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

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

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

REASONED ORDER NO. 40 DT 14.02.2022
PROCEEDINGS NO, 1444 OF 2014

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-

Gosto Behari Dey, Bhagabati Charan Dey (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 **Gosto Behari Dey, Bhagabati Charan Dey of 45A, Adya Shradh Ghat Road, Kolkata-700007** is in unauthorized occupation of the Public Premises specified in the Schedule below:

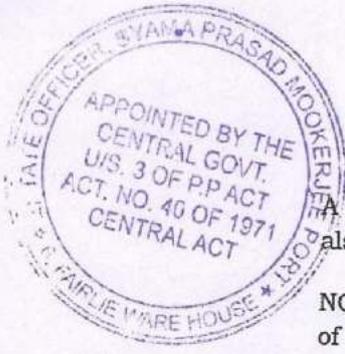
REASONS

1. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear dues/damages etc. as prayed for on behalf of SMP, Kolkata.
2. That the lease as granted to O.P. by KoPT had doubtlessly determined by efflux of time, in the facts and circumstances of the case.
3. That O.P. cannot claim renewal of lease from the Port Authority as a matter of right and cannot dictate the terms and conditions of any renewal of lease that may be offered by the Port Authority in terms of their Estate Management Policy.
4. That O.P has erected unauthorised constructions and parted with possession of the public premises without having any authority of law.
5. 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 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 issuance of notice dated 02.05.2005, demanding possession by the Port Authority and O.P's occupation has become unauthorized in view of Sec.2(g) of the P.P. Act, 1971.
7. That right from the date of expiry of the lease, O.P. has lost its authority to occupy the Public Premises and O.P. is liable to pay dues/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.

By Order of
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
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SYAMA PRASAD MOOKERJEE PORT

PLEASE SEE ON REVERSE

OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



(2)

A copy of the reasoned order No. 40 dated 14.02.2022 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 **Gosto Behari Dey, Bhagabati Charan Dey of 45A, Adya Shradh Ghat Road, Kolkata-700007** and all persons who may be in occupation of the said premises or any part thereof to vacate the said premises within 15 days of the date of publication of this order. In the event of refusal or failure to comply with this order within the period specified above the said **Gosto Behari Dey, Bhagabati Charan Dey of 45A, Adya Shradh Ghat Road, Kolkata-700007** and all other persons concerned are liable to be evicted from the said premises, if need be, by the use of such force as may be necessary.

SCHEDULE

Plate No-SB-125 & SF-166)

The said piece or parcel of land msg. about 332.315 sq.m. or thereabouts is situated on the north side of Adya Shradh Ghat Cross Road at Kulpighat in the presidency town of Kolkata. It is bounded on the north by Trustees' strip of open land beyond which lies the land occupied partly by Lalit Mohan Dass and partly by Estate Pannalal Nandy, on the east by the Trustees' land occupied by Calcutta Oil Syndicate, on the south by Adya Shradh Ghat Cross Road and on the west by the Trustees' land leased to Ram Ranjan Samanta, Gopika Ranjan Samanta & others. Trustee's means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata).

Dated: 15.02.2022

Rajson
Signature & Seal of
Estate Officer.

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SYAMA PRASAD MOOKERJEE PORT
Head of Office
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SYAMA PRASAD MOOKERJEE PORT

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

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

Proceedings No. 1444 Of 2014 Order Sheet No. 37

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

GOSTO BEHARI DEY, VS BHAGABATI CHARAN DEY

FINAL ORDER

The instant proceedings No. 1444 of 2014 arose out of an application being No. Lnd.4/18/II/05/4287 dated 01.09.2005 filed by Syama Prasad Mookerjee Port, Kolkata (Erstwhile Kolkata Port Trust) hereinafter referred to as KoPT, Applicant herein, praying for an order of eviction and recovery of arrear dues/damages and other charges along with accrued interest etc. against **Gosto Behari Dey, Bhagabati Charan Dey, Opposite Parties(O.P)** herein, under relevant provisions of the Public Premises (Eviction of Unauthorised Occupant) Act 1971. The facts of the case is summarised here under.

KoPT had granted a long term lease of Land measuring 332.315 sq.m under Occupation Nos. SB-125 & SF-166 situated on the North side of Adya Shradh Ghat Cross Road, Kulpighat in the presidency town of Kolkata for a period of 30 years without any option of renewal w.c.f 01.12.1971 by a deed of lease executed by and between the parties on 28.10.1972. The said lease expired on 01.12.2001 due to efflux of time. KoPT submits that even after the expiry of the lease, O.P. continues to occupy the port premises unauthorisedly and is in default of making payment of rent/compensation despite KoPT's demand.

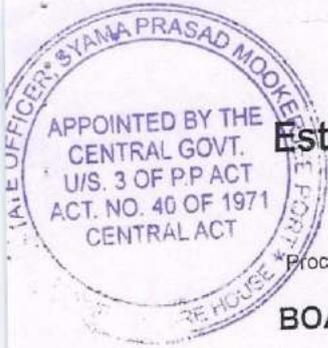
KoPT further submits that O.P. has made unauthorised construction and parted with possession of the subject premises in clear violation to the terms and conditions of such lease.

It is also the case of KoPT that notice to quit dated 02.05.2005 was issued to the O.P. asking the O.P. to hand over clear, vacant, peaceful and unencumbered possession of the property to KoPT on 30.06.2005. By the said notice dated 02.05.2005 KoPT also notified the O.P. that all its relationship with KoPT stood

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14.02.2022

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Head
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SYAMA PRASAD MOOKERJEE PORT

15/02/2022
OFFICER
JEE PORT



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
GOSTO BEHARI DEY, BHASABATI CHARAN DEY

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14.02.2022

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SYAMA PRASAD MOOKERJEE PORT

determined on the expiry of lease w.e.f. 01.12.2001. KoPT submits that O.P. has no authority under law to occupy the public premises after issuance of notice to quit dated 02.05.2005 and was required to hand over the possession of the property in question to KoPT on 30.06.2005 as required under the notice to quit. It is the case of KoPT that O.P. is in wrongful occupation in the public premises on and from 01.07.2005 and accordingly, KoPT is entitled to have the O.P. evicted from the port premises. Further, O.P. is liable to pay compensation charges/mesne profits for unauthorized use and occupation of the Port Property in question.

Notice u/s 4 of the Act, dated 21.06.2006 was issued by this Forum to O.P. to show cause as to why an order of eviction should not be made against the O.P. on the various grounds mentioned in the said Notice. By the said notice, O.P. was also called upon to appear before this Forum in person or through the duly authorised representative capable to answer all material questions connected with the matter along with the evidence which the O.P. intends to produce in support of the cause for personal hearing.

The said notice was sent to the recorded addresses of O.P. at 45A, Adya Shradh Ghat Road, Kolkata-700007 both by Speed Post & hand delivery. It appears from records that the Notice sent through speed post was not returned back. However, the Report of Process Server dated 08.08.2014 depicts that said notice was served upon O.P personally and one Basudeb Dey has received the same on behalf O.P.

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On the day fixed for appearance and filing of reply to the Show Cause by the O.P., one S.C Ghosh expressing himself as an Advocate of O.P., appeared and filed a petition for obtaining copies of certain documents from KoPT along with a Vakalatnama to contest the instant

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Proceeding No. 1444 Of 2014 Order Sheet No. 39

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
GOSTO BEHARI DEY, BHAGABATI CHARAN DEY

14.02.2022

matter on behalf of O.P. Thereafter on 12.11.2014, Ld' Advocate of O.P. filed his reply to the Show cause duly signed by Mr. Basudeb Dey, one of the representatives & Partner of O.P., followed by petition /application dated 17.12.2014, 04.05.2016, 09.11.2016, 03.01.2018, supplementary affidavits dated 25.07.2018, 17.09.2018 & 12.03.2019 and Written Notes of Arguments dated 03.08.2018. Thereafter, KoPT also filed their rejoinder to such reply/written objection on 20.01.2015 followed by Joint Inspection Report vide application being No. Lnd.4/18/II dated 17.06.2015, Report of reconciliation of Accounts vide Application being No. Lnd. 4/18/II dated 04.11.2015 and comment against O.P.'s application dated 3.01.2018 as filed on 18.05.2018 and an updated comprehensive Statement of accounts as generated on 12.09.2018 to clarify the present dues of O.P. as on date. Both the parties were heard extensively & thereafter the matter was reserved for final order.

Now, while passing the Final Order, I have carefully considered the documents on record and the submissions of the parties. After due consideration of all relevant papers/documents as brought before me in course of hearing , I find that following issues have come up for my adjudication :

- I) Whether the instant proceeding is maintainable or not;
- II) Whether the present proceeding is maintainable in view of the State of W.B Gazette Notification dated 29th January 2019 or not;
- III) Whether O.P has unauthorisedly erected any construction on the demised land or not.

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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. 1414 of 2014 Order Sheet No. 40

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

GOSTO BEHARI DEY, VS BHAGABATI CHARAN DEY

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14.02.2022

- IV) Whether O.P. has unauthorisedly sub-let and parted with possession of the tenancy right without prior approval of SMP, Kolkata or not;
- V) Whether O.P. can claim further renewal of lease as a matter of right or not.
- VI) Whether O.P.'s plea for waiver of rate of interest is sustainable or not;
- VII) Whether the notice to quit dated 02.05.2005 as issued by the Port Authority is valid and lawful in the present facts and circumstances of the case or not;
- VIII) Whether after alleged expiry of such long term lease O.P. or any other 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 SMP, Kolkata during the period of its unauthorised occupation or not;

As regards **issue No. I & II** are taken up together for convenient discussion, 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. SMP, Kolkata has come up with an application for declaration of O.P's status as unauthorized occupant in to the public premises

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

Proceedings No. 11410

Of 2014

Order Sheet No. 41

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

GOS TO BHARI DEY, BHASABATI CHARAN DEY

with the prayer for order of eviction, recovery of rental dues and compensation/damages etc. 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.

As regards the issue of Gazette Notification of State of W.B. dated 29th January 2019 as annexed by O.P with the application /supplementary Affidavit dated 12.03.2019, I must say that such notification is of no effect today because being aggrieved by the said Notification dated 29.01.2019, KoPT has preferred a Writ Petition being W.P. No. 74 of 2019 before the Hon'ble Calcutta High Court and Hon'ble High Court has already vide its Judgement dated 10.08.2020 allowed such W.P. No 74 of 2019 by setting aside such Notification dated 29th January 2019 with the following observations:-

"..... A) that the original notice dated 25th October, 2018 was both subject and purpose specific.

B) That the contents of the original notice dated 25th October, 2018 had the effect of enticing the Board to take a legal position qua Municipal Premises number 68 and 69 comprising in all 12 Bighas and 7 Cottahs of land.

C) In a well thought out manoeuvre by the State respondents the Board was allowed to hold on its position over a Lot A, while, simultaneously unleashing the provisions of the 2012

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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. 1440 of 2014 Order Sheet No. 42

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

GOSTO BEHARI DEY, VS BHAGABATI CHARAN DEY

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Act declaring the surprise Board to be a persona non grata qua Lots B1 and B2.

D) Finding itself outmanoeuvred, the Board has pressed this action by claiming title also in respect of several properties in Lots B1 and B2 in respect of which neither the KMC has measured nor declared the Municipal Premises No. to fulfill the conditions precedent of an inquiry inherent in the 2012 Act.

E) The KMC decided to aid the arbitrary state action by failing to identify and/or correlate the Municipal Premises Nos. of the property in issue with its corresponding area/boundary.

In the backdrop of the above discussion, this Court is persuaded to interdict the passage of the Royal Horse. This Court finds the action impugned of the Respondents to be foundationally flawed and accordingly sets it aside....."

Therefore, I am firm in holding that this Forum being empowered under PP Act has every jurisdiction to deal with and dispose of this instant matter in accordance with Law.

Issues No.III & IV i.e issues of unauthorised construction and unauthorised parting/subletting of the premises are taken up together for convenient discussion. O.P. vide their Written Notes of Arguments dated 03.08.2018, admits such unauthorised construction. It is the categorical submission of O.P. that they have raised construction as per the sanctioned plan of Calcutta Municipal Corporation where Municipal Commissioner is the sole authority to take proper action in case of any violation and no civil court can interfere within the Jurisdiction of Commissioner of K.M.C even if any illegal unauthorised construction is made within KMC

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Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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(Eviction of Unauthorised Occupants) Act 1971



Proceedings No. 11444 Of 2014 Order Sheet No. 43

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
GOSTO BEHARI DEY, BHAGABATI CHARAN DEY

area. KoPT without taking any step before the Calcutta Municipal Corporation, hold investigation through their own agent which is illegal and arbitrary. However, in my view such allegation of O.P. is not tenable in the eye of law because both the parties in this instant proceeding have admitted the covenant and condition of such long term lease & it appears from the copy of such lease as executed between both parties on 28.10.1972 that for erection of any building or structure or structural works a licence in writing from the Commissioner for the Port of Calcutta to be obtained by the lessee during the term of such tenancy. Although O.P. raised many points but did not make any whisper in this regard in any of the documents submitted by them therefore, I am not at all inspired by O.P's submission in this regard. Clause 3 of the registered lease deed reads as follows:

"3. AND also will not at any time during the said term without the licence in writing of the Commissioner first had and obtained erect any building or structure or erection or other structural works on the demised land or make any alteration or addition whatsoever in or to any buildings or structures which may hereafter be erected on the demised land with such licence as aforesaid. Provided however and it is distinctly stipulated and agreed that no application for the grant of such licence will be entertained by the Commissioners unless they are satisfied that the proposed structures or buildings have bearing on the purpose for which the lessees are taking lease of the demised land and the period of the lease and in this respect the decision of the Commissioner shall be final and conclusive.

Moreover, KoPT has also come up with specific drawing/sketch Maps being No. 9387-K dated 20.01.2015 highlighting the unauthorized construction in red hatch but O.P is silent as to how this construction can be said to be

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Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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Proceedings No. 1440 Of 2014 Order Sheet No. 44

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

GOSTO BEHARI DEY, BHAGABATI CHARAN DEY
VS
GOSTO BEHARI DEY, BHAGABATI CHARAN DEY

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14.02.2022

authorized in nature. As per the P.P Act1971, once the Notice U/S-4 is issued, burden is on the O.P to Show Cause and/or produce evidence but in this case O.P has hopelessly failed to do so. In my view, the O.P. has sufficiently admitted about the existence of unauthorized construction in the premises, and since it is a settled law that admitted facts need not be proved, I have no bar in accepting that the breach of unauthorized construction was existing when the notice to quit dated 02.05.2005 came to be issued by the Port Authority.

As regards the issue of unauthorized parting with possession, O.P. vide their written notes of arguments dated 03.08.2018 submitted that KoPT has permitted them to induct 26 sub-tenants so in case of vacancy of any such sub-tenant vacancy may be fill up by posting subtenants however, it appears from the Joint inspection report dated 17.06.2015 that beside authorised subtenants 14 nos of occupants were found as unauthorised which has subsequently been admitted by O.P. Moreover, KoPT has filed copy of several letter before this Forum addressing the O.P. (such as letter dated 11.02.2002, 09.04.2002, 11.02.2003, 01.08.2003 & 06.04.2004) whereby KoPT has requested O.P for removal of outsiders/third parties along with other breaches. But inspite of receiving the copy of such letter, O.P apparently did not pay any heed to that matter. This communications amply depicts that O.P has parted with possession to rank outsiders. Moreover, the Comments/rejoinder filed by the Port Authorities on 20.01.2015 also depicts that O.P. has parted with possession of the subject premises to third parties. This Letter/application filed by a Statutory Authority like KoPT cannot be disbelieved. The O.P could not produce any document to defend his position. As such it is very difficult to accept the mere claim of the O.P which is bereft of any cogent reason. Moreover, induction of a third party without

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(Eviction of Unauthorised Occupants) Act 1971



Proceedings No. 1444 Of 2014 Order Sheet No. 45

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

GOSTO BHARI DEY, BHASABATI CHARAN DEY

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14.02.2022

the approval of KoPT is also against spirit of tenancy. Therefore, the issue of unauthorized parting with possession is decided in favour of KoPT.

On **issue no. V** with regard to further "renewal of lease", O.P vide their application dated 17.12.2014 sought an authoritative order before the Forum for renewal of their lease. It is the categorical submission of O.P. that they have filed a petition addressing the Land Manager, KoPT immediately before the expiry of such lease. However, it is evident from the photocopy of the registered lease deed dated 28.10.1972 that the purpose of lease was storage of cereals, edible oil etc, for a period of 30 years without any option for renewal commencing from 01.12.1971. Admittedly, there was no specific assurance on the part of the Port Authority to grant lease for further period to O.P. after expiry of the contractual period of lease on and from 01.12.2001. As there was no option in exercising renewal of such lease, it cannot be said that Port Authority was under any legal obligation to grant them lease for a further period. Now the question arises about the intention of the Port Authority for grant of lease to O.P. It transpires that an exercise was taken place to check the status of the property by way of inspection of the property from KoPT's end and KoPT by its letter dated 06.04.2004 asked O.P. to remove the breaches standing upon the land in question. It is also seen that issue of non payment, unauthorised construction & parting with possession were taken up by the Port Authority by their letter dated 11.02.2002, 09.04.2002, 11.03.2003 and 01.08.2003 and duly brought to the notice of O.P. All the exchange of letters from KoPT's side and O.P's side as well must lead to the conclusion that KoPT was not sitting idle over the issue of granting fresh lease to O.P. upon expiry of the period of lease in question but KoPT was unable to process the matter of granting lease for want

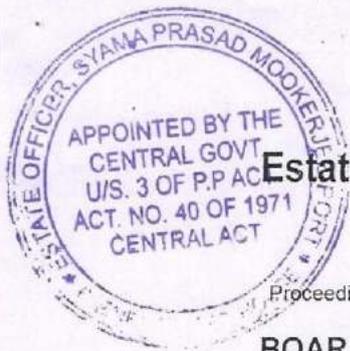
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OFFICE OF THE
SYAMA PRASAD MOOKERJEE PORT

13/02/2022

SV



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. 1444 of 2014 Order Sheet No. 46

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

GOSTO BEHARI DEY, BHAGABATI CHARAN DEY
VS
GOSTO BEHARI DEY, BHAGABATI CHARAN DEY

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14.02.2022

of removal of breaches as detected by the Port Authority. I do not find any irregularity or illogical act on the part of KoPT in requisitioning the removal of such breaches. Hence, KoPT cannot be blamed for its act as landlord of the premises. It is true that O.P. expressed their intention to KoPT for grant of further lease for a period of 30 years in respect of the Public Premises in question however such request was not entertained by KoPT. Therefore, taking note of the matter that as per Transfer of Property Act, O.P. as lessee is bound to handover possession of the leased out property to KoPT (lessor) on expiry of the contractual period of lease, I am deciding the issue in favour of KoPT.

As regards the **issue No.VI**, I must say that waiver of KoPT's claim on account of interest is required to be adjudicated seriously as the issue involves mixed question of fact and law as well. It is my considered view that payment of interest is a natural fall out and one must have to pay interest in case of default in making payment of the principal amount due to be payable. Needless to mention that one of the basic conditions of lease that the lessee/O.P. is liable to pay rents in timely manner to the lessor KoPT and any breach in such terms shall invariably attract the penal charges by way of interest. All canons of law permits charging of interest if payments are being made in delayed fashion. For occupation and enjoyment of Port property, the charges leviable upon the tenants/occupiers are based on the Schedule of Rent Charges as applicable for a tenant/occupier in respect of respective zone as indicated in such Schedule of Rent Charges. O.P cannot deny such liability of payment of interest as he has failed to pay the principal amount due to be payable by him more so this forum has no power in the matter of waiver of interest for which O.P has to pray before proper Authority of KoPT. As such, I have no hesitation to decide the issue in favour of

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Proceeding No. 15/11/14

Of 2014 Order Sheet No. 47

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

OS TO BHARIDAY, BHAGABATI CHARAN DEY

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14.02.2022

KoPT and I have no bar to accept the claim of KoPT on account of Interest accrued for delayed payment.

Issues No.VII & VIII are taken up together as they are related with each other, I must say that a lessee like O.P. cannot claim any legal right to hold the property after expiry of the period of lease. O.P has failed to satisfy this Forum about any consent on the part of KoPT in occupying the public premises. I am consciously of the view that KoPT never recognized O.P. as a lawful user/tenant in respect of the property in question after expiry of the period of such long term lease. As per Section 2 (g) of the P. P. Act the "unauthorized occupation", in relation to any Public Premises, means the occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person in the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. Further, as per the Transfer of Property Act, a lease of immovable property determines either by efflux of time limited thereby or by implied surrender or on expiration of notice to determine the lease or to quit or of intention to quit, the property leased, duly given by one party to another. It is also a settled question of law that O.P, occupier cannot claim any legal right to hold the property after expiry of the lease, without any valid grant or allotment from SMP, Kolkata's side. Moreover, as per the Transfer of Property Act, 1882, a lessee is under legal obligation to hand over possession of the property to its landlord/lessor in its original condition after expiration of tenancy under lease. The tenancy of the O.P. automatically stands terminated upon expiry of the lease-hold period and no additional Notice is required in the eye of law on the part of the landlord to ask the O.P. to vacate the premises. In other words, in case of a long term

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SYAMA PR...

15/02/2022
OFFICER
SYAMA PR...

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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. 1444 Of 2014 Order Sheet No. 48

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lease having a specific date of expiration, there is no legal compulsion upon the landlord to issue any Notice to Quit. The landlord is, however, free to issue such a Notice as a reminder or as an act of gratuity. In the instant case, the landlord i.e. KoPT adopted such a course and claims to have issued a Notice to O.P. dated 02.05.2005 asking for vacation of the said premises on 30.06.2005. Whether such Notice has been received by O.P. or not is quite immaterial inasmuch as O.P. was duty bound to hand over possession to KoPT after expiry of such lease which it had failed to do so. Therefore, O.P.'s occupation is unauthorized.

"Damages" are like "mesne profit" that is to say the profit arising out of wrongful use and occupation of the property in question. I have no hesitation in mind to say that after expiry of the lease, O.P. has lost its authority to occupy the public premises and O.P. is liable to pay damages for such unauthorized use and occupation.

To come into such conclusion, I am fortified by the decision/observation of the Hon'ble Supreme Court in Civil 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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The Port Authority has a definite legitimate claim to get its revenue involved into this matter as per the SMP, Kolkata's

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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 SMP, Kolkata that the charges claimed on account of damages is on the basis of the SMP, Kolkata'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 SMP, Kolkata is based on sound reasoning and should be acceptable by this Forum of Law. As per law, when a contract has been expired by efflux of time and party continues their occupation unauthorisedly, the another party who suffers by such violation is entitled to receive, from the party who has violated the terms of the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such violation of the terms, or which the parties knew, when they made the contract to be likely to result from the such violation.

O.P. failed to substantiate as to how its occupation could be termed as "authorised" in view of Sec. 2(g) of the P.P Act, after expiry of the period as mentioned in the SMP, Kolkata's notice dated 02.05.2005, demanding possession

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SYAMA PRASAD MOOKERJEE PORT

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Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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from O.P. I have no hesitation to observe that O.P's act in continuing occupation after expiry and determination of the lease is unauthorized and O.P. is liable to pay damages for unauthorized use and occupation of the Port property in question upto the date of delivering vacant, unencumbered and peaceful possession to SMP, Kolkata.

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

1. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear dues/damages etc. as prayed for on behalf of SMP, Kolkata.
2. That the lease as granted to O.P. by KoPT had doubtlessly determined by efflux of time, in the facts and circumstances of the case.
3. That O.P. cannot claim renewal of lease from the Port Authority as a matter of right and cannot dictate the terms and conditions of any renewal of lease that may be offered by the Port Authority in terms of their Estate Management Policy.
4. That O.P has erected unauthorised constructions and parted with possession of the public premises without having any authority of law.
5. 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 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

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issuance of notice dated 02.05.2005, demanding possession by the Port Authority and O.P's occupation has become unauthorized in view of Sec.2(g) of the P.P. Act, 1971.

- 7. That right from the date of expiry of the lease, O.P. has lost its authority to occupy the Public Premises and O.P. is liable to pay dues/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, 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. KoPT 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.

I find that KoPT has made out an arguable claim against O.P., founded with sound reasoning, regarding the damages /compensation to be paid for the unauthorised occupation. I make it clear that KoPT is entitled to claim 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 as the possession of the premises is

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still lying unauthorisedly with the O.P. KoPT is directed to submit a statement comprising details of its calculation of damages, 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 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

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(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 ***