

MUMBAI PORT AUTHORITY
OFFICE OF THE ESTATE OFFICER
UNDER PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971
The Estate Officer, 6th Floor, Vijay deep bldg., S. V. Marg, Ballard Estate, Mumbai – 400 001.

CASE NO. EO/E /135 OF 2013

IN THE MATTER OF:

The Board of Mumbai Port Authority

A Statutory Corporation, Successor in title
Of the Board of Trustees of the port of Mumbai
Having its registered office at Vijay Deep,
Shoorji Vallabhdas Marg, Fort,
Mumbai – 400 001.

..... **Petitioner**

V/s.

1) Shubh Hospitality Pvt. Ltd.

Add- 30 P. J. Ramchandani Marg,
Opposite Radio Club, Colaba
Mumbai- 400 005

2) Bank of India

Add- Corporate Banking Branch,
4th floor, 70/80 Mahatma Gandhi Marg
Mumbai 400 023

3) J.M. Financial Asset Reconstruction Company Pvt. Ltd,

Add – 141 Maker Chamber III,
Nariman Point Mumbai – 400021
30 P. J. Ramchandani Marg,
Opposite Radio Club, Colaba
Mumbai- 400 005

.... **Respondents**

CORAM: SHRI. U.B. SUBHEDAR

(Estate Officer Appointed under Section 3 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 vide Gazette Notification dated 19.12.2024)

Petitioner Representative: Ms Neha Sawant (Legal Manager)

Advocate for Petitioner: Adv. Mandar Bangale & Associates

Advocate for Respondent: Adv. Viren Asar, a/w. Wadia Gandhey Co.

- 1) The present proceedings are instituted by the Petitioner under Sections 4, 5, and 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 for seeking eviction of the Respondents from Plot No. RR-1245 admeasuring 1036.71 sq. metres situated at Apollo Reclamation Estate, Colaba, Mumbai together with structures standing thereon and for seeking recovery of arrears of rent, compensation, damages, mesne profits and interest.
- 2) The case of the Petitioner, as emerging from the Petition and amendments thereto, may be summarized as under:



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- a) The Petitioner is a statutory body constituted under the Major Port Trusts Act, 1963 and presently governed by the Major Port Authorities Act, 2021. The Petitioner is the owner and lessor of the property bearing Plot No. RR-1245 admeasuring 1036.71 sq. metres situated at Apollo Reclamation Estate, Colaba, Mumbai. The said premises are public premises within the meaning of Section 2(e) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.
- b) The Petitioner leased the subject premises to the respondent No 1 in terms of Indenture of Lease dated 29.10.1935 for a term of 99 years commencing from 07.08.1933 which expiring on 06.08.2032 by flux of time. The lease was given for the purpose "*use and occupation as first class residences and for no other purpose*". That the petitioner granted lease therein favour of Phirozshah Cowasji Lentin and his wife Banoo Phirozshah Cowasji Lentin and later to Raobahdur Dadasaheb Surve.
- c) The petitioner vide their deed of variation dated 08.02.1977, the leasehold rights in respect of the property stood vested in favour of Balwant Rai Shelly. Under the Deed of Variation the said Balwant Rai Shelly was allowed to use the said garage in for storage of non-hazardous materials.
- d) On 23 July, 1993, the said Balwant Rai Shelley expired leaving behind his last Will and testament dated 27 January, 1993. Under the said Will, Balwant Rai Shelley gave, devised and bequeathed all his right, title and interest in respect of the said property in favour of his daughter Pramila Ramnikrai Wadhwan. This Will has been probated in 1995. The said was communicated by letter dated 26.07.1993 by Advocate of Late Shri Balwant Rai Shelley.
- e) In the year 2006 the said Pramila Ramnikrai Wadhwan sought permission of Petitioner to further assign the leasehold rights in respect of the said property in favour of Shubh Hospitality Pvt. Ltd., thereafter terms and conditions were quoted by the petitioner vide letter dated 04.09.2006 which was approved by the petitioner vide it's Trustee Resolution No. 113 of 2006. Pursuant to the aforesaid permission, by and under a Deed of Assignment dated 22nd December, 2006, executed between said Pramila Ramnikrai Wadhwan of the one part and Shubh Hospitality Pvt. Ltd of the other part, the said Pramila Ramnikrai Wadhwan assigned and transferred the leasehold rights. Shubh Hospitality Pvt. Ltd., intended to take financial assistance for carrying out its business, and accordingly, approached Bank of India.
- f) Shubh Hospitality Pvt. Ltd., has violated the term & conditions quoted by the petitioner vide its letter date 04.09.2006, wherein clause (viii) restricted Respondent No 1 to create any under lease without the prior consent of the petitioner.
- g) The petitioner observing the said breach of Terms & Conditions terminated the lease of Respondent No.1 vide its Advocates notice dated 27.09.2012. Further, the Petitioner has submitted that the Notice was duly served upon Respondents by R.P.A.D and by pasting.



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- h) It is also submitted in the petition that after service of the termination notice the occupation of the Respondent on the petitioned premises have become unauthorized and therefore they are liable to pay the petitioner compensation for wrongful use and occupation of the petitioned premises till they vacate the premises.
- i) Does the petitioner has sought the following relief –
- a) *Summary proceedings be initiated against the Respondents under Sections 4 to 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.*
 - b) *The Respondents be ordered to vacate and hand over vacant and peaceful possession of Plot No. RR-1245 admeasuring 1036.71 sq. metres situated at Apollo Reclamation Estate, Mumbai after removing structures standing thereon.*
 - c) *Orders under Sections 5A and 5B of the Public Premises Act be passed directing removal of all structures and fixtures from the premises.*
 - d) *In default, the Petitioner be permitted to remove the structures at the cost and consequences of the Respondents.*
 - e) *The Respondents be ordered to pay arrears of compensation, rent, taxes and other charges amounting to Rs.19,58,88,342.61 together with interest.*
 - f) *The Respondents be ordered to pay damages and compensation for wrongful use and occupation amounting to Rs.219,28,77,983.63 together with interest.*
 - g) *Costs and consequential reliefs.*
- 3) Pending the petition, the petitioner had carried amendment to the petition bringing their latest scale of rates based on Policy Guidelines for Land Management 2015.
- 4) After submission of the above petition, this authority issued notice under section 4 (1) of the Public Premises Eviction Act 1971 to the Respondents via RPAD and show cause Notices were also pasted on petitioned premises.
- 5) In response to the said notice, Respondent No. 3 has appeared and filed written statement on 25.03.2013 and contended that the proceedings initiated by the Petitioners under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 are wholly without jurisdiction, illegal, and misconceived, as the Respondent is not an unauthorized occupant and the premises do not qualify as “public premises” within the meaning of the Act; further, the Petitioners have acted contrary to binding Supreme Court judgments (notably in the Wadia case), statutory guidelines, and principles of natural justice, while selectively and arbitrarily targeting the Respondent No.3 despite similar cases being treated differently, thereby rendering the eviction proceedings mala fide, time-barred, and liable to be dismissed at the threshold. It is also contended that Petitioners are not included under the definition of local authority under section 7 (6) the Maharashtra Rent Control Act of 1999 hence the tenants of the Petitioner enjoy protection under the said Act.
- 6) The Respondent No.3 further contended that it is a Securitization and Reconstruction Company registered under the provisions of the SARFAESI Act and is engaged in acquisition and enforcement of financial assets and security interests. According to Respondent No.3, the mortgage created by Respondent No.1 in favour of Respondent No.2 was legal, valid and enforceable. It is contended that the Lease Deed did not prohibit creation of equitable mortgage by deposit of title deeds.



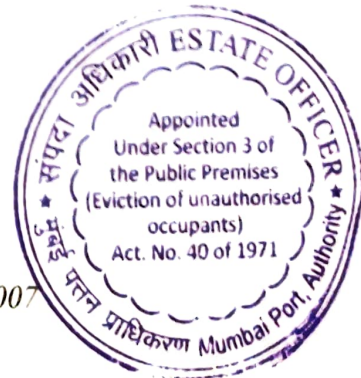
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- 7) In response to the amendment carried out by the petitioner pending the petition on 09.06.2025, Respondent filed its additional written statement on 03.07.2025 contending the amended claims of the Petitioner, particularly the demand for alleged arrears, damages, and compensation, which are denied in toto as inflated, arbitrary, and unsupported by law. The Respondent disputes the calculation of amounts (including the substantial claim reflected in Annexures), contending that such claims are based on erroneous assumptions and are contrary to settled legal principles that prohibit levy of excessive or retrospective charges by public authorities. It is further contended that the Scale of Rates of Petitioner are sub-judice before Bombay High Court and cannot be applied to subject case.
- 8) In view of the rival pleadings of the parties, this authority framed on 07.03.2017 and additional issues on 08.08.2025 following issues:
- Whether the Respondents prove that the equitable mortgage created by Respondent No.1 in favour of Respondent No.2 was in consonance with the Lease Deed and the Deed of Variation?*
 - Whether the Petitioner proves that Respondent No.1 carried out alterations to the structure in breach of the Lease Deed and the Deed of Variation?*
 - Whether the Petitioner proves that the lease is duly forfeited and/or determined under notice dated 27.09.2012?*
 - Whether the Petitioner proves that the show cause notices were validly issued?*
 - Whether the Petitioner proves that Respondent No.1 is in arrears of rent and/or compensation as per the particulars annexed to the Petition?*
 - Whether the Petitioner proves that it is entitled to claim interest as alleged in the Petition?*
 - Whether the Petitioner proves that it is entitled to claim damages for alleged wrongful use and occupation against the Respondents calculated from 01.01.2013?*
 - Whether the Petitioners prove that the Respondents are unauthorized occupants/unlawful occupants under Section 2 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971?*
 - Whether the Petitioner proves that it is entitled to the reliefs prayed for in the Petition?*
 - What order?*
- 9) The petitioner examined Shri P.A. Johnson, Assistant Estate Manager (Gr.-I), as PW-1. In his affidavit of Evidence PW-1 has supported the contentions raised by the petitioner in the petition. The evidence of PW-1 following documents were marked and exhibited;
- Copy of the lease deed dated 29.10.1935*
 - Certified True Copy of TR No. 169 of 1943*
 - Certified True Copy of TR No. 397 of 1962*
 - Certified True Copy of TR No. 1006 of 1966*
 - Little & Co. letter dated 29.12.1995*
 - Copy of terms and conditions letter dated 04.09.2006*
 - Acceptance Letters dated 26.11.2006, 22.12.2006 and 08.03.2007*
 - Certified True Copy of TR No, 113 of 2006*
 - Copy of Deed of Variation dated 08.02.1977*
 - Copy of Adv Notice dated 27.09.2012 alongwith personal service and acknowledgements, RPAD pasting reports*
 - Reply of advocate on behalf of Respondents No. 3 dated 10.10.2012*
 - Letter dated 02.01.2009 of Respondent No.2*



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- xiii. *Copy of the letter dated 18.02.2009, 23.03.2009 and reply dated 26.03.2009*
- xiv. *Copy of the letter dated 17.09.2012*
- xv. *Reply of the Respondent No. 3 dated 03.10.2012*
- xvi. *Copy of the statement of arrears*
- xvii. *Certified True Copy of TR No. 365 of 1991*
- xviii. *Copy of public notice under economic times issue dated 24.12.2012*
And copy of the letter dated 18.01.2013
- xix. *Copy of the public notice of petitioners dated 13.02.2013 in the issue of economic times*
- xx. *Copy of POA of Mr H.P. Kulkarni for signing the petition and Mr. P.A. Johnson.*

10) PW-1 was cross examined by Respondent No.3. Other Respondents have failed to cross examine PW-1.

11) The petitioner examined Miss Neha Sawant, Manager Legal, as PW-2. In her affidavit of Evidence PW-2 has supported the contentions raised by the petitioner in the petition. The evidence of PW-2 following documents were marked and exhibited;

- i. *Certified True Copy of TR No. 1006 of 1966*
- ii. *Lease deed dated 29.10.1933*
- iii. *Copy of Deed of Variation dated 08.02.1977*
- iv. *Notices dated 27.09.2012 with RPAD Receipts and pasting report alongwith Respondent No.3 Letter dated 10.10.2012*
- v. *Respondent No. 2 letter dated 02.01.2009*
- vi. *Copy of the letter dated 18.02.2009, 23.03.2009 and reply dated 26.03.2009*
- vii. *Copy of the letter dated 17.09.2012*
- viii. *Inspection report dated 08.08.2012 and letter dated 17.09.2012*
- ix. *Letter dated 18.01.2013*
- x. *Public Notice dated 13.02.2013*
- xi. *Copy of the statement of arrears*
- xii. *Copy of Statement of Damages*
- xiii. *Gazette Notification No. 521 of 2021, 554 of 2021 and Notification dated 28.04.2022 and revised SOR and notification No. 43 dated 26.04.2023*
- xiv. *Certified True Copy of TR No. 1006 of 1966*
- xv. *Little & Co. letter dated 29.12.1995*
- xvi. *Copy of terms and conditions letter dated 04.09.2006*
- xvii. *Acceptance Letters dated 26.11.2006, 22.12.2006 and 08.03.2007*
- xviii. *Certified True Copy of TR No, 365 of 12.12.1991 and T.R. No. 296 of 2020*
- xix. *Letter of Authority*

12) PW-2 was cross examined by Respondent. Other Respondents have failed to cross examine PW-2.

13) As against the aforesaid evidence produced by the petitioner, Respondent has examined one witness by filing Affidavit of Examination-in-Chief (AOE) of their witness (R3W-1) namely Vaibhav Shetty with following documents:

- i. *Copy of the Oral Assent*
- ii. *Copy of letter addressed by Respondent No. 2*
- iii. *Copy of Letter addressed by Respondent No. 2*



- iv. Copy of assignment agreement executed between Respondent No. 2 & 3
- v. A copy of the Deed of Rectification executed between Respondent No. 2 & 3
- vi. Copies of Order passed in O.A No 143 of 2010 and review application No. 7 of 2018
- vii. A copy of public Notices published by Respondent No. 3
- viii. A copy of the letter addressed by Respondent No. 3
- ix. A copy of the order passed by Hon'ble Bombay High Court in WP No. 502 of 2013

14) After adducing the above evidence, the Respondent No.3 closed his evidence.

15) Respondent No.1 & 2 have not adduced any evidence.

16) I have heard the arguments by the Ld. Advocates of the Petitioner and the Respondent No.3 respectively. Respondent No.1 & 2 remained absent and have failed to advance any arguments.

Findings on the above issues and the reasons thereof:

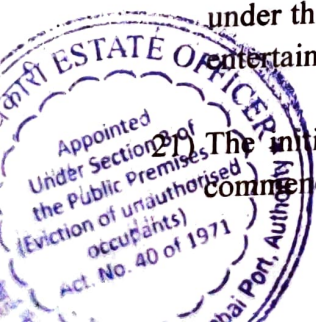
Findings and reasons as to Issue No 1

17) It is not disputed that the premises was given on lease by Respondent No.1. It is also not seriously disputed that Respondent No.1 had mortgaged the property to Respondent No.2 for securing loan and probably on nonpayment of loan Respondent No.2 authorized Respondent No.3 to auction the property. Consequently Respondent No.3 Claims to have acquired the interest in the property. According to Respondent No.3, the said mortgage by Respondent No.1 in favour of Respondent No.2 is in consonance of the T & C of the lease deed.

18) The contents of the lease deed are not disputed by Respondent No.3 as they are. The Lease deed contains the condition namely ***“AND that the said Lessee shall not during this demise mortgage the said premises by way of under-lease And shall not assign the hereby demised premises without the consent in writing of the said Trustees first obtained to such assignment and that every such assignment shall within one calendar month after the date of registration thereof by the Registrar of Assurances be left at the Office of the said Trustees in order that the same may be registered in their books.”***

19) The Respondent No.3 seems to have come with a case that interpretation of

20) Board of Trustees under Major Port Trusts Act 1963, now under Major Port Authorities Act 2021) and its premises do fall within Section 2(e)(2) (v) of the PPE Act which is in the meaning of public premises. This Authority — the Estate Officer, Mumbai Port Authority — is duly appointed under Section 3 of the PPE Act to exercise powers in respect of public premises under the control of MbPA. Accordingly, this Authority has full and exclusive jurisdiction to entertain and decide the present Petition.



21) The initial Lease Deed with reference to the subject premises was granted on 29.10.1935 commencing on 07.08.1933 to Phirozshah Cowasji Lentin and his wife Banoo Phirozshah

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Cowasji Lentin and later to Raobahdur Dadasaheb Surve. Futher Deed of Assignment dated 06.05.1943, the leasehold rights were assigned by Rao Bahadur Dadasaheb Appasaheb Surve in favour of Dadiba Sorabji Dubash and others. Thereafter, the Dubash family and the Central Bank Executor & Trustee Co. Ltd. agreed to transfer their leasehold rights. The proposed transfer was sanctioned by the Port Trust under Trustees Resolution No.1006 of 1966. The Lease was then transferred by deed of variation dated 08.02.1977, in favour of Balwant Rai Shelly. Under the Deed of Variation the said Balwant Rai Shelly was allowed to use the said garage in for storage of non-hazardous materials. Balwant Rai Shelley expired leaving behind his daughter Pramila Ramnikrai Wadhwan transferring the leasehold rights qua the suit premises. In the year 2006 the said Pramila Ramnikrai Wadhwan sought permission of Petitioner to further assign the leasehold rights in respect of the said property in favour of Shubh Hospitality Pvt. Ltd., thereafter terms and conditions were quoted by the petitioner vide letter dated 04.09.2006 which was approved by the petitioner vide it's Trustee Resolution No. 113 of 2006. The residual period lease was given to Shubh Hospitality Pvt Ltd i.e. Respondent No.1 from Pramila Wadhwan vide terms and conditions dated 04.09.2026 and other terms and conditions as per lease deed (**Exhibit-A Colly PW-1**).

- 22) It may be noted that Respondent No. 3 contends there was no breach of terms and conditions and as well as the covenants of lease. It is also contended by the Respondent No. 3 vide their letter dated 10.10.2010 (**Exhibit-E Colly PW-1**) that there is no need of seeking approval of MbPA for equitable mortgage and it can be executed without its approval. Petitioner has refuted that there was any mortgage sanctioned by the MbPA and there were breach of terms and conditions and covenants. The said clause of the lease deed dated 29.10.1935 provides that, ***"AND that the said Lessee shall not during this demise mortgage the said premises by way of under-lease And shall not assign the hereby demised premises without the consent in writing of the said Trustees first obtained to such assignment and that every such assignment shall within one calendar month after the date of registration thereof by the Registrar of Assurances be left at the Office of the said Trustees in order that the same may be registered in their books"*** Petitioner officer vide its inspection report dated 08.08.2012, (**Exhibit- G PW-2**). observed that Respondent No.1 has sub-let/ assigned and created third party rights in the subject property. The entire property was sub-let by Respondent No. 1 to Respondent No. 2 & 3. . I have gone through the said Lease Deed and clause governing sub-letting under-leasing and it is established that mortgage on the said premises by way of under-lease without prior permission of the petitioner was strictly prohibited.
- 23) However the Respondent No.3 contends vide their letter dated 10.10.2012 (**Exhibit-E Colly PW-1**). issued to the petitioner it was amply clear that no permission of Petitioner was required for the mortgage of the subject premises as it was equitable mortgage and as per provision of the Transfer of Property Act 1982 said mortgage was good in Law.
- 24) Respondent No. 1 was fully aware of the Lease covenants and terms and conditions prohibit mortgaging of the subject premises. Therefore the case of the Respondent does not sustain that equitable mortgage was permitted and no sanction of petitioner was required. The reliance placed by Respondent No.3 on the provisions of section 108 of Transfer of Property Act does



not appear to be well founded. It may be noted that section 108 of Transfer of Property Act provides about the Rights and liabilities of lessor and lessee. Section 108 reads as under:

"In the absence of a contract or local usage to the contrary, the lessor and the lessee of immovable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next followed, or such of them as are applicable to the property leased:- (j) the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it".

- 25) On perusal of the above provisions of section 108 of Transfer of Property Act specifically mentions that said rights and liabilities contained in that section would come into application only in absence of *contract or local usage to the contrary*. The Respondent No.3 has failed to establish that there was any contract between the Petitioner and Respondent No.1 (i.e. Lessor and Lessee respectively) or any local usage, under which a lessee can have the right to mortgage the leased premises without prior permission, consent or approval of the petitioner/lessor. In absence of proof of such contract or local usage, the contention of Respondent No.3 cannot be accepted to say that the Respondent No.1 lessee was entitled to mortgage the property to Respondent No.2 without prior permission, consent or approval of the petitioner/lessor.
- 26) In view of the above reasons I hold that the Respondent NO.3 has failed to prove that the equitable mortgage created by Respondent No.1 in favour of Respondent No.2 was in consonance with the Lease Deed and the Deed of Variation. **Therefore I hold that Issue No.1 has been not been proved.**

Findings and reasons as to Issue No 2

- 27) Issue No.2 is about the allegation pf the petitioner that the Respondent No.1 has done unauthorized construction activities in violation of T & C of the lease deed. According to petitioner, the respondents have unauthorisedly demolished brick masonry wall in the subject premises.
- 28) It is a case of the Respondent No.3 that there was no unauthorized construction. It is pleaded Respondent No.3 that Respondent No.1 had carried out all the repairs, including re-plastering in the subject premises were informed to the petitioner by Letter dated 08.03.2007 and this, according to Respondent No.3, was as per the lease covenants and there was no such question of unauthorized construction. Letter was issued by Petitioner to Respondent No. 1 informing that the re-plaster / repair was completed without the approval of Petitioner and called to clarify the same. It is the case of the Respondent No. 3 that only tenantable repairs, plastering, painting, plumbing works and routine maintenance activities were undertaken for preservation of the existing structure. The case of Petitioner is that the respondents have unauthorisedly demolished brick masonry wall in the subject premises. It is also contented by the petitioner that lease deed covenant expressly states that only certain repairs are permissible with prior permission of Petitioners. However, no permissions has been obtained by the Respondents for carrying out the unauthorized repairs. Form the above pleading of the Respondent No.3 and the letter of the petitioner referred to above, I hold that the Respondent No.1 has carried out repairs including re-plastering. Admittedly this is without prior permission of the lessor/petitioner. It

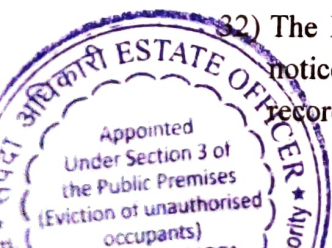
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is worth to be mentioned here that there is a covenant in lease deed 29.10.1935 that the lessee shall not carry out any alteration in the architectural design or decoration thereof without the previous consent in writing of the said Trustees for that purpose first had and obtained. The said clause of the lease deed dated 29.10.1935 provides that ***“AND ALSO will not cut or maim any of the principal walls of the buildings for the time being on any part of the piece of ground hereby demised or make or permit to be made any alterations in or additions to the said buildings either externally or internally or in the architectural design or decoration thereof without the previous consent in writing of the said Trustees for that purpose first had and obtained”***. This shows that the repairs including re-plastering admittedly done by Respondent No.1 contravenes the above T & C and, therefore I hold that this is violation of the T & C of the lease.

- 29) Moreover whatever repairs including re-plastering has been done admittedly by Respondent No.1 is without permission from MCGM as per clause of repairs of premises buildings etc. As per clause of repairs of premises buildings contained in lease deed it provides that whatever repairs and maintenance was to be carried out with prior permission to be sought from local authority under municipal law. No such permission has been produced by Respondent No.1 has been done as per law.
- 30) Petitioner also states that respondents are in breach of the Clause 18 of the term & condition dated 04.09.2006 (**Exhibit-B Colly PW-1**), provides that clause 31 of the terms and conditions provides that, ***“That you / proposed assignees shall not do any constructions or add / alter or carry out any alterations of any nature whatsoever without prior written permission from Mumbai Port Trust and also from MCGM / concerned authorities. You / proposed assignees shall submit for prior approval of the Board the detailed plans through licensed Architect for the above purpose. Please note that such plans can be considered with prior approval.”*** This clause in T & C prohibits all construction activities without permission of the lessor. It means that that even re-plastering and repairs are the construction activities and they should also be with the prior permission of the lessor. I am not convinced of the Id. Advocate of Respondent No.3 that plastering and other repairs do not require prior permission of the lessor/petitioner as per the T & C. or the It appears from the perusal of the Respondents pleadings namely the written statement that respondents despite being aware of the above conditions neither produced any permissions from MbPA / Heritage conservation committee since the property situated in fort prescient with sub prescient known as Gateway prescient as seen from the documents produced by Respondent No. 3.
- 31) For the above reasons I hold that petitioner has proved that Respondent No.1 carried out alterations to the structure is in breach of the Lease Deed and the Deed of Variation also the terms and conditions. **Therefore I hold that Issue No.2 has been proved.**

Findings and reasons as to Issue No 3

- 32) The Petitioner vide its Notice dated 27.09.2012 has terminated the Lease. The Petitioner's notice dated 27.09.2012 was served to Respondent by way of RPAD and the same is taken on record. (**Exhibit-D Colly PW-2**). Hence, notices were validly served and despite the receipt of



said notice the Respondents have failed to comply with the requisitions contained therein rendering them in unauthorized occupation. After the termination of lease authority of the Respondents to occupy the petition premise was withdrawn. However, the Respondent did not handover the possession of the petition premises to the Petitioner hence the status of Respondents with regard to petition premises became that of an 'unauthorized occupant' in terms of Section 2 (g) of the PPE Act. The same is reproduced here for the sake of reference-
Section 2 (g)- "Unauthorized occupation, in relation to any premises, means the occupation of 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 as expired or has been determined for any reason whatsoever."

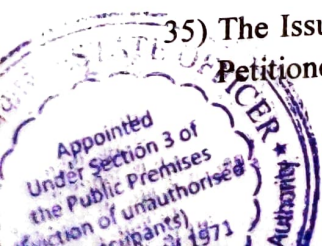
- 33) However the Respondent No.3 contends vide their letter dated 10.10.2012 (**Exhibit-E Colly PW-1**), issued to the petitioner it was amply clear that no permission of Petitioner was required for the mortgage of the subject premises as it was equitable mortgage and as per provision of the Transfer of Property Act 1982 said mortgage was good in Law. The provision of Transfer of Property Act section 108 Rights and liabilities of lessor and lessee reads as under:
"In the absence of a contract or local usage to the contrary, the lessor and the lessee of immovable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next followed, or such of them as are applicable to the property leased:- (j) the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it". It appears that there was a Lease Deed between the Petitioner and Respondent No. 1 and the provisions of 108 will not apply as there was Lease Deed which expressly prohibited mortgaging of the Petition premises. In view of the breaches and sub-letting petitioner had forfeited Respondent No. 1's Lease rights. Therefore that Respondent No.1 has continued to be in unauthorized occupation of the petition premises. **Therefore I hold that Issue No. 3 has been proved.**

Findings and reasons as to Issue No 4

- 34) It is the submission of the petitioner that this authority issued notice under section 4 (1) of the Public Premises Eviction Act 1971 to the Respondents via RPAD and show cause Notices were also pasted on petitioned premises. In response to the said notice, Respondent No. 3 has appeared and filed written statement on 25.03.2013. The Respondent No.1 and 2 have not filed their reply to the show cause notice and not participated in the on-going proceedings, therefore this authority proceeded ex-parte against them. The respondents also does not contend the non-receipt of show cause notice of this authority issued under the Public Premises (Eviction of Unauthorized Occupants) Act 1971. **Therefore I hold that issue No. 4 has been proved.**

Findings and reasons as to Issue No 5, 6 & 7

- 35) The Issue No. 5, 6 & 7 are related to Arrears/Compensation/Damages/Other Charges of the Petitioner.



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The Estate Officer, 6th Floor, Vijay deep bldg., S. V. Marg, Ballard Estate, Mumbai – 400 001.

- 36) According to the petitioner the respondent is in arrears of contractual and other charges together with interest and Arrears as applicable as per the Petitioners policy and guidelines. The said arrears according to the petitioners were mentioned in Advocate Termination Notice dated 27.09.2012. In paragraph 13 of the Affidavit of Evidence of Petitioner Witness No.1 following has been stated:

"I say that over and above the arrears mentioned in the Notice dated 27.09.2012 as stated in para 6 above, the Respondent No.1 is in further arrears of compensation/damages in respect of the said premises the rent/compensation/damages and presuming aggregate service tax arrears off inclusive of interest as on 30.09.2012 amounts to Rs.8,07,02,917.27ps. and further liable to pay compensation/damages as per Board policy with interest thereon at 18% p.a. from the date of filing of Petition till recovery of possession by the Petitioners from the Respondents. I tender the copy of statement of arrears. I say contents are true and correct. I identify the signature of then Assistant Estate Manger (5) Mr. V-Gusain, who has signed the statement of Arrears. I say same may be taken on record and marked as Exhibit J." (Exhibit-J & K Colly PW-2).

- 37) It is the contention of the Respondent No. 3 that on 26.03.2009 they had conveyed to the petitioner that already Rs. 2.5 Crores have been made to the Petitioner as advanced rent, while signing the Lease Deed. The petitioners vide their letters dated 18.02.2009, 23.03.2009 & 27.09.2012 had communicated outstanding rent and other charges to be borne by the Respondents. So it cannot be construed as complete payment of the total outstanding dues to the petitioner has been made. **Therefore I hold that petitioner has proved the Issue No. 5, 6 & 7. (Exhibit-G PW-1).**

Findings and reasons as to Issue No 8, 9 & 10

- 38) Therefore, the Petitioner vide its Notice dated 27.09.2012 has terminated the Lease. The Petitioner's notice dated 27.09.2012 was served to Respondents by way of RPAD and the same is taken on record. Hence, notices were validly served and despite the receipt of said notice the Respondents have failed to comply with the requisitions contained therein rendering them in unauthorized occupation. After the termination of lease authority of the Respondents to occupy the petition premise was withdrawn. However, the Respondent did not handover the possession of the petition premises to the Petitioner hence the status of Respondents with regard to petition premises became that of an '*unauthorized occupant*' in terms of Section 2 (g) of the PPE Act. The same is reproduced here for the sake of reference- **Section 2 (g)-** "*Unauthorized occupation, in relation to any premises, means the occupation of 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 as expired or has been determined for any reason whatsoever.*"

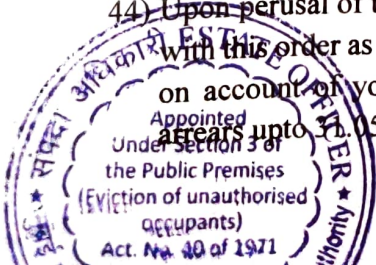
- 39) In the instant case the Ownership and public premises status are undisputed. Further the Existence of lease and Deed of Variation is also undisputed. The Creation of mortgage in favour of Bank of India & Assignment in favour of JM Financial ARC is admitted. The Receipt of



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termination notice by Respondent No. 3 is effectively admitted through correspondence and re-examination. It is pertinent to note that no document showing written permission of MBPA for mortgage has been produced by the Respondents. RW-1 admitted Respondent No. 3 derives rights through Bank of India and Respondent No.1. Further the RW-1 admitted Respondent No. 3 has no contractual liability towards MBPA, thereby supporting absence of privity of contract. Also there is no order setting aside forfeiture notice dated 27.09.2012 is produced on record. Most important there is no document establishing direct tenancy or lease between MBPA and Respondent No.3 exists.

- 40) I find the nature of above proceeding is summary in nature and same needs to be followed in its strictest sense. Respondents have failed to adhere to the summary nature of the proceeding. The object of PPE proceeding has been up-held by Apex Court in the case of Jain Ink Manufacturing Company v Life Insurance Company AIR 1981 SC 670 wherein it was categorically held that *"the object of the Public Premises Act is to provide for eviction of unauthorised occupants from public premises by a summary procedure so that the premises may be available to the authorities mentioned in the Premises Act which constitute a class by themselves"*.
- 41) The Apex Court in LIC v. Vita (2025 SC) held *"PPE Act, 1971 and the State Rent Control Acts are special enactments in themselves. Rule generalia specialibus non derogant will not apply. Having regard to the purpose, policy and legislative intent of the PP Act, 1971, the same would prevail over the State Rent Control Acts in respect of eviction of 'unauthorized occupants' of 'public premises' as defined in Section 2(g) of the Act."*
- 42) After considering the rival pleadings of the parties it is established that Respondent are in violation of Lease Covenants and after forfeiture of Lease respondents are continuing the possession of the Petition premise without any authority. In view of the finding recorded by me earlier from Issues No.1 to 7 **I hold that petitioner has proved the Issue No. 8, 9 & 10.**
- 43) In view of the findings recorded hereinabove, the Petition deserves to be allowed. Accordingly, the Respondents are held to be unauthorised occupants of the public premises bearing Plot No. RR-1245 admeasuring 1036.71 square metres situated at Apollo Reclamation Estate, Colaba, Mumbai together with structures standing thereon. The Respondents and all persons claiming through or under them are directed to vacate and hand over vacant and peaceful possession of the said premises to the Petitioner within the period prescribed under Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. In the circumstances, being satisfied as above, I therefore, declare that the Respondent No 1 to 3 are in unauthorized occupation of the scheduled premises and liable to be evict from the premises. I hereby pass an order under section 5(1) for eviction of Respondents from the said premises. Accordingly FORM 'B' are issued.
- 44) Upon perusal of the evidence, I have assessed the Petitioners Statement of Damages produced with this order as compensation / arrears pay the sum assessed by me as damages / mesne profit on account of your unauthorized occupation of the premises and to pay the compensation arrears upto 31.05.2026 with interest as on 31.05.2026 amounting to Rs. 275,78,61,569/- (Two



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Hundred Seventy Five Crores Seventy Eight Lakhs Sixty One Thousand Five Hundred Sixty Nine Only) including damages. I hereby pass orders for payment of arrears of compensation, taxes, and other charges under section 7(1) (2) (2A) of the 1971 Act against the Respondents to pay the same. Accordingly, orders in "FORM- G" are issued.

SCHEDULE
Description of the Petition Premises

All the piece or parcel or land situate at Strand Road on the Apollo Reclamation Estate of the Board of Trustees of the Port of Mumbai at Colaba containing by admeasurement 1036.71 sq.mtrs. or thereabouts and bounded as follows : on or towards the North by the land belonging to the said Board and leased to Pestanji Nussseerwanji Kerawala and Others, on or towards the South by Arthur Bunder Road and or towards the East by the Strand Road, and on or towards the West by the other land belonging to the said Board and leased partly to Adi Framji Dubash and others and partly to Kishanchand Panaial and another, which said premises are to registered in the Books of the Collector of land Revenue under Cadastral Survey No.10/384 of Colaba Division, together with all buildings standing thereon and assessed by the Assessor and the Collector of Municipal Rates and Taxes under 'A' ward Nos. 554 (3) and 574 (D), Street No. 30 all of which premises are situate on the Apollo Reclamation Estate in the City and Registration Sub-District and District of Bombay City and Bombay Suburban.

Place: Mumbai

Date:09.06.2026



[Handwritten signature]
4/6/26

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CASE NO. EO/E ((135)(135-A)(135-B) OF 2013

IN THE MATTER OF:

The Board of Mumbai Port Authority
A Statutory Corporation, Successor in title
Of the Board of Trustees of the port of Mumbai
Having its registered office at Vijay Deep,
Shoorji Vallabhdas Marg, Fort,
Mumbai – 400 001.

..... **Petitioner**

V/s.

1) Shubh Hospitality Pvt. Ltd.

Add- 30 P. J. Ramchandani Marg,
Opposite Radio Club, Colaba
Mumbai- 400 005

2) Bank of India

Add- Corporate Banking Branch,
4th floor, 70/80 Mahatma Gandhi Marg
Mumbai 400 023

3) J.M. Financial Asset Reconstruction Company Pvt. Ltd,

Add – 141 Maker Chamber III,
Nariman Point Mumbai – 400021
30 P. J. Ramchandani Marg,
Opposite Radio Club, Colaba
Mumbai- 400 005

.... **Respondents**

FORM B

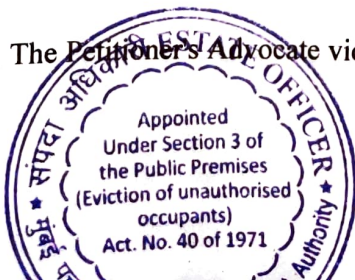
(Order under sub section (1) of Section 5 of The Public Premises (Eviction of Unauthorised Occupants) Act 1971)

WHEREAS I, the undersigned am satisfied for the reasons recorded hereinabove that the Respondents above named are in unauthorised occupation of Public Premises specified in Schedule below and have failed to handover the vacant and peaceful possession despite termination of Tenancy.

REASONS

Upon perusal of the petition, documents on record and heard the argument of advocate for the petitioner, it is, prima facie, observed that

1. The Petitioner's Advocate vide legal notice dated 27.09.2012 to all Respondents terminated the lease.



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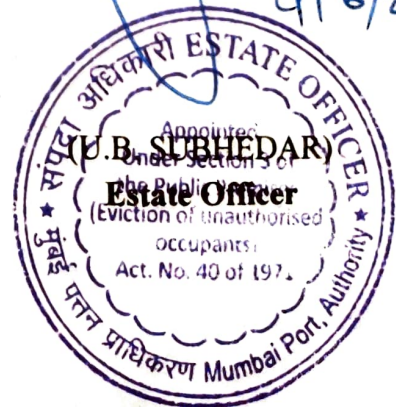
NOW, THEREFORE, in exercise of the powers conferred on me under sub-section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order **Shubh Hospitality Pvt. Ltd & Ors.** who may be in occupation of the said premises or any part thereof to vacate the said 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 **Shubh Hospitality Pvt. Ltd & Ors** and all other concerned are liable to be evicted from the said premises, if need, by the use of such force as may be necessary.

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Place: Mumbai

Date: 09.06.2026



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CASE NO. EO/E ((135)(135-A)(135-B) OF 2013

IN THE MATTER OF:

The Board of Mumbai Port Authority
A Statutory Corporation, Successor in title
Of the Board of Trustees of the port of Mumbai
Having its registered office at Vijay Deep,
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Mumbai – 400 001.

..... **Petitioner**

V/s.

4) Shubh Hospitality Pvt. Ltd.

Add- 30 P. J. Ramchandani Marg,
Opposite Radio Club, Colaba
Mumbai- 400 005

5) Bank of India

Add- Corporate Banking Branch,
4th floor, 70/80 Mahatma Gandhi Marg
Mumbai 400 023

6) J.M. Financial Asset Reconstruction Company Pvt. Ltd,

Add – 141 Maker Chamber III,
Nariman Point Mumbai – 400021
30 P. J. Ramchandani Marg,
Opposite Radio Club, Colaba
Mumbai- 400 005

.... **Respondents**

FORM - G

(Order under Sub Section (2) and (2-A) of Section 7 of The Public Premises (Eviction of Unauthorised Occupants) Act 1971)

WHEREAS I, the undersigned am satisfied that you the Respondents are unauthorized occupation of the Public Premises in the **Schedule** below.

AND WHEREAS, by written notice you were called up on to show cause on 18.02.2013, why an order requiring you to pay damages from 01.12.2012 at the rate of Rs. 1453.2 per sq. mtrs per FSI per Month for the period as per the Latest Statement of Arrears on account of unauthorised use and occupation of the said premises, should not be made; AND WHEREAS, you have not made any objections or produced any evidence before said date;



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NOW, THEREFORE, in exercise of the powers conferred on me by sub section 2 of Section (7) of the Public Premises (Eviction of Un authorized Occupants) Act, 1971, I hereby order you to pay the sum for the period from 1st December 2012 at the rate of three times of the rate of Rs. 494.5 i.e. 1453.2 sq. mts per month for FSI - 1 as per the policy of the Board of the petitioner or any other higher rate of petitioner as per the Board's decision / with interest thereon @18% per annum and further interest till realization of payment as damages on account of your unauthorized occupation of the premises.

In exercise of the power conferred by sub-section 2-A of the section 7 of the said Act, I also hereby order you to pay the compensation upto 30.11.2012 with interest as on 31.05.2026 amounting to Rs. 20,61,13,131.84 (Rupees Twenty Crores Sixty One Lakhs Thirteen Thousand One Hundred Thirty One Only) and damages and compensation arrears as per latest statement amounting to Rs 255,17,48,437.22 (Rupees Two Fifty Five Crores Seventeen Lakhs Forty Eight Thousand Four Hundred Thirty Seven Only). I also hereby order you to pay interest @ 18% per annum on the above damages till recovery of possession.

In the event of your refusal or failure to pay the damages, or any instalments hereof within the said period or in the manner aforesaid, the amount will be covered as arrears of land revenue.

SCHEDULE
Description of the Petition Premises

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Place: Mumbai
Date: 09.06.2026

