It is the case of Syama Prasad Mookerjee Port Kolkata (Erstwhile Kolkata Port Trust/KoPT), hereinafter referred to as SMPK, applicant herein, that land msg. about 62.710 Sq.m situated at SMPK's Jagannath Ghat Godown, Thana- Jorabagan Police Station comprised under Plate No. CG-36/A was allotted to **M/s. Makhan Lall Dey & Sons Pvt. Ltd (O.P.)** on monthly term lease and O.P. violated the conditions for grant of such lease by way of non-payment of rental dues and also by way inducting subtenant without having any permission from SMPK.

It is the case of SMPK that in view of such aforementioned breaches committed by O.P. SMPK made a request to the O.P. to quit, vacate and deliver up the peaceful possession of the subject premises on 01.05.1982 in terms of the notice to quit dated 01.03.1982. As the O.P. did not vacate the premises even after issuance of the said Quit Notice, the instant Proceeding bearing No.197 of 1993 was initiated before the Forum for eviction of the alleged unauthorised occupant, seeking other relief. It is also the case of SMPK that as the O.P. has failed to deliver back possession even after the issuance of notice demanding possession dated 01.03.1982, O.P.'s occupation is unauthorised and O.P. is liable to pay damages for wrongful use and enjoyment of the Port Property in question.

This Forum of Law formed its opinion to proceed against O.P. and issued Show Cause Notice u/s 4 of the Act (for adjudication of the prayer for order of eviction etc) dated 05.10.1993(vide Order No.1 Dated 05.10.1993) as per Rule made under the Act.

O.P. entered appearance through its Advocate and contested the matters by filing several applications to the Show Cause Notice/s and/or objections. It appears that since the very 1st day of their appearance O.P. had prayed before the Forum for regularisation of their tenancy on the condition of payment of all SMPK's due and showed honest gesture for settlement of their dispute with SMPK. However, when SMPK submitted that as per the then guideline/order of the Ministry of Surface Transport regularisation is not possible, considering the submissions of both, the Forum reserved the Final order on 06.06.2000 and accordingly passed a reasoned order on 21.08.2000 along with the following directions:-

92

19.09.2023

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

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

[Signature]



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 197 Of 1993 Order Sheet No. 67

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S. MAKHAN LALL DEY & SONS PVT LTD

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19.01.2023

- a) That O.P shall pay a sum of Rs.2 lacs to the Calcutta Port Trust on account of damages for unauthorised use and occupation of the public premises from 25.06.1980 within two months from the date of passing of this order.
- b) That O.P shall go on paying charges on account of damages for unauthorised creation of sub-tenancy in favour of Somnath Kundu in respect of half portion of the back side of the Compartment No.D/15 Jagannath Ghat Godown.
- c) That O.P shall pay to the Calcutta Port Trust for such unauthorised subletting to Shri Somnath Kundu on account of damages equivalent to monthly sub-letting fees per month as per demand of the Calcutta Port Trust which may be varied from time to time without raising any dispute whatsoever upto the date of removal of such sub-tenancy.
- d) That O.P shall pay all the charges on account of occupation into the public premises equivalent to monthly rental dues payable upto August, 2000 within two months from the date of this order as per C.P.T's demand.
- e) That both the parties are entitled to get adjustment of their accounts with the payments/claim made so far and C.P.T. shall issue regular demand notes for rental dues to O.P. after reconciliation of the accounts preferably from 1st December, 2000.
- f) That in the event of failure on the part of O.P. to make payments as aforesaid, Calcutta Port Trust will be in liberty to proceed for eviction against O.P. as per law.

