



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 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.41 DT 08.10.2023
PROCEEDINGS NO. 1574 OF 2017

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

-Vs-

M/s. Shanti Builders (O.P)

F O R M - "B"

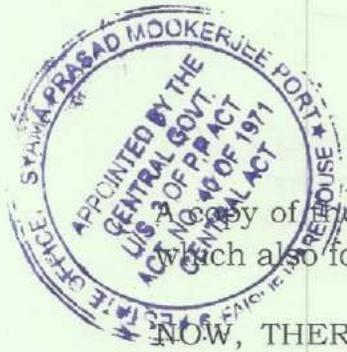
**ORDER UNDER SUB-SECTION (1) OF SECTION 5 OF THE PUBLIC
PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971**

18440 WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that
18441 **M/s. Shanti Builders, 137, Canning Street, Kolkata -700001 AND ALSO AT 20,
Netaji Subhas Road, 1st Floor, Kolkata-700001** is in unauthorized occupation of the
Public Premises specified in the Schedule below :

R E A S O N S

- 1) That the proceedings against O.P. is very much maintainable.
- 2) That you have violated the condition of tenancy under licence as granted by the Port Authority by way of not making payment of licence fees/rental dues to SMPK.
- 3) That O.P.'s contention regarding "Statutory Tenant" has got no merit in the facts and circumstances of the case.
- 4) That the licence as granted to the O.P. by SMPK had doubtlessly expired on 01.03.2016.
- 5) That no case has been made out on behalf of O.P. as to how its occupation in the Public Premises could be termed as "authorised occupation" after expiry of the licence.
- 6) That the instant Proceeding is not barred by the doctrine of Estoppel, waiver and acquiescence.
- 7) That O.P. has failed to make out any case in connection with "abatement of rent" as pleaded.
- 8) That the O.P. had no authority to occupy the Public Premises after expiry of licence and service of the Notice to Quit dated 11.08.2016 and O.P.'s occupation is "unauthorized" in view of Sec. 2(g) of the P.P. Act, 1971 and O.P. is liable to pay compensation charges with interest for wrongful use and enjoyment of the Public Property 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. 41 dated 08.08.2023 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. Shanti Builders, 137, Canning Street, Kolkata -700001 AND ALSO AT 20, Netaji Subhas Road, 1st Floor, Kolkata-700001** and all persons who may be in occupation of the said premises or any part thereof to vacate the said premises within 15 days of the date of publication of this order. In the event of refusal or failure to comply with this order within the period specified above the said **M/s. Shanti Builders, 137, Canning Street, Kolkata -700001 AND ALSO AT 20, Netaji Subhas Road, 1st Floor, Kolkata-700001** and all other persons concerned are liable to be evicted from the said premises, if need be, by the use of such force as may be necessary.

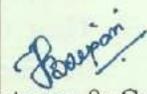
SCHEDULE

Plate No. CG-281

Kolkata Port Trust's structure msg. about 101.674 Sq.m on the 1st floor and msg. about 101.764 Sq.m on the 2nd floor at Old Howrah Bridge, Mullick Ghat under North Port Police Station in the Presidency town of Kolkata. It is bounded on the North by a two storied building, on the East by Strand Bank Road, on the South by strip of open land and on the West by the Trustees' land allotted to Ganta Seva Samity.

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

Dated: 09.08.2023


Signature & Seal of
Estate Officer.

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



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**ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT, KOLKATA
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OFFICE OF THE ESTATE OFFICER

6, Fairley Place (1st Floor)

KOLKATA - 700 001

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

Form " E "

PROCEEDINGS NO.1574/R OF 2017

ORDER NO. 41 DATED: 08.08.2023

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

To

**M/s. Shanti Builders,
137, Canning Street,
Kolkata -700001.**

AND ALSO AT

**20, Netaji Subhas Road,
1st Floor, Kolkata-700001.**

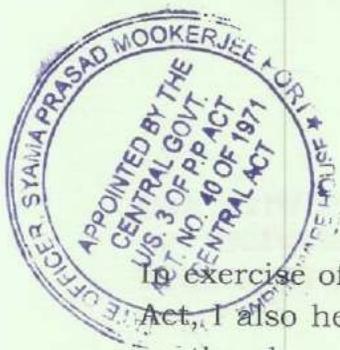
WHEREAS you are in occupation of the public premises described in the
Schedule below. (Please see on reverse).

