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

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

OFFICE OF THE ESTATE OFFICER
6, Fairley Place (1st Floor)
KOLKATA - 700 001

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

REASONED ORDER NO. 24 DT 15.02.2023
PROCEEDINGS NO. 1151 OF 2011

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

M/s. International Engineering & Construction Co. (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. International Engineering & Construction Co., 1, Nimak Mahal Road, Kolkata-700043 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 the lease as granted to O.P. by SMPK had doubtlessly determined by efflux of time, in the facts and circumstances of the case.
3. That O.P. cannot claim "renewal of lease" as a matter of right, particularly when the lease in question does not contain any provision for exercising any option for renewal.
4. That there was no agreement (either expressly or impliedly) between SMPK and O.P. for renewal of lease for a further period of 99 years commencing from 01.02.2002 as contented by O.P.
5. That O.P. has erected unauthorised constructions and inducted unauthorised subtenants on the subject public premises in question without having any authority of law.
6. That O.P. has failed to bear any witness or adduce any evidence in support of their occupation as "authorised occupation" inspite of repeated chances for a considerable period and O.P.'s act of continuing in occupation in the Public Premises without paying requisite charges is opposed to public policy.
7. That notice to quit dated 08.06.2007 issued by the Port Authority to O.P., demanding possession is valid, lawful and binding upon the parties.
8. That O.P.'s occupation has become unauthorized in view of Sec. 2(g) of the P.P. Act and O.P. is liable to pay damages for unauthorized use and enjoyment of the Port Property right from the date of expiry of the lease period on and from 01.02.2002 in question upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

PLEASE SEE ON REVERSE



(2)

A copy of the reasoned order No. 24 dated 15.02.2023 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. International Engineering & Construction Co.,1, Nimak Mahal Road, Kolkata-700043** 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. International Engineering & Construction Co.,1, Nimak Mahal Road, Kolkata-700043** 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.D-83/2/A

The said piece or parcel of land msg. about 1271.659 sq.m or thereabouts is situated at Nimak Mahal Road at West Port Police Station. It is bounded on the North by Trustees' land leased to Arya Parishad Vidyalaya, on the South by the Trustees' land leased to Kolkata Municipal Corporation, on the East by Nimak Mahal Road & on the West by the Trustees' land leased to P.C. Chatterjee & Co.

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

Dated: 15.02.2023.

Signature & Seal of
Estate Officer.

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



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FINAL ORDER

The instant proceedings No. 1151, 1151/D of 2011 arises out of the application bearing No. Lnd. 4545/II/Loose/08/9/34 dated 29.08.2008 filed by Syama Prasad Mookerjee Port, Kolkata (erstwhile Kolkata Port Trust/KoPT), hereinafter referred to as "SMPK", the Applicant herein, praying for order of eviction and recovery of arrear compensation along with interest against **M/s. International Engineering & Construction Co**, O.P. herein, under relevant provision of the Public Premises (Eviction of Unauthorised Occupants) Act 1971. The facts of the case is summarised here under.

SMPK had granted a long term lease of land measuring 1271.659 sq.m situated at Nimak Mahal Road, Thana-West Port Police Station, Dist. 24 Parganas under Occupation No. D-83/2/A to the O.P. under a long term lease of 30 years w.e.f. 01.02.1972. The said lease had expired on 31.01.2002 due to efflux of time.

It is submitted by SMPK that O.P. had erected unauthorised construction on the demised land and also inducted subtenants without taking any permission from SMPK in gross violation of the terms of tenancy as granted to O.P. and O.P. continued to occupy the Port premises unauthorisedly beyond the expiry of the lease period.

In view of the aforesaid breaches committed by the O.P., SMPK had issued notice to quit being No. Lnd. 4545/II/Loose/07/813 dated 08.06.2007 asking the O.P. to hand over clear, vacant, peaceful and unencumbered possession of the property to SMPK on 12.12.2007. SMPK submits that O.P. has no authority under law to occupy the public premises after expiry of the lease period and was required to hand over the possession of the property in question to SMPK on 12.12.2007 as required under the notice to quit. It is the case of SMPK that O.P. is in wrongful occupation in the public

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premises on and from 01.02.2002 and is liable to pay compensation charges/mesne profits for unauthorized use and occupation of the Port Property in question.

Notice/s u/s 4 and 7 of the Act both dated 08.03.2016(vide Order No.11 dated 08.03.2016) were issued by this Forum to O.P. to show cause why an order of eviction and an order requiring O.P. to pay arrears of damages/compensation charges together with interest should not be made against the O.P.

It appears from record that a writ Petition being A.S.T. No.1574 of 2007 subsequently renumbered as W.P. No.21399(W) of 2007 challenging the ejection Notice was filed by O.P before the Hon'ble High Court at Calcutta. Whereupon the Hon'ble High Court vide its order dated 17.09.2007 was pleased to pass an interim order directing O.P to go on paying the current occupational charges until further order/s. In the said Order of Hon'ble Court direction was further passed asking O.P to continue their occupation until further orders and the Forum to go with the proceedings under P.P Act without passing any final order except with the leave of the Court. Such order of the Hon'ble High Court is reproduce below :

".....In the event, the petitioner deposits a sum of Rs.60,35,533.13 paise with the authorities of the Kolkata Port Trust and deposits a further sum of Rs.6,10,844/- and furnishes a Bank Guarantee of Rs.6,00,000/- of any nationalized bank to the satisfaction of the authorities of the Kolkata port Trust within 28th September, 2007, the petitioner shall continue with the occupation of the land in question until further order. However, this Order shall not prevent the Adjudicating Authority under the Public Premises(Eviction of Unauthorised Occupants) Act, 1971 to go ahead with the proceedings as evident from the notice dated 8th June, 2007 but shall not pass any final order without the leave of this Court. It is made clear that the

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petitioner shall go on paying the current occupation charges until further orders."

It reveals that after passing of the aforesaid order certain payments were made by O.P which was adjusted as part payment of compensation charges of SMPK without prejudice to their rights and contention.

It also reveals that a modification application being C.A.N No.9249 of 2007(now C.A.N 1 of 2007) was moved by O.P. before the Hon'ble High Court, Calcutta inter alia for modification of the Order dated 17.09.2007 passed by His Lordship Hon'ble Justice Soumitra Paul in A.S.T. No.1574 of 2007(Vinay Kumar Singh vs Kolkata Port Trust). However, the same was dismissed by Hon'ble High Court vide it's order dated 09.11.2022 with a stay on the operation of such order upto November 30, 2022. Thereafter challenging the said Order dated 09.11.2022, Sri Vinay Kumar Singh preferred an appeal vide MAT No.1807 of 2022 and CAN No.1 of 2022 against SMPK, before the Hon'ble Division Bench of the Calcutta High Court, wherein the Hon'ble Court vide its Order dated 21.12.2022 was again pleased to extend the interim stay inter alia stating that "*....subject to deposit of Rs.5 Crores by the Appellant within a period of two weeks from today. The said deposit is without prejudice to the rights of the parties and the same will be kept in a separate interest bearing account by the Respondents/ SMPK*

Thereafter the said Stay Application was further taken up for hearing on 11.01.2023 before the Hon'ble Division Bench of the Calcutta High Court and such order of stay was vacated accordingly when the Appellant expressed his inability in compliance of the Order dated 21.12.2022. Thereafter, Hon'ble Division Bench of Calcutta High Court Vide it's Order dated 06.02.2023 ultimately dismissed the MAT Appeal being No.1807 of 2022 on merit.

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O.P. contested the matter through its Ld. Advocate and filed on 11.04.2016 its reply/written objection to the show cause notice/s along with the Vakalatnama, duly signed by Vinay Kumar Singh, Director of the O.P., followed by letter/petition dated 12.07.2016 and written notes of arguments filed on 23.08.2016. SMPK also filed its arguments and counter-arguments through letters/applications on various dates. Both the parties were heard extensively. Upon considering the deliberations of the parties and after carefully going through all the documents placed on record, I find that the following issues have come up for my consideration:

- I) Whether the proceedings under P.P. Act is maintainable or not;
- II) Whether Show Cause Notice u/s.4 & 7 of the P.P. Act issued to O.P., both dated 08.03.2016 is sustainable in the eye of law or not;
- III) Whether the proceedings at the instance of SMPK against O.P. is barred by law of estoppel or not;
- IV) Whether the O.P. has parted with possession of the public premises unauthorisedly, or not;
- V) Whether O.P. has carried out unauthorized construction or not;
- VI) Whether O.P. can claim for "renewal of lease" in respect of the Public Premises in question as a matter of right or not;
- VII) Whether there was any agreement between SMPK and O.P. for renewal of lease in favour of O.P. for a further period of 99 years commencing from 31.01.2002 or not;
- VIII) Whether SMPK's notice dated 08.06.2007 as issued to O.P., demanding possession from O.P. is valid and lawful or not;
- IX) Whether after alleged expiry of such long term lease O.P. or any other's occupation could be

[Signature]

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termed as "unauthorised occupation" in view of Sec.2 (g) of the P.P. Act and whether O.P. is liable to pay damages to SMPK during the period of its unauthorised occupation or not;

With regard to **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 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 and recovery of damages against O.P. on the plea of determination of lease or 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 is any specific order of stay of such proceedings by any competent court of law. To take this view, I am fortified by an unreported judgment of the Hon'ble High Court, Calcutta delivered by Hon'ble Mr. Justice Jyotirmay Bhattacharya on 11.03.2010 in Civil Revisional Jurisdiction (Appellate Side) being C.O. No. 3690 of 2009 (M/s Reform Flour Mills Pvt. Ltd. -Vs- Board of Trustees' of the Port of Calcutta) wherein it has been observed specifically that the Estate Officer shall have jurisdiction to proceed with the matter on merit even there is an interim order of status quo of any nature in respect of possession of any public premises in favour of anybody by the Writ Court.





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Relevant portion of the said order is reproduced below:

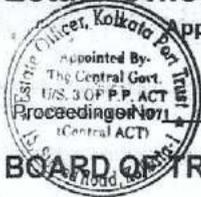
"In essence the jurisdiction of the Estate Officer in initiating the said proceedings and/or continuance thereof is under challenge. **In fact, the jurisdiction of the Estate Officer either to initiate such proceedings or to continue the same is not statutorily barred.** As such, the proceedings cannot be held to be vitiated due to inherent lack of jurisdiction of the Estate Officer.

The bar of jurisdiction, in fact, was questioned because of the interim order of injunction passed in the aforesaid proceedings".

Hon'ble Division Bench of Calcutta High Court had the occasion to decide the jurisdiction of the Estate Officer under P.P. Act in Civil Appellate Jurisdiction being MAT No.2847 of 2007 (The Board of Trustees of the Port of Kolkata and Anr - vs- Vijay Kumar Arya & Ors.) reported in Calcutta Weekly Note 2009 CWN (Vol.113)-P188 The relevant portion of the judgment (Para-24) reads as follows:-

"The legal issue that has arisen is as to the extent of Estate Officer's authority under the said Act of 1971. While it is an attractive argument that it is only upon an occupier at any public premises being found as an unauthorized occupant would he be subject to the Estate Officer's jurisdiction for the purpose of eviction, the intent and purport of the said Act and the weight of legal authority that already bears on the subject would require such argument to be repelled. Though the state in any capacity cannot be arbitrary and its decisions have always to be tested against Article 14 of the Constitution, it is generally subjected to substantive law in the same manner as a private party would be in a similar circumstances. That is to say, just because the state is a Landlord or the state is a creditor, it is not burdened with any onerous covenants unless the Constitution or a particular statute so ordains"

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In view of the authoritative decisions as cited above, I have no hesitation in my mind to decide the issue in affirmative that is to say this Forum of Law has absolute authority under law to adjudicate upon the issues relating to the Public Premises in question.

With regard to **Issue No.II**, O.P vide their reply to the Show Cause has submitted that after deposition of lease amount of Rs.60,35,533.13 for 99 years lease w.e.f 01.02.2002 in terms of the order of Hon'ble High Court, issuing any notice on the alleged claim of damages for the period 01.02.2002 to 30.06.2008 is no way sustainable. However, I do not find any justification in O.P's statement. 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 eviction and recovery of arrear 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. Further mere information is now sufficient to attract statutory mandate under P.P Act for issuing Show Cause Notice/s against any tenant. 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 in favour of SMPK.

Regarding the **issue No.III** i.e on the issue of estoppel, O.P vide their reply to the Show Cause claimed that by way of approving and confirming the acceptance of offer, SMPK has accepted O.P. as a tenant therefore, cannot be deviated from their earlier representation and SMPKs conduct is directly hit



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by the principles of promissory estoppel. However, according to law, the question of estoppel arise when one person has by his declaration, act or omission, **intentionally** caused or **permitted** another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceedings between himself and such person or his representative, to deny the truth of that thing. In other words to constitute an estoppel there must be an intention or permission to believe certain thing. There is no material to prove any intention or permission on the part of SMPK to consider/accept O.P's status into the Public Premises as "lessee" in respect of Proceedings No. 1151 of 2011 and to withdraw/ cancel the notice dated 08.06.2007. Therefore, the question of 'estoppel' as raised on behalf of O.P. does not arise at all in view of the facts and circumstances of the case and the issue No. III is also decided against O.P.

Issues IV and V are taken up together, as the issues are related with each other. It is the case of SMPK that the lease granted to the O.P. (without any option for renewal) expired on 31.01.2002. SMPK has further claimed about existence of unauthorized construction in the subject premises, unauthorised subletting/ parting with possession of the subject premises and also that the O.P. was in default of compensation charges, at the time of expiry of the said lease. Thereafter, since the O.P. failed to hand over possession of the property to the Port Authority, the notice to quit dated 08.06.2007 came to be issued to the O.P. The O.P. on the contrary has claimed that during the existence of approval and confirmation in regard to acceptance of offer by them, the Port Authority was not justified in issuing the notice to quit.

I have carefully gone into the rival submissions and the documents produced before me. The SMPK's letter dated 08.01.2003, discloses that there were some unauthorised constructions which have been demolished by O.P and after such demolition penalty amount was also been recalculated by SMPK. During the course of hearing, it further came out through an intimation of SMPK dated 07.07.2015 that some

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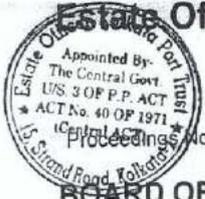
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unauthorised constructions were detected at the premises and it was intimated to IEC Co to remedy such breaches. However, some unauthorised structures were removed subsequently but for other structures O.P has opted for payment of penal charges.

Be that as it may, during the course of hearing the O.P. expressed its willingness to remove the said breach by payment of penal charges for unauthorised construction. In my view, such conduct of O.P clearly shows that O.P. has sufficiently admitted about the existence of unauthorised construction in the premises, and since it is a settled law that admitted facts need not be proved, I have no bar in accepting that the breach of unauthorised construction was existing when the notice to quit dated 08.06.2007 came to be issued by the Port Authority.

Further it also the specific case of SMPK that O.P. has inducted subtenants in the Public Premises in question. The Application of SMPK in terms of the order No. 5 dated 07.07.2015 reveals that a cheque submitted by O.P on account of penal charges for unauthorised construction was drawn by one M/s. Maximix Construction Pvt. Ltd in place of recorded tenant(IEC Co). It was also observed that the status of IEC Co had changed and a private Limited company viz M/s Maximix Construction Pvt. Ltd become the proprietor of the said IEC Co. In my view, induction of M/s Maximix Construction Pvt. Ltd in the subject occupation of O.P. is nothing but an unauthorised parting and such parting with possession was made by O.P. without the permission of Port Authority. Moreover, O.P has violated the provision of the expired lease deed in question which contained the responsibility of O.P./lessee regarding transfer/assignment of lease hold land as per clause 6 under "Transfer of Lease" which reads as follows:-

AND will not assign, transfer, underlet or part with possession of the demised land or any part thereof without the prior consent in writing of the Commissioners. In case the permission is granted it may be on such terms and condition as the



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Commissioner may think fit. If permission is refused the commissioners should not be called upon to assign any reasons for such refusal. Provided however and it is hereby specifically stipulated that no request for assignment or transfer of the demised land or any part thereof shall be entertained by the Commissioners within a period of Five years from the date of commencement of the lease.

In view of the discussions above, I have no hesitation to hold that both the allegations of SMPK have sufficient merit and thus the issues are decided in favour of SMPK.

On **issue No. VI**, there is no scope to extend the matter by elaborate discussion. The lease in question was expired on 31.01.2002 and there was no provision in the expired lease for exercising any option for renewal of the same. In absence of any "renewal clause" that is to say any provision for exercising option for renewal by O.P., I do not find any scope to consider any matter of "renewal of lease" in favour of O.P. In fact O.P. cannot claim "renewal of lease" in question as a matter of right. Hence the issue is decided against O.P.

Evaluation of factual aspect will certainly dominate the decision with regard to **issue No. VII**. The statements made on behalf of O.P. in their objection filed on 11.04.2016 are very much relevant for the purpose of determination of the point at issue. In fact, the entire case of O.P. is standing upon the statements made on behalf of O.P. in their objection against paras- iv, v, viii, ix, x & xiii which are as follows :-

"iv)... I state that before expiry of the said lease period, on number of occasions matter in regard to extension of such lease period has been discussed by and between our Company and the Competent Authority of the KPT and during the course of such negotiation, conditions in regard to extension of such lease period almost amicably has been settled by and between our Company and KoPT. During the course of such discussion/negotiation, on 13.02.2002, the matter has been discussed in detail by and between our Company and Chairman, KoPT. At the time of such meeting it has been settled by and between our Company and the Chairman, KPT



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that the lease period of the said land shall be extended for a further period of 99 years in favour of our Company.

At the time of such meeting, Chairman, KoPT informed us that the lease amount in regard to such 99 years lease of the said land shall be intimated to us within a very few days.

v) I state that after the said meeting since within a reasonable time, we have not been informed about the amount of such 99 years lease, on 25.02.2002, I wrote a letter to the Land Manager, KoPT for making early intimation in this regard.

viii) I state that the Deputy Land Manager, KoPT vide letter dated 16th January, 2003 issued offer letter in our favour for grant of 99 years lease of the said land. In the said offer letter it has been stated that the Central Government in recent times is inclined to grant lease of 99 years without any option of renewal by realizing the value land as premium upfront followed by annual rent of Rs.1/per Sq.m to be enhanced every 10 years by 25%. In the said Offer letter quantum of lease amount for the period of 99 years has been fixed to the tune of Rs.50,13,201/- and the lease period has mentioned to be commenced retrospectively w.e.f 01.02.2002 i.e the next following day of the expiry of previous lease of 30 years.

ix) I state that on receipt of the said offer letter dated 16.01.2003 on the very next day i.e on 17.01.2003, by a letter we accepted the said offer with all its terms and conditions.

x) I state that despite receipt of such acceptance of the proposal/offer, since the authority of KoPT had not executed the agreement for such 99 years lease, Of the land.

xiii) I state that it is very unfortunate and surprising also that even after obtaining approval from the concerned Ministry of the Government of India and even after resolution and confirmation of the Board of Trustees of KoPT, such lease deed has not been executed due to their lackadaisical and callous attitude on the part of concerned authority of the KPT."

The contentions of O.P. regarding "renewal" of lease is on the basis of *agreement* with SMPK and such agreement is founded upon *assurance* and *conduct* of SMPK after expiry of the lease

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period in question. Now the question arises how far the statement made by O.P. for formation an agreement is true on the basis of materials on record. To constitute a contract/agreement, enforceable under law there must be a valid offer and a valid acceptance on the part of the parties. There is no express agreement between the parties for renewal of lease. Now, I have to infer about the implied consent or agreement as contended by O.P. There is no whisper about the person responsible of the Port Authority where from O.P. received any assurance for renewal of lease in question and whether such person is competent to give any assurance on behalf of the Port Authority or not. In such a situation the exchange of letters between the parties cannot constitute any sort of "assurance" on the part of the Port Authority to obtain renewal of lease. The conduct of the Port Authority as emerges from the exchange of letters between the parties is not at all indicative of any assurance or any implied agreement. As such, the statements made on behalf of O.P. is devoid of particulars and deserves no merit. Therefore, the plea taken on behalf of O.P. regarding agreement for renewal of lease with the same terms and conditions as embodied in the expired lease in question is rejected. Thus the issue is decided against O.P.

Issues No.VIII & IX are taken up together as they 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 of lease. O.P has failed to satisfy this Forum about any consent on the part of SMPK in occupying the public premises. 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 of such long term lease. 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 in the public premises after the authority (whether by way of grant or any

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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 also a settled question of law that O.P, occupier cannot claim any legal right to hold the property after expiry of the lease, without any valid grant or allotment from SMPK's side. Moreover, as per the Transfer of Property Act, 1882, a lessee is under legal obligation to hand over possession of the property to its landlord/lessor in its original condition after expiration of tenancy under lease. The tenancy of the O.P. automatically stands terminated upon expiry of the lease-hold period and no additional Notice is required in the eye of law on the part of the landlord to ask the O.P. to vacate the premises. In other words, in case of a long term lease having a specific date of expiration, there is no legal compulsion upon the landlord to issue any Notice to Quit. The landlord is, however, free to issue such a Notice as a reminder or as an act of gratuity. In the instant case, the landlord i.e. SMPK adopted such a course and claims to have issued a Notice to O.P. dated 08.06.2007 asking for vacation of the said premises on 12.12.2007. Whether such Notice has been received by O.P. or not is quite immaterial inasmuch as O.P. was duty bound to hand over possession to SMPK after expiry of such lease which it had failed to do so. Therefore, O.P's occupation is unauthorized.

"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 lease, O.P. has lost its authority to occupy the public premises 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



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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.

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 as "authorized occupation" without making payment of requisite charges. I am fortified by the Apex Court judgment reported in JT 2006 (4) Sc 277 (Sarup Singh Gupta -vs- Jagdish Singh &Ors.) wherein it has been clearly observed that in the event of termination of lease the practice followed by Courts is to permit landlord to receive each month by way of compensation for use and occupation of the premises, an amount equal to the monthly rent payable by the tenant. In my view, the case in hand is very much relevant for the purpose of determination of damages upon the guiding principle as laid down by the Hon'ble Apex Court in the above case. In course of hearing, it is submitted on behalf of SMPK that the charges claimed on account of damages is on the basis of the SMPK's Schedule of Rent Charges as applicable for all the tenants/occupiers of the premises in a similarly placed situation and such Schedule of Rent Charges is notified rates of charges under provisions of the Major Port Trusts Act 1963. In my view, such claim of charges for damages by SMPK is based on sound reasoning and should be acceptable by this Forum of Law. As per law, when a contract has been expired

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by efflux of time and party continues their occupation unauthorisedly, the another party who suffers by such violation is entitled to receive, from the party who has violated the terms of the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such violation of the terms, or which the parties knew, when they made the contract to be likely to result from the such violation.

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 the period as mentioned in the SMPK's notice dated 08.06.2007, demanding possession from O.P. I have no hesitation to observe that O.P's act in continuing occupation after expiry and 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.

NOW THEREFORE, the logical conclusion which could be arrived at that O.P's occupation and the occupation of anybody asserting any right through O.P. have become unauthorized and they are liable to be evicted u/s.5 of the Act on the following grounds/reasons.

1. That the proceedings against O.P. is very much maintainable.
2. That the lease as granted to O.P. by SMPK had doubtlessly determined by efflux of time, in the facts and circumstances of the case.
3. That O.P. cannot claim "renewal of lease" as a matter of right, particularly when the lease in question does not contain any provision for exercising any option for renewal.
4. That there was no agreement (either expressly or impliedly) between SMPK and O.P. for renewal of lease

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for a further period of 99 years commencing from 01.02.2002 as contented by O.P.

5. That O.P. has erected unauthorised constructions and inducted unauthorised subtenants on the subject public premises in question without having any authority of law.
6. That O.P. has failed to bear any witness or adduce any evidence in support of their occupation as "authorised occupation" inspite of repeated chances for a considerable period and O.P's act of continuing in occupation in the Public Premises without paying requisite charges is opposed to public policy.
7. That notice to quit dated 08.06.2007 issued by the Port Authority to O.P., demanding possession is valid, lawful and binding upon the parties.
8. That O.P's occupation has become unauthorized in view of Sec. 2(g) of the P.P. Act and O.P. is liable to pay damages for unauthorized use and enjoyment of the Port Property right from the date of expiry of the lease period on and from 01.02.2002 in question upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

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

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I make it clear that I am not inclined to assess the damages at this stage as the Notice u/s 7(2) was issued only for a particular period whereas the O.P. is liable to pay damages for unauthorized use and enjoyment of the property right upto the date of handing over of possession of the public premises to SMPK. I further make it clear that I have not gone into the merits of the submissions of the parties regarding the quantum/assessment of damages and all points raised by the parties in relation thereto are kept open, to be decided upon issuance of fresh Notice u/s 7(2) of the Act by this Forum, at the appropriate time. SMPK is directed to submit a report regarding its claim on account of damages against O.P., indicating there-in, the details of the computation of such damages with the rate of charges so claimed for the respective periods (including the date of taking over of possession) for my consideration in order to assess the damages as per the Act and the Rules made thereunder.

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

(Kausik Kumar Manna)
ESTATE OFFICER

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