Thereafter, a lapse of considerable period the matter was further taken up before the Forum on 16.03.2010 and SMPK again harp on the issue of eviction on the ground of non compliance of such order dated 21.08.2000. During the course of hearing on 25.05.2010, O.P further prayed instalments for liquidation of the dues of SMPK and on 22.06.2010 O.P. prayed three months time to liquidate all principal amounts of dues/charges as payable to SMPK. In the meantime Ld' Advocates of sitting occupant appeared on 06.12.2010 and filed an application along with their Vakalatnama for allowing them time to substantiate their right. On 20.12.2010 another application was filed on behalf of the sitting occupant with a prayer for adding them as party to the instant Proceeding. However, considering the bonafide intention of O.P. and without paying any heed to the submission of such sitting occupant, the Forum allowed chances to O.P. to liquidate the dues of SMPK by way of instalments and accordingly, O.P. cleared off a substantial amount of dues of SMPK by way of

By Order of:
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PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

[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. 197 Of 1993 Order Sheet No. 68

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S. MARHAN LALL DEYA SOLLS PVT LTD

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19.01.2023

regular payment. It further appears that during the course of hearing, process of regularization was also raised up at the appropriate level of SMPK and such process was continued for a certain period. Thereafter on 07.04.2014, O.P filed an application addressing the Sitting occupant for vacation of the subject premises however, the Forum after perusal of such application and hearing both the parties, asked SMPK to submit a written report on that issue. Thereafter on 20.11.2017 SMPK filed a detail report regarding the status of the instant public premises in question submitting that the entire public premises is now under the occupation of O.P. and O.P has erected a wooden mezzanine floor on such premises without having any permission from SMPK and O.P. is still liable to pay compensation charges to SMPK.

I have duly considered O.P's application dated 23.04.2018 (with photographs of the premises) with regard to SMPK's allegation regarding unauthorised construction such as constructions of mezzanine floor etc. as raised by SMPK and also the application dated 26.03.2019 regarding the issue of vesting of the subject land.

All along O.P. denied the allegations of SMPK except the 3 times rent charges. By application dated 23.04.2018, O.P. denied the allegation of unauthorized construction. It is stated that O.P. constructed a wooden rack in the said premises which was misrepresented as a wooden Mezzanine floor in the inspection report as filed on 2014 and the said rack had already been dismantled (shown in the photographs annexed). It is also stated that after removal of such wooden structure there remain no further dispute in respect of the said premises.

I have applied my mind to the SMPK's quit notice dated 01.03.1982, petition dated 09.04.1988, SMPK's application dated 20.11.2017, Statement of Accounts (27.10.2017 & 14.12.2022), O.P.'s applications dated 26.03.2019, 23.04.2018, 16.03.2018, 10.04.2014, 19.03.2014 & 23.07.2012.

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

- I) 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;
- II) Whether O.P has defaulted in payment of rental dues to SMPK or not;

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

Handwritten signature/initials

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. 43 197 Of 1993 Order Sheet No. 69

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S - MAKHAN LALL & SONS PVT LTD

- 92
19.01.2023
- III) Whether the plea taken by OP regarding whimsical, arbitrary, and unreasonable manner of calculation of damages, has got any merit or not;
 - IV) Whether the O.P. has made unauthorised construction on the subject premises or not;
 - V) Whether O.P has sublet or parted with possession of the subject premises to third parties or not;
 - VI) Whether O.P's contention regarding treating them as direct tenant under SMPK in respect of the subject premises has got any merit or not;
 - VII) Whether SMPK is justified in serving notice of ejectment dated 01.03.1982 to O.P. or not;
 - VIII) Whether O.P. is liable to pay damages/ compensation as claimed by SMPK in terms of the condition of such lease or not;

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

CERTIFIED COPY OF THE ORIGINAL
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
19.01.2023
Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Regarding the **issue No.I** i.e on 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 26.03.2019, 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 outmanoeuvred, 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 nor declared the Municipal Premises No. to fulfill the conditions precedent of an inquiry inherent in the 2012 Act.

AK



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S MAKHAN LALL DEY & SONS PVT LTD

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.

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....."