AND WHEREAS, by written notice dated 07.06.2017 you are called upon to
show cause on or before 05.07.2017 why an order requiring you to pay a sum
of Rs.13,86,905/- (Rupees Thirteen lakh eighty six thousand nine hundred five
only) being the rent payable together with compound interest in respect of the
said premises should not be made;

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

NOW, THEREFORE, in exercise of the powers conferred by sub-section (1) of
Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act
1971, I hereby require you to pay the sum of Rs.13,86,905/- (Rupees Thirteen
lakh eighty six thousand nine hundred five only) for the period from 2nd day of
April, 2015 upto 1st Day of March, 2016 (both days inclusive) to SMPK
by 24.08.2023

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

SCHEDULE

Plate No. CG-281

Kolkata Port Trust's structure msg. about 101.674 Sq.m on the 1st floor and msg. about 101.764 Sq.m on the 2nd floor at Old Howrah Bridge, Mullick Ghat under North Port Police Station in the Presidency town of Kolkata. It is bounded on the North by a two storied building, on the East by Strand Bank Road, on the South by strip of open land and on the West by the Trustees' land allotted to Ganta Seva Samity.

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

Dated: 09.08.2023

Signature and seal of the
Estate Officer

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



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AFFIXATION ON PROPERTY

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

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

PROCEEDINGS NO.1574/D OF 2017
ORDER NO. 41 DATED: 08.08.2023

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

**M/s. Shanti Builders,
137, Canning Street,
Kolkata -700001.
AND ALSO AT
20, Netaji Subhas Road,
1st Floor, Kolkata-700001.**

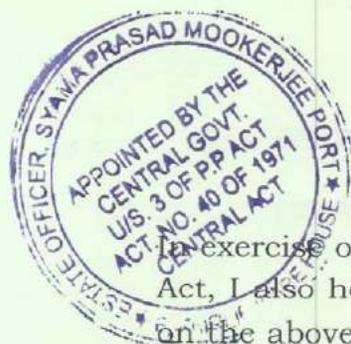
WHEREAS I, the undersigned, am satisfied that you are in unauthorised occupation of the public premises mentioned in the Schedule below:

AND WHEREAS by written notice dated 07.06.2017 you are called upon to show cause on or before 05.07.2017 why an order requiring you to pay damages of Rs. 48,99,680.50 (Rupees Forty eight lakh ninety nine thousand six hundred eighty and paise fifty only) together with [compound interest] for unauthorised use and occupation of the said premises, should not be made;

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

NOW, THEREFORE, in exercise of the powers conferred on me by Sub-section (2) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971, I hereby order you to pay the sum of Rs. 48,99,680.50 (Rupees Forty eight lakh ninety nine thousand six hundred eighty and paise fifty only) assessed by me as damages on account of your unauthorised occupation of the premises for the period from 01.03.2016 to 31.12.2016 (both days inclusive) to SMPK by 24.08.2023.

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.

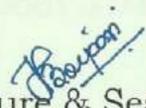
SCHEDULE

Plate No. CG-281

Kolkata Port Trust's structure msg. about 101.674 Sq.m on the 1st floor and msg. about 101.764 Sq.m on the 2nd floor at Old Howrah Bridge, Mullick Ghat under North Port Police Station in the Presidency town of Kolkata. It is bounded on the North by a two storied building, on the East by Strand Bank Road, on the South by strip of open land and on the West by the Trustees' land allotted to Ganta Seva Samity.

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

Date 09.08.2023


Signature & Seal of the
Estate Officer.

