

o/c



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

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

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

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

PROCEEDINGS NO.1952/D OF 2022
ORDER NO. 26 DATED: 26.04.2023.

Form- G

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

To

Brig. H.S Ghuman,
C/o, G.G. Weigh Bridge,
Diverted C.G.R. Road,
Near Gate No.5, N.S.D.,
Kolkata-700043.

3106

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
13.04.2023
Head Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

AND WHEREAS by written notice dated 07.10.2022 you are called upon to show cause on or before 21.10.2022 why an order requiring you to pay damages of Rs.82,77,209/- (Rupees Eighty two Lakh seventy seven thousand two hundred nine Only) for Plate No. D-300/77 and Rs.14,016/- (Rupees Fourteen thousand sixteen only) for Plate No.D-300/77/1, together with [compound interest] for unauthorised use and occupation of the said premises, should not be made;

AND WHEREAS I have considered your objections and/or evidence produced before this Forum;

NOW, THEREFORE, in exercise of the powers conferred on me by Sub-section (2) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971, I hereby order you to pay the sum of Rs.82,77,209/- (Rupees Eighty two Lakh seventy seven thousand two hundred nine Only) for Plate No. D-300/77 and Rs.14,016/- (Rupees Fourteen thousand sixteen only) for Plate No.D-300/77/1 assessed by me as damages on account of your unauthorised occupation of the premises both for the period from 17.03.2003 to 31.07.2022 (both days inclusive) to SMPK by 26.04.2023.

PLEASE SEE ON REVERSE



: 2 :

In exercise of the powers conferred by Sub-section (2A) of Section 7 of the said Act, I also hereby require you to pay compound interest @ 7.50 % per annum on the above sum till its final payment being the current rate of interest as per the Interest Act, 1978.

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

SCHEDULE

Plate Nos. D-300/77 & D-300/77/1

Trustees' Land msg.171sq.mtrs at Diverted C.G.R. Road under Plate No. D300/77. It is bounded on the North by the Trustees' Subhas Bhawan, on the East by land leased to M/s. Aarpee International, on the South by the Trustees' land used as Kolkata Police Traffic Guard Barrack and on the West by Trustees' Netaji Subhas Dock.

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

Date 13.04.2023 .

Signature & Seal of the
Estate Officer.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
13.04.2023
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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



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

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

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

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

REASONED ORDER NO. 26 DT 12.04.2023
PROCEEDINGS NO.1952 OF 2022

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

Brig. H.S. Ghuman (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
Brig. H.S Ghuman, C/o, G.G. Weigh Bridge, Diverted C.G.R. Road, Near
Gate No.5, N.S.D., Kolkata-700043 is in unauthorized occupation of the
Public Premises specified in the Schedule below:

REASONS

- 1) That proceedings against O.P. under P.P. Act is very much maintainable under law.
- 2) That O.P. has violated the condition of long term lease as granted by the Port Authority by way of unauthorisedly occupying such premises after expiry of such lease by efflux of time.
- 3) That O.P. while in possession and enjoyment of the Port Property and while acknowledging the jural relationship as debtor to SMPK cannot take the shield of time barred claim under Limitation Act.
- 4) That O.P. has erected unauthorised constructions over the subject premises in question without having any authority of law.
- 5) That the Notice demanding possession from O.P. as issued by SMPK dated 16.11.2005 is valid, lawful and binding upon the parties and O.P. had no authority under law to occupy the Public Premises after expiry of the contractual period of lease in question that is from 17.03.2003.
- 6) That O.P.'s occupation is unauthorized after expiry of period of lease in question and O.P.'s occupation has become unauthorized in view of Section 2(g) of PP Act.
- 7) That O.P. is liable to pay damages for wrongful use and enjoyment of the Port property upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
13.04.2023
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

PLEASE SEE ON REVERSE



(2)

A copy of the reasoned order No. 26 dated 12.04.2023 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 **Brig. H.S Ghuman, C/o, G.G. Weigh Bridge, Diverted C.G.R. Road, Near Gate No.5, N.S.D., 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 **Brig. H.S Ghuman, C/o, G.G. Weigh Bridge, Diverted C.G.R. Road, Near Gate No.5, N.S.D., 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.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

P 13.04.2023
Head Assistant
ESTATE OFFICER

SCHEDULE

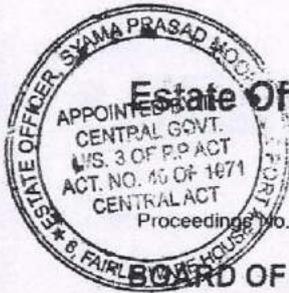
Plate Nos. D-300/77 & D-300/77/1

Trustees' Land msg.171sq.mtrs at Diverted C.G.R. Road under Plate No. D300/77. It is bounded on the North by the Trustees' Subhas Bhawan, on the East by land leased to M/s. Aarpee International, on the South by the Trustees' land used as Kolkata Police Traffic Guard Barrack and on the West by Trustees' Netaji Subhas Dock.

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

Dated: 13.04.2023.


Signature & Seal of
Estate Officer.



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. 1952, 1952/D of 2022 Order Sheet No. 33

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
BRIG. H. S. GHUMAN

FINAL ORDER

The matter is taken up today for final disposal. The factual aspect involved in this matter is required to be put forward in nutshell in order to link up the chain of events leading to this proceeding. It is the case of Syama Prasad Mookerjee Port, Kolkata (erstwhile Kolkata Port Trust/KoPT), hereinafter referred to as 'SMPK', the applicant herein that **Brig. H.S. Ghuman** (O.P.) came into occupation of the Port property being land msg. 171 sq.m. situated at Diverted C.G.R Road, comprised under Plate nos. D-300/77 and D-300/77/1 (way leave) as a long term lessee for a period of 10 years without any option of renewal with effect from 17.03.1993 and such lease in respect of the land in question was expired on 16.03.2003 due to efflux of time. It is the case of SMPK that O.P. prefers to continue in occupation after expiry of the period of lease and that too after demand for possession in terms of the notice dated 16.11.2005 to handover possession on 19.12.2005. It is also the case of SMPK that O.P. has defaulted in payment of rental dues to SMPK and also made unauthorised construction on the subject premises in question in contravention of the conditions of such lease.

This Forum of Law formed its opinion to proceed against O.P. and issued Show Cause Notice/s u/s 4 of the Act (for adjudication of the prayer for order of eviction) and u/s 7 of the Act (for adjudication of the prayer for realisation of damages etc.) both dated 07.10.2022 (vide order No.20 dated 30.09.2022) under the provisions of the Act and Rules made thereunder.

It reveals from record that on 21.10.2022 i.e. on the schedule date of appearance and filing of reply to the Show Cause, one S.S Ghuman, expressing himself as a son and authorised representative of O.P., appeared before the Forum to contest the instant matter. An application/petition dated 17.10.2022 on behalf of O.P. signed by Mr. S.S Ghuman was found in the record. During the course of hearing said representative of O.P.

26
12.04.2023

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
R. 21.04.2023
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

1952, 1952/D of 2022 Order Sheet No. 34

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

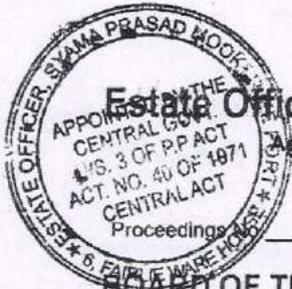
VS

BRIG. H.S. GHUMAN

26
12.04.2023

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
21.12.2022
Head Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

referred such application dated 17.10.2022 and contended that the applications dated 3rd April 2018, 25th April 2019, 23rd July 2021, 17th June 2022, 8th July 2022 and 24th August 2022 along with the Statements of Accounts were not furnished by SMPK without which an effective reply could not be filed by O.P. Hearing the submission of O.P., the Forum thereafter gave a direction to the department for furnishing such copies to O.P. and thereafter, in the same hearing, Forum gave a further direction to O.P for filing their reply to the Show Cause upon receipt of such documents. It appears that during the course of hearing on 09.11.2022, 16.11.2022 and on 25.11.2022, O.P were given number of opportunities to file their reply to Show Cause and finally on 12.12.2022 O.P filed an application challenging the authority of Estate Officer along with enumerating certain other grounds on maintainability, inter-alia seeking dismissal of the instant proceeding. I must mention here that as per the provisions of the Public Premises Act, 1971 it is the primary duty of O.P. to file the reply or deal with the grounds mentioned in the show Cause notice/s. It is obvious that the grounds as enumerated in the Show Cause is based on the case primarily established by SMPK through its original and additional applications, if any, submitted before this Forum. It appears from records that a copy of the Original Application of SMPK dated 03.04.2018 has already been handed over to the authorised representative of O.P., under his personal acknowledgement on 21.10.2022. Hence, it can be taken without much hesitation that O.P. was aware of the basis of claim of SMPK on and from 21.10.2022. However, instead of filing the reply to show cause, O.P. has chosen to file an application seeking non-maintainability of the instant Proceeding, after a period of almost 1 months 22 days, after becoming cognisant of the case made out by SMPK. Hence, the conduct of O.P. somehow indicates their tactics for delaying the matter and eventually, deferring the administration of justice. Hence, I find very little merit in the application of O.P. seeking non-maintainability of the instant Proceeding. The O.P was duty bound to file evidence/documents in support of their



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

1952, 1952/D of 2022 Order Sheet No. 35

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

BRIG. H. S. GHUMAN

26
12.04.2023

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
213.04.2023
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

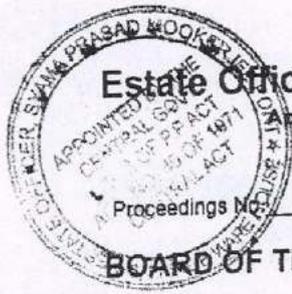
case, if any, against the Show Cause issued by this Forum. The points taken by O.P. for non-maintainability of the present Proceeding could easily be taken by O.P. in their Reply to Show Cause and the P.P. Act does not contemplate to take the maintainability Proceeding as a standalone Proceeding.

Be that as it may, following the principles of Natural Justice that no one should be condemned unheard, I proceed to consider the case made out by O.P. through his application dated 12.12.2022. I have carefully read the said application dated 12.12.2022 filed by O.P. with all their imports and contents. After carefully considering the documents on record and the submission of the parties, I find that following issues have come up for my adjudication:

- I. Whether the instant Proceeding against O.P. is maintainable or not;
- II. Whether the Maxim "no one should be a judge in his own cause" applies in the instant case or not;
- III. Whether the allegations of default of rent at the time of issuing Quit notice and unauthorised construction, against O.P., have any merit or not;
- IV. Whether proceedings against O.P. is maintainable on the ground of "barred by limitation" or not;
- V. Whether the plea taken by O.P. about waiver of the notice to quit dated 16.11.2005 by the SMPK, has got any merit or not;
- VI. Whether the notice demanding possession from O.P. issued by the Port Authority dated 16.11.2005 is valid and lawful or not;
- VII. Whether O.P. is liable to pay damages as claimed by SMPK for unauthorised use and enjoyment of the Port Property immediately after expiry of the lease period in question or not;

Issues No. I & II, are taken up together for convenience of discussion as the issues are mainly related to jurisdiction of this Forum of Law to entertain the application of SMPK dated

Handwritten signature/initials at the bottom of the page.



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. 1952, 1952/D of 2022 Order Sheet No. 36

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
BRIG. H.S. GHUMAN

26
12.04.2023

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
P. 22.13.04.2023
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

03.04.2018. In fact, the issues are related to each other on the question of maintainability of the proceedings.

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 along with the prayer for order of eviction and recovery of damages 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 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. 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



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. 1952, 1952/D of 2022 Order Sheet No. 37

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA.

VS
BRIG. H. S. GHUMAN

26
12.04.2023

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
19.04.2023
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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".

The maxim that no one can be judge in his own case only means that he should not have private interest in the case he is to adjudicate. The Estate Officer discharges his official function under the law. He acts as a tribunal and has no private interest. He cannot be said to be both the prosecutor and the judge. No material has been produced or no case has been made out by O.P as to how this forum of law is involved



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. 1952, 1952/D of 2022 Order Sheet No. 34

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
BRIG. H. S. GRAUMAN

26
12.04.2023

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
13.04.2023
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

with any work relating to O.P's tenancy or related to any decision making process of the Port Authority to seek prayer for eviction against O.P etc. As such I do not find any merit to the submissions made on behalf of O.P in this regard.

In view of the discussions above, the issues are decided accordingly against O.P.

As regards **issue No. III**, I must mention that once the lease is accepted to have expired in all sense of law, the occupation of the O.P. is definitely "unauthorised" in terms of Sec. 2 (g) of the P.P. Act, 1971 and as such any discussion as to existence of any other breaches are purely academic. Hence, I have not gone into the merit of SMPK's allegations regarding non payment of rent and carrying out of unauthorized construction against O.P. Moreover, it is also seen from the record that their no rental dues at present. O.P is only liable to pay compensation charges for unauthorised use and occupation of the subject premises in question.

In **issue No. IV**, now the question arises whether O.P can take the plea of time barred claim under Limitation Act, while in possession and enjoyment of the Port property or not. It is my considered view that O.P cannot escape their liability towards payment of rental dues on the plea of "limitation" as per Sec. 25 of the Indian Contract Act, while acknowledging the jural relationship as debtor. No attempt has been made on behalf of O.P as to how O.P's 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 02.11.2011, demanding possession.

The core submissions regarding non-applicability of the Limitation Act in proceedings before this Forum is based on various decisions of the Hon'ble Apex Court of India and Calcutta High Court, wherein it has been decided that Limitation Act. has no application before quasi-judicial authorities like this Forum of Law which is not a civil court to be governed by the Civil Procedure Code.



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. 1952, 1952/D of 2022 Order Sheet No. 39

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
BRIG. H. S. GHUMAN

26
12.04.2023

By Order of:
THE ESTATE OFFICER
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13.04.2023
Head Assistant
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SYAMA PRASAD MOOKERJEE PORT

The judgment of the Hon'ble Apex Court of India reported in New India Assurance Case - 2008 (3) SCC 279 = AIR 2008 SC 876 is very much relevant in deciding the question whether this Forum is a court or not. It was decided by the Supreme Court that Civil Procedure Code and Indian Evidence Act are not applicable for proceedings before the Estate Officer under P.P. Act which provided a complete code. The Limitation Act applies to "suits" to be governed by CPC and Indian Evidence Act. When the basic elements for adjudication of a "suit" are totally absent for proceedings under P.P. Act, 1971, it is futile to advance any argument for its application. The judgments of different High Courts including that of Delhi High Court could be accepted as a guiding principle. In this connection, I am fortified by a judgment of the Hon'ble High Court, Calcutta in S.N. BHALOTIS -vs- L.I.C.I. & Ors. reported in 2000(1) CHN 880 with reference to the judgment reported in AIR 1972 Tripura 1 (Hemchandra Charkraborty -vs- Union of India) wherein, it was clearly held that proceedings initiated by an Estate Officer are not in the nature of suit nor the Estate Officer acts as a Court while deciding proceedings before him.

It is worthy to record that there is no prescribed period of limitation in the Limitation Act itself for recovery of "damages". It would not be out of scope to mention that Limitation Act bars the remedy by way of "suit" but not the entitlement. In my view, there is a clear distinction between 'rent' and 'damages'. So long both the parties admit their relationship as landlord and tenant, the question of paying damages does not arise. In other words, if the tenant is asked to pay rent by the landlord, the element of authorized occupation could be inferred but in case of demand for damages, there is element of unauthorized use and enjoyment of the property (1996) 5 SCC 54 (Shangrila Food Products Ltd. & Anr vs Life Insurance Corporation of India & Another).

In view of the discussion above, I am of the view that this Forum of Law is very much competent under law to adjudicate the claim of SMPK against O.P. and Limitation Act has no



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Proceedings No. 1952, 1952/D of 2022 Order Sheet No. 40

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
BRIG. H.S. GHUMAN

26
12.04.2023

By Order of:
THE ESTATE OFFICER,
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
ISSUED BY THE ESTATE OFFICER,
SYAMA PRASAD MOOKERJEE PORT
13.04.2023
Head Assistant
ESTATE OFFICER

application to the proceedings before the Estate Officer which is a quasi-judicial authority under P.P. Act and is neither a Civil Court to be governed by the Civil Procedure Code nor a "court" within the scheme of the Indian Limitation Act. In holding so, I have also relied on the judgment delivered by the Hon'ble Supreme Court of India on 23.4.2015 in Civil Appeal No. 4367 of 2004 (M.P. Steel Corporation -vs- Commissioner of Central Excise) reported in (2015) 7 SCC 58. I have also taken a note of Sec.29 of The Limitation Act, 1963 read with Sec.25 of the Indian Contract Act, 1872. It is my well considered view that even if for the sake of argument, Limitation Act is taken to apply to the proceedings before the Estate Officer (not admitting), Sec.25 of the Indian Contract Act will definitely come into play against O.P.'s plea for "time barred" claim under Limitation Act. I am of the view that O.P. acknowledged its relationship as debtor and Sec. 25 of the Contract Act debars O.P. to take the plea of "barred by limitation", in the facts and circumstances of the case. Hence, the issue IV is decided in favour of SMPK.

As regards the **Issue No.V**, O.P. vide their application dated 12.12.2022 submits SMPK has raised rent bills and had received and appropriated the amounts towards the said bills as late as 16th November, 2020 as such the proceeding cannot be initiated against the O.P. alleging unauthorized occupation." However, in my view, mere acceptance of rent or other charges during pendency of the eviction proceedings does not confer any right to O.P. and it does not amount to waiver of notice to quit. As per law, in order to constitute a waiver of notice to quit, O.P. must have to prove that SMPK by accepting rent had intended to treat the lease 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. Moreover, as the land is still under the control of Opposite Party, SMPK did not make any mistake in receiving occupational charges from O.P.



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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
BRIG. H. S. GHUMAN

26
12.04.2023

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
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PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
12.04.2023
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

[Handwritten signature]

In the present case in hand SMPK actively prosecuted the proceedings for ejection against O.P. and as such it cannot be an accepted proposition that the notice to quit is bad by any sense of law.

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

Issues No. VI & VII are bound to be dominated by the decision against the aforesaid issues. I have deeply gone into the submissions/ arguments made on behalf of the parties in course of hearing. The properties of the SMPK are coming under the purview of "public premises" as defined under the Act. Now the question arises how a person become unauthorized occupant into such public premises. As per Section 2 (g) of the Act the "unauthorized occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. As per 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. Here the tenancy under lease in favour of O.P. has been determined by efflux of time limited thereby and the Port Authority by service of notice dated 16.11.2005 demanded possession from O.P. and did not recognize O.P. as tenant by way of not issuing rent demand. There is no material to prove O.P's intention to pay the dues/charges to SMPK as per SMPK's demand on the basis of Schedule of Rent Charges. "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 contractual period of lease, O.P. has lost its authority to



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VS
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occupy the public premises, on the evaluation of factual aspect involved into this matter and O.P. is liable to pay damages for such unauthorized use and occupation. To come into such conclusion, I am fortified by the decision/ observation of the Hon'ble Supreme Court in Civil Appeal No.7988 of 2004, decided on 10th December 2004, reported (2005)1 SCC 705, para-11 of the said judgment reads as follows.

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

Undoubtedly, the tenancy under lease is governed by the provisions of the Transfer of Property Act 1882 and there is no scope for denial of the same. In course of hearing, the representative of SMPK states and submits that Port Authority never consented in continuing O.P's occupation into the public premises and never expressed any intention to accept O.P as tenant. It is contended that SMPK's intention to get back possession is evident from the conduct of the Port Authority and O.P. cannot claim its occupation as "authorized" without receiving any rent demand note.

The question of "Holding Over" cannot arise in the instant case as the Port Authority never consented to the occupation of O.P.

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



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any other mode, expressing the assent for continuance in such occupation after expiry of the period as mentioned in the notice to vacate the premises. 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 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. Moreover, as per law O.P. is bound to deliver up vacant and peaceful possession of the public premises to SMPK after expiry of the period of lease in question or after expiry of the period as mentioned in the notice to Quit in its original condition. 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 ejectment notice, dated 16.11.2005, 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 notice is valid, lawful and binding upon the parties. In view of the discussions above, the issues are decided in favour of SMPK.



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NOW THEREFORE, I think it is a fit case for allowing SMPK's prayer for eviction against O.P. u/s 5 of the Act for the following grounds/reasons:

- 1) That proceedings against O.P. under P.P. Act is very much maintainable under law.
- 2) That O.P. has violated the condition of long term lease as granted by the Port Authority by way of unauthorisedly occupying such premises after expiry of such lease by efflux of time.
- 3) That O.P. while in possession and enjoyment of the Port Property and while acknowledging the jural relationship as debtor to SMPK cannot take the shield of time barred claim under Limitation Act.
- 4) That O.P. has erected unauthorised constructions over the subject premises in question without having any authority of law.
- 5) That the Notice demanding possession from O.P. as issued by SMPK dated 16.11.2005 is valid, lawful and binding upon the parties and O.P. had no authority under law to occupy the Public Premises after expiry of the contractual period of lease in question that is from 17.03.2003.
- 6) That O.P.'s occupation is unauthorized after expiry of period of lease in question and O.P.'s occupation has become unauthorized in view of Section 2(g) of PP Act.
- 7) That O.P. is liable to pay damages for wrongful use and enjoyment of the Port property 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

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12.04.2023
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SYAMA PRASAD MOOKERJEE PORT



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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VS
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By Order of:
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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.

It is my considered view that a sum of Rs.82,77,209/- (Rupees Eighty two lakh seventy seven thousand two hundred nine only) for Plate No.D-300/77 and Rs.14,016/-(Rupees Fourteen thousand sixteen only) for Plate No.D-300/77/1 both for the period from 17.03.2003 to 31.07.2022(both days inclusive) are due and recoverable from O.P. by the Port authority on account of damages and O.P. must have to pay such dues to SMPK on or before 26.04.23. The said damages shall attract compound interest @ 7.50 % per annum, which is the current rate of interest as per the Interest Act, 1978 (as gathered by me from the official website of the State Bank of India) from the date of incurrence of liability, till the liquidation of the same, as per the adjustment of payments, if any made so far by O.P., in terms of SMPK's books of accounts. I sign the formal orders u/s 7 of the Act.

I make it clear that SMPK is entitled to claim further damages against O.P. for unauthorized use and occupation of the public premises right upto the date of recovery of clear, vacant and unencumbered possession of the same in accordance with Law, and as such the liability of O.P. to pay damages extends beyond 31.07.2022 as well, till such time the possession of the premises continues to be under the unauthorised occupation with the O.P. SMPK is directed to submit a statement comprising details of its calculation of damages after 31.07.2022, indicating there-in, the details of the rate of such charges, and the period of the damages (i.e. till the date of taking over of possession) together with the basis on which such charges are claimed against O.P., for my consideration for



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the purpose of assessment of such damages as per Rule made under the Act.

I make it clear that in the event of failure on the part of O.P. to 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

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