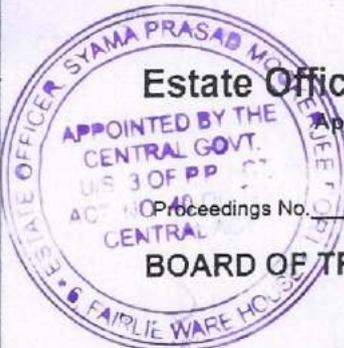
In view of the authoritative decisions as cited above, I have no hesitation in my mind to decide the issue in favour of the Port Authority.

The issue of Non payment in **issue No.II** also requires elaborate discussions. It reveals from the Statement of Accounts filed by SMPK during the course of hearing that O.P never made any payment in timely manner. It further appears that O.P vide it's application dated 23.04.2018 has denied such dues for the occupation of the said Public premises. Records also reveals that as per the direction of the Forum opportunity was given to O.P. to liquidate the occupational charges(as per eagerness expressed by O.P from time to time) and O.P. had made some sporadic payments from time to time albeit irregularly and inconsistently. I may mention here that it was the O.P itself who prayed easy installment on several occasions for liquidation of SMPK's dues. In my view, had the O.P not been guilty of non-payment of rent and taxes, it would definitely not have come forward to liquidate even a part of occupational charges. The very conduct of O.P establishes that contention of SMPK is not without any basis. Moreover, during the course of hearing, although SMPK has come up with a detailed Statement of Accounts however, to contradict the claim of SMPK no other submissions or documents have been placed before this Forum by O.P. Thus in the aforementioned circumstances, being satisfied as above, I have no hesitation to uphold the claim of the Port Authority. I take note of the fact that all payments made by O.P during course of the proceedings are provisionally accepted by SMPK as damages/compensation for continuous use and occupation of the public premises in question as part payment thereof and hence, I have no reason to disbelieve the claim of SMPK, regarding arrears of rent prevailing at the time of issuance of the notice to quit dated 01.03.1982.

On **Issue no. III**, a plea has been raised by O.P in its application dated 23.04.2018, that the exorbitant charges under the head of compensation has been imposed wrongly upon the O.P. as unauthorised occupant, therefore, it should be waived. Further, charging of compensation@ 3xSoR from

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



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S. MAKHAN LALL DEY & SONS PVT LTD

92
19.01.2023

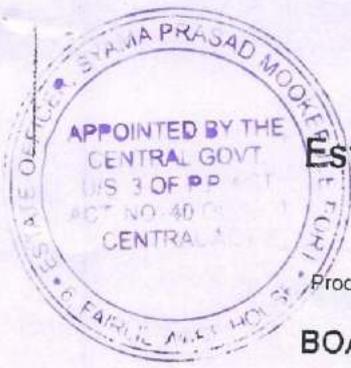
October, 2016 is bad exercise of law and O.P is only liable to pay monthly charges on the basis of amount quoted in the last bill.

It bears mention here that the Port Authority from time to time by notification in the Official Gazette fixed scale of rates on which lands and structures belonging to Port Authority to be let out. U/s 52 of the Major Port Trusts Act 1963, the Central Government was to approve such rate before it was made applicable. In 1997, Sec. 52 was repealed and different mechanism was evolved by which power to fix rent was given to the Tariff Authority of the Major Ports. Sec. 49 of M.P.T Act was also amended by the Port Laws (Amendment) Act 1997 with effect from 09.01.1997. The validity of these provisions of the MPT Act was upheld by the Hon'ble Supreme Court in the case of **Luga Bay Shipping Corporation -Vs- Board of Trustees of the Port of Cochin and Ors. Reported in AIR 1997 SC 544 = 1997(1) SCC 631.**