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



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1574, 1574/R, 1574/D of 2017

Order Sheet No. 35

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
SHANTI BUILDERS

41
08.08.2013

FINAL ORDER

The matter is taken up today for final disposal. Structure(RCC)measuring 101.674 sqm on the 1st floor and structure msg.101.764 Sq.m on the 2nd floor at Old Howrah Bridge, Mullick Ghat, Thana: North Port Police Station, within the Presidency town of Kolkata, comprised under occupation No.CG-281 was allotted to **M/s. Shanti Builders** (O.P) on licence for 11 months w.e.f 04.04.2014 by Syama Prasad Mookerjee Port, Kolkata(Erstwhile Kolkata Port Trust/KoPT), hereinafter referred to as SMPK, the Applicant herein, on certain terms and conditions. The said licence was extended for a further period of 11 months from 02.04.2015 to 01.03.2016. It is the case of SMPK that O.P had failed and neglected to pay arrear licence fees/rent and taxes along with interest since long and continued to occupy the premises after expiry of such licence period illegally in violation of the terms of the tenancy. SMPK demanded possession of the Public Premises from O.P. by notice dated 11.08.2016 and it is argued that after expiry of the period as mentioned in the said notice, O.P. has no authority under law to occupy the Public Premises and O.P. is liable to pay damages for wrongful use and enjoyment of the Port Property as per SMPK's Schedule of rent charges in course together with interest accrued thereon for delayed payment.

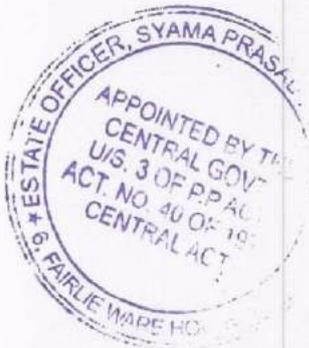
This Forum of Law formed its opinion to proceed against O.P. and issued Show Cause Notice u/s 4 of the Act (for adjudication of the prayer for order of eviction etc.) and Show Notice u/s 7 of the Act (for adjudication of the prayer for recovery arrear rental dues and damages etc.) all dated 07.06.2017(vide Order No.1 dated 05.06.2017).

It appears from record that subject proceedings followed a court case being Title Suit No.429 of 2016 before the Ld. 7th bench City Civil Court, Calcutta. As it is learnt upon inquiry that there is no order of stay in connection with the said Title Suit in question, the Forum proceeded with the speedy disposal of the instant matter under the four corner of P.P Act. It also reveals that subject proceedings also followed a Misc Appeal being Misc Appeal No.25 of 2019 filed by O.P. challenging the Order dated 11.03.2019 passed by the Ld' Estate Officer. O.P. prayed for Order of Oral Examination/Cross Examination of Parties in addition to filing of Affidavit of Evidence. The Misc appeal was taken up for hearing before the Ld' Judge, Bench-X, City Civil Court, Calcutta. After hearing the parties vide its 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
Head Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

10.08.2013

22



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. 1574, 1574/R, 1574/D of 2017 Order Sheet No. 36

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

SHANTI BUILDERS

H1

08.08.2023

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

10.08.2023

dated 18.11.2021, Ld' Court was pleased to confirm the Order of the Estate Officer with some variation/modification of the impugned order. Such order of the Ld' Court is reproduced below:-

"That the instant Misc Appeal, being No.25 of 2019, stands disposed of with some variation/modification of the impugned order as passed by the Ld. Estate Officer in the Proceeding No.1574, 1574/R, 1574/D of 2017(Board of Trustees for the Port of Kolkata Vs. M/s. Shanti Builders), but without any order as to cost as per the provision of order 41 rule 32 of the Code of Civil Procedure

The impugned order dtd.11.03.2019 passed by the Ld. Estate Officer in Proceeding No.1574, 1574/R, 1574/D of 2017(Board of Trustees for the Port of Kolkata vs M/s. Shanti Builders) is confirmed with certain variation/modification to the effect that present Opposite Party/Appellant be allowed to submit their Affidavit -in-Evidence-in support of their case, if the same has not yet been submitted on behalf of the Opposite Party/Appellant along with final notes of argument."

It is seen that O.P. had duly been entered into appearance through its Advocate and contested the matter by filing written objection/reply to the Show Cause/s on 01.09.2017. O.P. filed its Affidavit in Chief on 25.02.2019 and also filed an application on 25.10.2021 praying adjournment of the instant hearing till the final disposal of the Misc Appeal. It is submitted by the Advocate for O.P. that Forum of law has the power of Civil Court u/s.8 of the Public premises(Eviction of unauthorised occupant) Act-1971 for the purpose of holding inquiry under this Act. It is further argued on behalf of O.P.that this Forum must have to follow the procedure under the relevant Rules in connection with hearing of the suits and examination of witnesses, adducing evidence and cross-examination. SMPK on the other hand submitted with argument that Estate Officer is a quasi judicial authority under P.P Act and not a Civil Court to be governed by the Civil Procedure Code for adjudication of the matter before him. Indian Evidence Act need not be followed in toto as in case of Civil Court's Practice and Procedure and this Forum of Law is bound to proceed according to the rules made under the P.P. Act. It is strongly argued that papers/documents produced in course of hearing on behalf of SMPK forms a part of the record of this proceeding which are sufficient to prove SMPK's case against O.P.



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. 1574/R.1574/P. of 2017 Order Sheet No. 37

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

SHANTI BUILDERS VS

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08.08.2023

I have duly considered the documents filed on behalf of O.P. and the reply to the Show Cause Notice/s as filed on 01.09.2017. The petitions filed on behalf of O.P. on various dates including the applications/ comments of SMPK dated 08.11.2017, 11.03.2019 and 05.08.2021 have also received my attention. I have applied my mind to the Affidavit in Chief of O.P. filed on 26.09.2011 and submissions/arguments made on behalf of the parties. After due consideration of all relevant papers/documents as brought before me in course of hearing and after careful consideration all the rival submission made on behalf of the parties, I find that following issues have come up for my adjudication.

- I. Whether instant Proceedings against O.P is maintainable or not;
- II. Whether SMPK has any cause of action against O.P. or not;
- III. Whether O.P's contention regarding "Statutory tenant" after expiry of the period of licence by way of payment of licence fees/charges and acceptance of the same by the Port Authority has got any merit or not;
- IV. Whether O.P. has defaulted in making payment of requisite licence fees/rent to SMPK or not;
- V. Whether SMPK's claim of compensation @ 3 times the last licence fees is justifiable or not;
- VI. Whether the proceedings at the instance of SMPK against O.P. is barred by law of estoppel waiver and acquiescence or not;
- VII. Whether the averment made by O.P. in their Affidavit in Chief filed on 25.02.2019 regarding repairs to the godown at the cost of O.P. has got any merit or not;
- VIII. Whether SMPK's notice dated 11.08.2016 as issued to O.P., demanding possession from O.P. is valid and lawful or not;
- IX. Whether O.P's occupation could be termed as "unauthorised occupation" in view of Sec.2 (g) of the P.P. Act and O.P. is liable to pay damages to SMPK during the period of its unauthorised occupation or not;

On **Issue 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

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THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
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SYAMA PRASAD MOOKERJEE PORT

10.08.2023

ee

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. 1574, 1574/R, 1574/Dot 2017 Order Sheet No. 38

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
SHANTI BUILDERS

41

08.08.2013

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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SYAMA PRASAD MOOKERJEE PORT

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

10.08.2013

Act puts a complete bar on Court's jurisdiction to entertain any matter relating to eviction of unauthorized occupants from the public premises and recovery of rental dues and/or damages, etc. SMPK has come up with an application for declaration of O.P.'s status as unauthorized occupant in to the public premises with the prayer for order of eviction, recovery of dues etc on the ground of expiry/revocation 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 u/s 4 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.

With regard to **issue No.II**, there is no dispute about occupation of O.P. into the Port Property in terms of 11months licence. Admittedly, O.P. is enjoying the property and never disputed SMPK's claim on account of licence fees/rental dues. In fact, O.P. has admitted the default in making payment of rental dues to SMPK and O.P. time to time made certain payments to SMPK as per condition of such licence. In this circumstances, SMPK as Land Lord/Licensor of the premises has definite cause of action against O.P./Licensee to demand possession of the premises and for recovery of dues/charges for continuous use and enjoyment of the Port Property in question. Hence, the issue is decided against O.P.

With regard to **issue No.III**, it is the case of O.P. that after determination of licence in question, SMPK has accepted Rs.5,26,210/- from O.P. and as such the licence is deemed to have been renewed and O.P. should be treated as 'Statutory tenant'. O.P. is not liable pay any abnormal damages to SMPK. SMPK on the other hand submits that nothing has been accepted as "rent" after expiry of the period of lease in question. Heard the submissions of both the parties. It appears that during the course of hearing no case has been made out or nothing has been produced on behalf of O.P. as to how their contention regarding acceptance of payment of Rs.5,26,210/- by SMPK after expiry of the period of licence in question could be substantiated. As per Transfer of Property Act, acceptance



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. 1574, 1574/R, 1574/D of 2017 Order Sheet No. 39

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

SHANTI BUILDERS VS

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08.08.2023

or payment made after institution of proceedings cannot be considered as waiver to the right of lessor to get back possession of the property in question. In my view, the same principle of law applies in the case of licence as well although licence is governed by the principles/provisions of the Indian Easement Act. In fact O.P. cannot claim "renewal of licence" in question as a matter of right. Therefore the issue is decided in favour of SMPK.

Issues No. IV and V are taken up together for convenient discussion. Regarding the issue of outstanding licence fees/rental dues, I have come across letters dated 16.03.2016 issued by the Port Authority, demanding the payment of said dues even before expiry of the licence in question. Nothing appears to have been furnished by the O.P. at the time of filing their reply/written objection, denying such contentions. That being so, I have no reason to disbelieve the claim of SMPK, regarding arrears of licence fees/rent prevailing at the time of expiry of such licence. Further, the detailed Statement of Accounts as generated on 20.04.2018 and the application submitted by SMPK on 05.08.2021 also depicts that there is huge dues on the part of O.P. Such Statement dated 20.04.2018 has already been handed over to O.P. There is no reason to disbelief such submission of the statutory authority like SMPK.

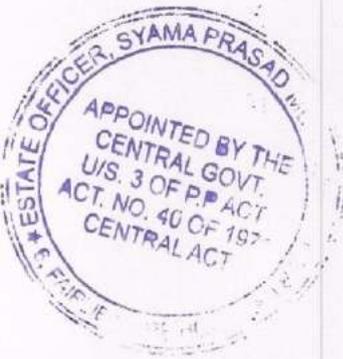
On the issue of three times rent charges, O.P. has claimed in their reply dated 01.09.2017 that by charging compensation @ 3times of licence fees SMPK is acting contrary to the principles of fair play and equity, justice and good conscience. Such claim of SMPK is abnormal and unjustified. Demand of three times of the defaulting amount is nothing but an attempt to make gain of an unjust enrichment. However, I must say that as per law, when any occupant enjoys possession without having any valid authority, the party whose interest is hampered by such unauthorised occupation is entitled to receive, from the party who is occupying unauthorisedly, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from any breach, or which parties knew, when they made the contract to be likely to result from the breach of it. As regards the three times rate of compensation in respect of unauthorised occupation, 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

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SYAMA PRASAD MOOKERJEE PORT

R. Mohan
Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

10.08.2023

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Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1574, 1574/R, 1574/D of 2017 Order Sheet No. 40

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
SHANTI BUILDERS

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08.08.2023

India & others) is very relevant. The said Order 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.
.....

Moreover, in clause (xx) of the Offer Letter for extension of licence dated 14.05.,2015 it is specifically mentioned that "after expiry or termination of licence, if you do not vacate the space within the due date, compensation @3times the last licence fees paid will be charged from the due date upto the date when the space is returned to SMPK in unencumbered and vacant condition." such being the case, O.P. is debarred from taking the plea of exorbitant licence fees/rent/charges. In fact, the question of compensation @3times the last licence fees or any question about abnormally high rate of occupational charges cannot be entertained by this Forum as the charges for occupation of Port Property is fixed up by Tariff Authority of Major Ports by their notification published under authority of law in accordance with the provisions of the Major Port Trusts Act, 1963 as time to time amended. O.P. cannot challenge or dispute anything about applicability and/or enforceability of such notification issued under authority of law. The issues are thus decided accordingly in favour of the Port Authority.

Regarding the **issue No.VI**, I must say that 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

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[Signature]
Assistant
ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

10.08.2023



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. 1574, 1574/R, 1574/D of 2017 Order Sheet No. 41

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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 "licensee" in respect of Proceedings No. 1574, 1574/R, 1574/D of 2017 and to withdraw/cancel the notice dated 11.08.2016. Mere claim of O.P. that nothing is lying due and payable by O.P. cannot be treated as waiver of their (SMPK's) right. It is my considered view that the question of 'estoppel' 'waiver' and 'acquiescence' as raised on behalf of O.P. does not arise at all in view of the facts and circumstances of the case. Thus the issue is also decided against O.P.

Regarding the **issue No.VII**, O.P vide their reply dated 01.09.2017 as well as Evidence on affidavit contended that due to reconstruction, repair and renovation of the godown O.P had already incurred a total sum of Rs.5,41,834/- and managed to convert the same in a habitable condition and due to such renovation work O.P had to wait for 4 months to such godown for commercial purposes however, inspie of knowledge of those difficulties, SMPK had collected the monthly rent for the said period. It is also the case of O.P that the expenses incurred by O.P for repair, renovation and bringing electricity in the godown should duly be credited by SMPK. However, SMPK vide their rejoinder strongly denied such submission of O.P. Now the question arises as to the rent/charge claimed by SMPK for the said period of 4 months is justifiable or not. It is seen that nothing has been produced or shown to me in course of hearing, which establishes the responsibility of SMPK for maintenance of the property in question. Such being the case, O.P. is debarred from taking the plea of abatement of rent/charges. Moreover, the clause (xvi) of the Letter dated 13.05.2015 as issued by SMPK to O.P specifically mentioned that such repair/maintenance of the licensed premises may be undertaken by O.P at their own cost to the entire satisfaction of the SMPK's Chief Engineer. In the aforementioned fact and circumstances, the question of abatement of charges for occupation into the Port Property being the Public Premises in question is not tenable under law. The issue is thus decided against O.P accordingly.

Issues VIII and IX are also required to be discussed analogously. Discussion against the foregoing paragraphs will certainly lead to the conclusion that the notice for revocation of licence dated 11.08.2016 as issued by the Port Authority, demanding possession from O.P. is very much

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SYAMA PRASAD MOOKERJEE PORT

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valid, lawful and binding upon the parties. I have deeply gone into the submissions/ arguments made on behalf of the parties in course of hearing. The properties of the Port Trust are coming under the purview of "public premises" as defined under the Act. Now the question arises as to how a person becomes 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. The licence granted to O.P. had undoubtedly expired and institution of proceedings against O.P. by SMPK is a clear manifestation of Port Authority's intention to get back possession of the premises. In such a situation, I have no bar to accept SMPK's contentions regarding expiry of licence and service of notice to quit dated 11.08.2016, on evaluation of the facts and circumstances of the case. "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 licence, O.P. has lost its authority to occupy the public premises, on the evaluation of factual aspect involved into this matter and O.P. is liable to pay damages for such unauthorized use and occupation. To come into such conclusion, I am fortified by the decision/observation of the Hon'ble Supreme Court in Civil Appeal No.7988 of 2004, decided on 10th December 2004, reported (2005)1 SCC 705, para-11 of the said judgment reads as follows.

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

.....
.....

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Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

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Although the above case-law was in respect of lease, the same principle of law applies in the case of licence as well. 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 licensee. It is contended that SMPK's intention to get back possession is evident from the conduct of the Port Authority. The licence had doubtlessly expired, whose validity for the purpose of deciding the question of law cannot be questioned by O.P. Therefore, there cannot be any doubt that the O.P. was in unauthorized occupation of the premises, once the licence had expired. In my opinion, institution of this proceedings against O.P. is sufficient to express the intention of SMPK to obtain an order of eviction and declaration that SMPK is not in a position to recognize O.P. as licensee.

