



O/C

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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. 09 DT 14.08.2023
PROCEEDINGS NO. 2010 OF 2023

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

-Vs-

M/s. Square Four Housing & Infrastructure Development Pvt. Ltd (O.P)

F O R M - "B"

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

19325 WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that **M/s. Square Four Housing & Infrastructure Development Pvt. Ltd, 238/A, AJC Bose Road, 2nd Floor, Suite No.2B, Kolkata-700020** is in unauthorized occupation of the Public Premises specified in the Schedule below:-

REASONS

1. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear of rental dues/damages etc. as prayed for on behalf of SMPK and the Notice issued by the Estate Officer u/s 4 of the Act is in conformity with the provisions of the Public Premises (Eviction of Unauthorised Occupant) Act 1971.
2. That no case has been made out on behalf of O.P. as to how O.P.'s occupation could be considered as "Authorised Occupation" after determination of lease as granted by the Port Authority.
3. That O.P. has defaulted in making payment of rental dues to SMPK in gross violation to the condition of tenancy as granted by the Port Authority.
4. That O.P. has failed to make out any case in connection with "suspension/abatement of rent" as pleaded.
5. That the O.P or any other person/occupant has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation".
6. That the notice/s to quit dated 23.03.2023 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties and O.P.'s occupation and that of any other occupant of the premises has become unauthorised in view of Sec.2 (g) of the P.P. Act.
7. That O.P. is liable to pay damages for wrongful use and occupation of the public premises up to the date of handing over the clear, vacant and unencumbered possession to the port authority.

PLEASE SEE ON REVERSE



(2)

A copy of the reasoned order No. 09 dated 14.08.2023 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. Square Four Housing & Infrastructure Development Pvt. Ltd, 238/A, AJC Bose Road, 2nd Floor, Suite No.2B, Kolkata-700020** 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. Square Four Housing & Infrastructure Development Pvt. Ltd, 238/A, AJC Bose Road, 2nd Floor, Suite No.2B, Kolkata-700020** 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-917

SMPK's Shed No.12 & 17 being land msg about 8128 sq.mts situated at Brooklyn (under Plate No.D-917), P.S-West Port Police Station, District-South24 Parganas, Registration District-Alipore. It is bounded and butted as follows:-

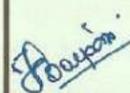
On the North : SMPK's road and SMPK's land allotted to M/s. Square Four Housing & Infrastructure Development Pvt. Ltd.

On the South: Partly by vacant SMPK's land and partly by M/s. IOL.

On the East: SMPK's land.

On the West: SMPK's road and then Brooklyn Shed No.9 earlier occupied by M/s. Ananda Bag Tea Company Ltd.

Dated: 24.08.2023


Signature & Seal of
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. 2010 of 2023 Order Sheet No. 10

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S. SQUARE FOUR HOUSING & INFRASTRUCTURE DEVELOPMENT

PVT. LTD.

09

14.08.2023

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER,
SYAMA PRASAD MOOKERJEE PORT
R HEAD ASSISTANT
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

25.08.2023

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 proceedings. It is the case of Syama Prasad Mookerjee Port, Kolkata (Erstwhile Kolkata Port Trust/KoPT), hereinafter referred to as 'SMPK', the applicant herein that **M/s. Square Four Housing & Infrastructure Development Pvt. Ltd (O.P.)** came into occupation of the SMPK's property being land measuring about 8128 Sq.mts (Earlier Shed No.12 & 17) situated at Brooklyn, comprised under occupation/Plate no. **D-917** as a long term lessee for a period of 30 years on "as is where-is" basis without any option of renewal with effect from 18.08.2017 for the purpose of "Storage building including open storage, container yard" and O.P. violated the conditions of tenancy as granted under such long term lease by way of not making the payment of arrear rental dues and other charges of SMPK inspite of repeated requests from them.

It is the case of SMPK that in view of such aforementioned breach committed by O.P. SMPK made a request to the O.P. to quit, vacate and deliver up the peaceful possession of the subject premises on 24.04.2023 in terms of the notice to quit being No.Lnd.5790/23/709 dated 23.03.2023. As the O.P. did not vacate the premises even after issuance of the said Quit Notice, the instant Proceeding bearing No.2010 of 2023 was initiated before the Forum for eviction of the alleged unauthorised occupant, seeking other relief. It is also the case of SMPK that as the O.P. has failed to deliver back possession even after the issuance of notice demanding possession dated 23.03.2023, O.P's occupation is unauthorised and O.P. is liable to pay damages for wrongful use and enjoyment of the Port Property in question.

It appears from record that in the Order Sheet Nos.1 to 9 of the instant Proceedings proceeding number has been wrongly recorded as "2010, 2010/R, 2010/D of 2023" in place of "2010 of 2023". Such error, in my view, might be a typographical one and do not prejudice the rights and liabilities of the parties to the present proceeding. In view of the above, it is therefore, directed that henceforth the proceedings should be read as 2010 of 2023 for all the material purposes of this proceeding.

It is also gathered from the application of SMPK that O.P. had challenged SMPK's notice to quit through a Writ Petition being W.P.A No. 9308 of 2023 (Square Four Housing & Infrastructure Development Pvt. Ltd & Another Vs Syama Prasad Mookerjee Port Trust & Another) wherein, the Hon'ble Justice Moushumi



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. 2010 Of 2023 Order Sheet No. 11

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

MS. SQUARE FOUR HOUSING & INFRASTRUCTURE DEVELOPMENT,

PVT. LTD.

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14.08.2023

Bhattacharya of High Court at Calcutta vide her Order dated 27.04.2023 was pleased to observe as follows:-

"....Since, learned counsel appearing for the respondent Port submits that the stage for compliance under Section 4(1) has not ~~has not~~ arrived as yet, it is expected that the respondent shall not give any effect to the said Notices or take any steps in pursuance thereof until the respondent follows the statutory procedure.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
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SYAMA PRASAD MOOKERJEE PORT
R. Madhupratap
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

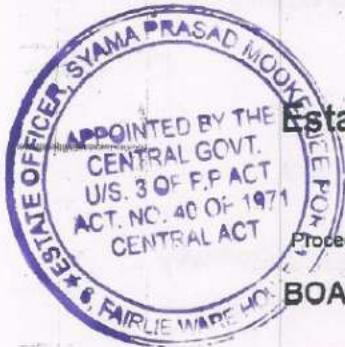
25.08.2023

Until the matter is further considered on affidavits, the petitioner shall pay an amount of Rs.3 crores to the respondent No.1 which shall be done by 12.05.2023. The payment shall be made without prejudice. It is made clear that the payments shall not result in any equitable considerations in favour of either of the parties before the Court. Affidavit- in-opposition be filed within three weeks. Reply thereto, if any be filed within a week thereafter. List this matter on 7th June, 2023. Needless to say, the respondent shall not be precluded from following the statutory mandate under the 1971 Act in the meantime."

The aforementioned Writ Petition is still pending before the Hon'ble High Court at Calcutta without any stay order.

This Forum issued Notice u/s 4 of the Act to O.P. on 11.05.2023(vide Order No.2 Dated 08.05.2023) and O.P. appeared before this Forum through their authorized representative and filed several applications/ objections. I have duly gone through and considered O.P.'s reply to the Show Cause notice submitted on 26.06.2023. I have also considered SMPK's rejoinder dated ¹⁴20.07.2023. After due consideration of all the papers/documents as brought before me in the course of hearing, I find that the following issues have come up for my decision:-

- I. Whether the Show Cause Notice (u/s-4) issued against O.P. is maintainable in view of Hon'ble Calcutta High Court's, order dated 27.04.2023 in WPA 9308 of 2023 under writ jurisdiction or not;
- II. Whether non-registration of the Lease Deed for 30 years lease of land as offered by the Port Authority to O.P. on



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. 2010 of 2023 Order Sheet No. 12

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

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- tender could be taken as a shield for denying the liability towards payment of rental dues to SMPK upon acceptance of the terms and conditions of the offer dated 09.05.2017 by O.P. or not;
- III. Whether the plea taken or argument advanced by O.P. in connection with abatement of rent on the ground of 'non-registration' is tenable under law or not;
 - IV. Whether O.P. is liable to pay any rental dues to SMPK or not;
 - V. Whether SMPK's notice dated 23.03.2023 demanding possession of port property from O.P. is valid and lawful or not;
 - VI. Whether after alleged expiry of such Quit Notice O.P.'s occupation could be 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 their unauthorised occupation or not;

Issue No.1 does not require elaborate discussion since the answer to this question lies in the provisions under sub-sections (1), (1A) and (1B) of Sec 4 of the Act, as amended in 2015, according to which if the Estate Officer has information that any person is in unauthorised occupation of any public premises and that he should be evicted or if the Estate Officer knows or has reasons to believe that any person is in unauthorised occupation of any public premises, the Estate Officer shall issue a notice calling upon the person concerned to show cause why an order of eviction should not be made and any delay in issuing such notice shall not vitiate the proceedings under the Act. Similarly, the Act provides for issuance of notice as a pre-requisite to consider any objection and evidence in support of the same before making any order u/s 7 of the Act in respect of recovery of rent/damages/interest etc.

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. SMPK has come up with an application for declaration of O.P.'s status as unauthorised occupant into the public premises with the prayer for order of eviction, recovery of damages etc. against O.P. on the ground of termination of authority to occupy the premises as earlier granted to O.P. Section 15 of the Act puts a complete bar on Court's jurisdiction to entertain any matter relating to eviction of unauthorised occupants from the public premises and recovery of rental dues and/or damages, etc. In fact, proceedings before this Forum of Law is not statutorily

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

25.08.2023



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. 2010 Of 2023 Order Sheet No. 13

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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barred unless there is any specific order of stay of such proceedings by any competent court of law. 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 said notices being bad in law or contrary to the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act 1971. I have duly considered Hon'ble High Court's order dated 27.04.2023 for my guidance. The order of the Hon'ble High Court specifically speaks that SMPK should not take any steps in pursuance of the quit notice/s without following statutory procedure.

By Order of:
**THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT**
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SYAMA PRASAD MOOKERJEE PORT
H. ASSISTANT
OFFICER OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

25.08.2023

In their reply to the Show Cause dated 26.06.2023, it is stated by O.P. that order dated 8th May, 2023 and the notice dated 11th May 2023, have not been issued on any valid or sustainable ground therefore, not maintainable. I am not inclined to accept the plea taken by O.P. In my view Forum has shown a greater respect/regard to adhere with the order of the Hon'ble High Court dated 27.04.2023 and proceeded as per statute. The notice u/s 4 of the Act issued by the Estate Officer on the ground of non-payment of SMPK's rental dues and such notice is merely an initiation of adjudication process on the justifiability of action on the basis of Quit Notice dated 23.03.2023. Hence, any question about the maintainability of the Show Cause Notice is not sustainable without any appropriate order, restraining the proceedings etc. from any competent court of law. In view of the above, the issue no.1 is decided against the O.P.

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Regarding **issue No. II & III**, I must say that lease for more than one year is compulsorily registerable document under the Indian Registration Act. The Transfer of Property Act provides that a lease of immovable property from year to year or for any term exceeding one year or reserving yearly rent can be made only by a registered instrument and all other lease of immovable property may be made either by a registered instrument or by agreement accompanied by delivery of possession. Where possession has been given under an agreement to lease, from that date the parties act exactly as the tenancy has been in force. The fact that the tenancy is to commence at a date subsequent to the agreement does not prevent there being a present demise. It is evident from the Certificate of Possession executed by and between the parties dated 18.08.2017 that O.P. took actual possession of the land from the Port Authority and there is no scope for treating the possession as "possession simpliciter." In fact, no case has been made out on behalf of O.P. to



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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Proceedings No. 2010 of 2023 Order Sheet No. 14

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S. SQUARE FOUR HOUSING & INFRASTRUCTURE DEVELOPMENT,

09

PVT. LTD.

14.08.2023

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THE ESTATE OFFICER
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SYAMA PRASAD MOOKERJEE PORT
H. Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

25.08.2023

support its contention with regard to "possession simpliciter." If there is a proposal in writing and is accepted in writing, the proposal and acceptance constitutes a contract in writing. Acts indicative of establishing the relationship of landlord and tenant can create a tenancy. These Acts may be expressed or implied or gathered from conduct or circumstances of the parties/case. A person in possession of the property under unregistered Lease Deed is not trespasser but merely Tenant-at-Will and the lessor/landlord is entitled to recover rent from them. Even if they are not liable to pay rent, they are still liable to pay compensation for use and occupation of the land. Therefore, O.P. cannot show a go-bye to the terms and conditions of the agreement to lease as reached between the parties on the basis of valid offer and acceptance of the same in writing. In absence of written lease creating a tenancy, the nature of tenancy must be determined from the surrounding circumstances and in particular from the course of dealing by parties. The status of O.P. in the facts and circumstances of the case could legally be termed as a lessee from month to month. To take this view I have borrowed my support from a decision of Full Bench of Madras High Court reported in AIR 1967 Mad 57 (FB) where it has been decided that if a non-agricultural lease is neither put into writing nor registered but is only accompanied by delivery of possession, the presumption will arise that the lease is from month to month (for which no writing is required), even though the rent appears to have been payable annually in lump sum. Hence, the contention of O.P. that the agreement reached between the parties for grant of lease for 30 years in respect of the land in question automatically fell through and no longer survived due to non-registration of the Lease Deed is not tenable under law. The rights and liabilities of the parties under a valid lease is of course distinctly separate from the rights and liabilities of the parties under an agreement for lease. But while in possession of the premises on the basis of an agreement for lease, O.P. cannot deny its liability towards payment of rental dues and/or compensation for use and occupation of the land. In my opinion the facts and circumstances of the case clearly speaks for O.P.'s liability towards payment of rental dues and/or compensation to SMPK.

Moreover, on the issue of abatement and/or suspension of rent charges, O.P. has failed to make out a case with supporting papers/documents that inaction on the part of SMPK has caused a great loss to the business of O.P. which renders the property commercially unusable for a particular period. Nothing has been produced or shown to me in course

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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Proceedings No. 2010 Of 2023 Order Sheet No. 15

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S. SQUARE FOUR HOUSING & INFRASTRUCTURE DEVELOPMENT PVT. LTD.

09

14.08.2023

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SYAMA PRASAD MOOKERJEE PORT

25.08.2023

of hearing, which establishes the responsibility of SMPK for execution and registration of lease deed of the property in question. Such being the case, O.P. is debarred from taking the plea of abatement and/or suspension of rent in respect of scheduled plot in question. In fact, the question of abatement of charges for occupation into the Port Property being the Public Premises in question is not tenable under law in the facts and circumstances of the case. The issues, are, therefore, decided against O.P.

As regards the **issue No. IV**, O.P. vide their reply to the Show Cause dated 26.06.2023 denied the claim of SMPK on account of arrear rent. It was the categorical submission of O.P. that alleged demand raised by SMPK on account of arrears of rent for the period 19.08.2019 to 23.04.2023 is bad owing to the non-execution and registration of lease in respect of the said plot, which has stultified/impaired the meaningful enjoyment of the lease and benefits and advantages, flows there from. O.P. has also stated that there has not been any default in the payment of rent for the scheduled plot. However, I am not convinced by such submission of O.P. because admittedly, a long term lease was granted to O.P. by the Port Authority on certain terms and conditions which was subsequently determined on the ground of non-payment and O.P. continued in occupation of the Port Premises even after determination of such lease. The matter of default in payment of rental dues arises during the period 19.08.2019 to 23.04.2023. Although O.P. has made payments but never succeeded in complete and full discharge of their dues taxes and interest. During the course of hearing, I am given to understand by the Port Authority that the rent charged from time to time is based on the rates notified by the Tariff Authority for Major Ports (TAMP) in the Official Gazette, which is binding on all users of the port property. In my view, the breach committed by the O.P. is very much well established in the facts and circumstances of the case and O.P. must have to suffer the consequences, following due applications of the tenets of law. In my view, the conduct of the O.P. does not inspire any confidence and I am not at all inclined to protect O.P. even for the sake of natural justice. In my considered view, the Port Authority has a definite legitimate claim to get its revenue involved into the Port Property in question as per the SMPK's Schedule of Rent Charges for the relevant period and O.P. cannot deny such payment of requisite charges as mentioned in the Schedule of Rent Charges.

In the aforementioned circumstances, being satisfied as above, I have no hesitation to uphold the claim of the Port Authority.



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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Proceedings No. 2010 of 2023 Order Sheet No. 16

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S. SQUARE FOUR HOUSING & INFRASTRUCTURE DEVELOPMENTS
PVT. LTD.

09

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Head Assistant
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SYAMA PRASAD MOOKERJEE PORT

25.08.2023

Issues V and VI are taken up together, as the issues are related with each other. On evaluation of the factual aspects involved in this matter, the logical conclusion which could be arrived at is that SMPK's notice dated 23.03.2023 as issued to O.P., demanding possession of port property from O.P. is valid and lawful and binding upon the O.P. 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 lease granted to O.P. was determined and the Port Authority by due service of notice/s to Quit demanded possession from O.P. SMPK's application for order of eviction is a clear manifestation of Port Authority's intention to get back possession of the premises. In course of hearing, the representative of SMPK submits that O.P. cannot claim its occupation as "authorized" without receiving any rent demand note. The lease was doubtlessly determined by SMPK's notice demanding possession, 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, In such a situation, I have no bar to accept SMPK's contentions regarding enforceability of the notice dated 23.03.2023, on evaluation of the facts and circumstances of the case. With this observation, I must reiterate that the notice to quit, 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. As per law O.P. is bound to deliver up vacant and peaceful possession of the public premises in its original condition to SMPK after expiry of the period as mentioned in the notice to quit.

"Damages" are like "mesne profit" which according to Section 2 (12) of the Code of the Civil Procedure, 1908 means "those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession" 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 determination of lease by way of Quit Notice, O.P. has lost its authority to occupy the public premises and O.P. is

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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Proceedings No. 2010 of 2023 Order Sheet No. 17

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

W/S. SQUARE FOUR HOUSING & INFRASTRUCTURE DEVELOPMENT, PVT. LTD.

09

14.08.2023

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

25.08.2023

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.

O.P. has failed to substantiate as to how its occupation could be termed as "authorised" in view of Sec. 2(g) of the F.P Act, after expiry of the period as mentioned in the SMPK's notice dated 23.03.2023, demanding possession from O.P. I have no hesitation to observe that O.P's act in continuing occupation



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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Proceedings No. 2010 Of 2023 Order Sheet No. 18

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/S. SQUARE FOUR HOUSING & INFRASTRUCTURE DEVELOPMENT
DVT. LTD.

09

14.08.2023

after determination of the lease is unauthorized and O.P. is liable to pay damages for unauthorized use and occupation of the Port property in question upto the date of delivering vacant, unencumbered and peaceful possession to SMPK. The Issues V and VI are thus 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 this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear of rental dues/damages etc. as prayed for on behalf of SMPK and the Notice issued by the Estate Officer u/s 4 of the Act is in conformity with the provisions of the Public Premises (Eviction of Unauthorised Occupant) Act 1971.
2. That no case has been made out on behalf of O.P. as to how O.P.'s occupation could be considered as "Authorised Occupation" after determination of lease as granted by the Port Authority.
3. That O.P. has defaulted in making payment of rental dues to SMPK in gross violation to the condition of tenancy as granted by the Port Authority.
4. That O.P. has failed to make out any case in connection with "suspension/abatement of rent" as pleaded.
5. That the O.P. or any other person/occupant has failed to bear any witness or adduce any evidence in support of its occupation as "authorised occupation".
6. That the notice/s to quit dated 23.03.2023 as served upon O.P. by the Port Authority is valid, lawful and binding upon the parties and O.P.'s occupation and that of any other occupant of the premises has become unauthorised in view of Sec.2 (g) of the P.P. Act.
7. That O.P. is liable to pay damages for wrongful use and occupation of the public premises up to the date of handing over the 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

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By Order of:

THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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

Hd. Asstt.
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

25.08.2023



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. 2010 of 2023 Order Sheet No. 19

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/S. SQUARE FOUR HOUSING & INFRASTRUCTURE DEVELOPMENT PVT. LTD.

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14.08.2023

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.

SMPK is further directed to submit a report regarding its claim on account of rental dues and damages against O.P., indicating there-in, the details of the computation of such rental dues/damages with the rate of charges so claimed for the respective periods (details of computation with rates applicable for the relevant periods) for my consideration in order to assess the rent/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. or the unauthorised occupants to hand over possession of the public premises to SMPK as aforesaid, Port Authority is entitled to proceed further for recovery of possession in accordance with law. All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL

J.P. Boipai
(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

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

25.08.2023