No argument has been advanced on behalf of O.P as to how their claim for payment at the old rate of rent is valid under authority of law. On the contrary, it is the contention of SMPK that the charges for occupation have been claimed against O.P on the basis of Schedule of Rent charges in force for the relevant period. I am taking note of the fact that SMPK's enhancement of rent charges is on the basis of notified rate of rent as per notification issued by the authority of law as per provisions of the Major Port Trusts Act, 1963, as amended from time to time. In course of hearing, it is 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 beyond the jurisdiction/scope of this forum of law. It is submitted with argument that as per law, O.P was under obligation to hand over possession of the property to SMPK in vacant and unencumbered condition and failure on the part of O.P to discharge such statutory liability is a breach of contract. It is my well considered view that unless there is any material/argument to substantiate O.P's claim regarding their entitlement to pay old rated charges/dues for occupation into the public premises, mere statement contradicting SMPK's claim is not acceptable under law. It is very futile to assert that O.P can restrict their liability to pay the old rated dues/charges for occupation and enjoyment of the Port property subsequent to the publication of notification/s by the Tariff Authority of Major Ports in exercise of their power under the Major Port Trusts Act 1963. In fact O.P. cannot claim differential treatment from other occupier/user of the Port

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SYAMA PRASAD MOOKERJEE PORT
OFFICE OF THE LD. EST. OFFICER
SYAMA PRASAD MOOKERJEE PORT

[Handwritten signature]



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 197 Of 1993 Order Sheet No. 72

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S. MAKHAN LALL DEY & SONS PVT LTD

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19.01.2023

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 determination of the monthly lease. In this connection, the order dated 03.09.2012 passed by Hon'ble Justice Dipankar Datta in WP no. 748 of 2012 (M/s Chowdhury Industries Corporation Pvt. Ltd. versus Union of India & others) is also relevant which reads as follows:

"....."

It is undisputed that there has been no renewal of the lease prior to its expiry or even thereafter. There is also no fresh grant of lease. The petitioner has been occupying the property of the Port Trust unauthorisedly and, therefore, the Port Trust is well within its right to claim rent at three times the normal rent in terms of the decision of the TAMP, which has not been challenged in this writ petition.

Furthermore, enhancement to the extent of three times the normal rent for persons in unauthorised occupation of Port Trust property does not appear to be utterly unreasonable and arbitrary warranting interference of the Writ Court.

"....."

In view of the foregoing, I am of the considered view that the claim of the Port Authority cannot be said to be arbitrary or unreasonable. Hence the issue is decided against OP.

On **issue No. IV**, regarding carrying out of unauthorised construction by O.P., there is no scope for elaborate discussion when O.P. by its application dated 23.04.2018 admits that such unauthorised construction has already been dismantled.

On the question of creation of unauthorised sub-letting under **issue no. V**, I also do not find any material to substantiate the case of SMPK because the last inspection report as submitted by SMPK on 20.11.2017 did not make any whisper about the unauthorised subletting/parting with possession. Moreover it is clearly stated in such report that the entire occupation is presently under the occupation of O.P.

On the question of 'direct tenancy' in **issue No.VI**, O.P. vide their application dated 23.04.2018 submits that while the grounds of eviction do not stand then the termination of tenancy on the basis of the said eviction notice and the application is otherwise bad exercise of law and/or bad in law and O.P. is entitled to be treated as direct tenant under SMPK in respect of the schedule premises. However, I do not find any scope to consider any matter with regard to grant of direct

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

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. 197 Of 1993 Order Sheet No. 73

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S - MAHARAJ LALL DEY & SONS (PVT) LTD

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19.01.2023

tenancy in favour of O.P. Moreover, O.P. has no right to hold the property in the event of determination of their lease hold interest. Hence, such submission of O.P. to be treated as direct tenant under SMPK is not tenable before this Forum of Law. In view of the discussion above, the issues is decided against O.P.