The Port Authority has a definite legitimate claim to get its revenue involved into this matter as per the rate of licence fees/occupational charges payable for the premises in question and/or SMPK's Schedule of Rent Charges for the relevant period and O.P. cannot claim continuance of its occupation without making payment of such requisite charges.

To take this view, 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 my view, the claim of charges for damages by SMPK is based on sound reasoning and should be acceptable by this Forum of Law. As per law, when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract to be likely to result from the breach of it.

It appears that Structure(RCC)measuring 101,674 sqm on the 1st floor and structure msg.101.764 Sq.m on the 2nd floor at Old Howrah Bridge, Mullick Ghat, in a Prime

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

20.08.2023

[Signature]



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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location of the presidency town of Kolkata was allotted to O.P., whose authority was subsequently terminated by SMPK vide Notice dated 11.08.2016 and since then O.P has been enjoying possession of the Prime piece of land under the shield of a Title Suit being No T.S. 429 of 2016 preferred by him before the Ld. 7th Bench City Civil Court, Calcutta. Being empowered under the provision of the P.P. Act, I do not find any constraint to adjudicate the matter filed by SMPK, especially in a situation when severe loss has already been occurred to Public exchequer due to default of O.P. for a long period of time.

From the discussions as aforesaid, I have no hesitation to observe that O.P's act in continuing occupation is unauthorized and O.P. is liable to pay damages for unauthorized use and occupation of the Port property in question upto the date of delivering vacant, unencumbered and peaceful possession to SMPK. With this observation, I must reiterate that the notice dated 11.08.2016, demanding possession from O.P. as stated above has 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.

NOW THEREFORE, I consider 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 the proceedings against O.P. is very much maintainable.
- 2) That you have violated the condition of tenancy under licence as granted by the Port Authority by way of not making payment of licence fees/rental dues to SMPK.
- 3) That O.P's contention regarding "Statutory Tenant" has got no merit in the facts and circumstances of the case.
- 4) That the licence as granted to the O.P. by SMPK had doubtlessly expired on 01.03.2016.
- 5) That no case has been made out on behalf of O.P. as to how its occupation in the Public Premises could be termed as "authorised occupation" after expiry of the licence.
- 6) That the instant Proceeding is not barred by the doctrine of Estoppel, waiver and acquiescence.
- 7) That O.P. has failed to make out any case in connection with "abatement of rent" as pleaded.

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Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

10.08.2023

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8) That the O.P. had no authority to occupy the Public Premises after expiry of licence and service of the Notice to Quit dated 11.08.2016 and O.P.'s occupation is "unauthorized" in view of Sec. 2(g) of the P.P. Act, 1971 and O.P. is liable to pay compensation charges with interest for wrongful use and enjoyment of the Public Property upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

ACCORDINGLY, formal order of eviction u/s 5 of the Act as per Rule made there under, is drawn giving 15 days time to the 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.

It is my considered view that a sum of Rs.13,86,905/- (Rupees Thirteen Lakh eighty six thousand nine hundred five only) for the period from 2nd day of April, 2015 upto 1st Day of March, 2016 (both days inclusive) is due and recoverable from O.P. by the Port authority on account of rental dues and O.P. must have to pay the rental dues to SMPK on or before 24.08.2023 Such dues 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 incurrance 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.

Likewise, I find that SMPK has made out an arguable claim against O.P., founded with sound reasoning, regarding the damages/compensation to be paid for unauthorised occupation. As such, I must say that Rs.48,99,680.50 (Rupees Forty eight Lakh ninety nine thousand six hundred eighty and paise fifty only) as claimed by the Port Authority as damages in relation to the subject premises in question, is correctly payable by O.P. for the period 01.03.2016 to

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ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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31.12.2016 (both days inclusive) and it is hereby ordered that O.P. shall also make payment of the aforesaid sum to SMPK by ~~24.08.2013~~ ^{24.08.2013}. The said damages shall also 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 incurrance 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 31.12.2016 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 31.12.2016, indicating therein, 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 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

(J.P. Boipai)
ESTATE OFFICER

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

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SYAMA PRASAD MOOKERJEE PORT

for Head Assistant
OFFICE OF THE E.D. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

10.08.2023