Issue no VII and VIII are taken up together, as the issues are related with each other. I must say that a lessee like O.P. cannot claim any legal right to hold the property after expiry of the period as mentioned in the Notice to Quit. O.P has failed to satisfy this Forum about any consent on the part of SMPK in occupying the public premises. Rather it is a case of SMPK that by notice dated 01.03.1982, O.P. was directed to hand over possession of the premises to SMPK. A letter/notice issued in official course of business has definitely got an evidentiary value unless there is material, sufficient to contradict the case of SMPK on the basis of such letter. Further, I am consciously of the view that SMPK never recognized O.P., as a lawful user/tenant in respect of the property in question after expiry of the period mentioned in the Notice to Quit dated 01.03.1982. As per Section 2 (g) of the P. P. Act the "unauthorized occupation", in relation to any Public Premises, means the occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. Further, as per the Transfer of Property Act, a lease of immovable 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. It is a settled question of law that O.P. cannot claim any legal right to hold the property after expiry of the period mentioned in the Notice to Quit dated 01.03.1982, without any valid grant or allotment from SMPK's side. This issue is also decided in favour of SMPK. In the instant case, the landlord i.e. SMPK claims to have issued a Notice to O.P. dated 01.03.1982 asking for vacation of the premises on 01.05.1982 as O.P. was duty bound to hand over possession to SMPK and it had failed to do, SMPK's claim by filing Application dated 09.04.1988 is very much justifiable. In fact, the filing of the instant proceedings against O.P is clear manifestation of SMPK's intention that it does not recognize the O.P as a valid tenant any longer. Further O.P. failed to substantiate as to how its occupation could be termed as "authorised" in view of Sec. 2(g) of the P.P Act, after expiry of

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

[Signature]
MEMO ASSISTANT
OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

[Signature]



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 197 of 1993 Order Sheet No. 74

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S - MAKHAN LALL DEY & SONS PVT LTD

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19.01.2028

the period as mentioned in the SMPK's notice dated 01.03.1982, demanding possession from O.P. Hence, I have no hesitation to observe that O.P.'s act in continuing occupation after determination of the lease 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. The Issues VII and VIII are thus decided in favour of SMPK.

In view of the discussions above, the issues are decided firmly in favour of SMPK. I find that this is a fit case for passing order of eviction against O.P or other interested Party whoever in occupation, and hence, being satisfied as above I hereby, passing Order of eviction under Section 5 of the Act on following grounds:-

1. That the proceedings against O.P. is very much maintainable.
2. That O.P. has no right whatsoever to claim direct tenancy from Port Authority in respect of the subject premises in question.
3. That you have failed to liquidate the rental dues/charges as claimed by the Port Authority at the time of issuance of ejection notice.
4. That O.P. has failed to bear any witness or adduce any evidence in support of its occupation as "Authorised Occupation".
5. That O.P. has got no right to hold the property after determination of lease (which was granted by the Port Authority in favour of O.P.) by service of notice to quit dated 01.03.1982.
6. That the notice to quit dated 01.03.1982 as issued to O.P. by the Port Authority is valid, lawful and binding upon the parties and O.P. is liable to pay damages for unauthorized use and enjoyment of the Port property in question up to the date of handing over of clear, vacant and unencumbered possession to SMPK.

ACCORDINGLY, I sign the formal order of eviction u/s 5 of the Act as per Rule made there under, giving 15 days time to O.P. and any person/s whoever may be in occupation to vacate the premises. I make it clear that all person/s whoever may be in occupation are liable to be evicted by this order and the Port Authority is entitled to claim damages for unauthorized use and enjoyment of the property against O.P. in accordance with Law up to the date of recovery of possession of the same. SMPK is directed to submit a comprehensive status report of the Public Premises in question on inspection of the property after expiry of the 15 days as aforesaid so that necessary

[Handwritten signature]

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



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S - MAKHAN LAL DEVI & SONS PVT LTD

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action could be taken for execution of the order of eviction u/s. 5 of the Act as per Rule made under the Act.

SMPK is directed to submit a statement comprising details of its calculation of dues, indicating there-in, the details of the rate of such charges, and the period of such dues (i.e. till the date of taking over of possession) together with the basis on which such charges are claimed against O.P., for my consideration for the purpose of assessment 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

(A.K Das)
ESTATE OFFICER

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

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

24.01.23
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT