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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 (240) of 2018

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) **Bharat Petroleum Corporation Ltd.**

Add- Legal Dept. Western Region,
Western Regional Office.
Plot No. 6, Sector 2,
Kharghar, Navi Mumbai - 410 210

2) **Aziz Mansubar Shaikh**

3) **Milind Avinash Dhawle**

4) **Vijay Service Center**

5) **Mehmadullah Aminullah Khan**

6) **Basidalli Akabaralli Siddiqui**

7) **Akbar Mohamed Khan**

8) **Akbar Mohd. Khan**

9) **Aabidalli**

Add - Old RR. No. 1710 & 1785,
Vijay Service Center,
Mazgaon Reclamation Estate,
Mumbai-400 010



....Respondents

CORAM: SHRI. V. M. SONAR

(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: Mr Sushil Deshpande (Legal Manager)

Advocate for Petitioner: Adv. Moreshwar Hasbe i/b. S.B. Rao

Advocate for Respondent: Adv. S.R. Page a/w. Adv. Eesha Jaifalkar for R-1.

ORDER

- 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 seeking eviction of the Respondents from the premises bearing Old RR No.1710 and 1785 admeasuring 826.74 sq. meters situated

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at Mazgaon Reclamation Estate, Mumbai together with recovery of arrears, damages and mesne profits.

2) The case of the petitioner as per their pleading may be summarized as under-

- a) The Petitioner is a Statutory Authority, constituted under Section 3 of the Major Port Authorities Act, 2021 being the successor in title to the Board of Trustees of the Port of Mumbai, constituted under the Major Port Trust Act, 1963 since repealed, having its office at the abovementioned address and owner of the premises in question, which are public premises within the meaning of Section 2(e) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.
- b) It is the case of the Petitioner that under Trustees Resolution No.137 dated 03.05.1991, Mumbai Port Authority (MbPA) granted 30 year lease to the Respondent No.1 in respect of the said premises for running Petrol Pump Service Station and Depot for Petrol and Motor Accessories, as per the terms and conditions of the Memorandum of Understanding dated 03.07.1991. According to the Petitioner, terms and conditions of the lease were agreed under Memorandum of Understanding dated 03.07.1991 and occupation commenced from 01.07.1991. However, no registered lease deed came to be executed between the parties and therefore Respondent No.1 continued only as monthly occupant/tenant subject to terms and conditions imposed by the Petitioner Authority.
- c) The Petitioner alleged that Respondent No.1 committed breaches of the terms and conditions governing occupation of the premises by unauthorizedly subletting and parting with possession of different portions of the premises in favour of Respondent Nos. 2 to 9 and other third parties, carrying out unauthorized constructions consisting of hutments and tin sheet structures, changing use of the premises for storage of scrap material and residential activities and by failing to furnish details of actual occupants from the year 2006 onwards.
- d) The Petitioner further alleged that Respondent No.1 committed defaults in payment of rent/compensation and substantial arrears became due and payable. It is the case of the Petitioner that during inspection dated 07.02.2018 conducted by officials of MbPA (Inspector Mr. A.P. Waghambare), various unauthorized occupants including Respondent Nos.2 to 9 were found occupying different portions of the premises and unauthorized structures, uses and other breaches were noticed. The Petitioner also relied upon subsequent inspection dated 28.03.2018 carried out by the official of MbPA and survey reports along with photographs prepared by the officials.

According to the Petitioner, due to the above said continued breaches and violations terms & conditions of the MoU, occupation rights of Respondent No.1 were terminated by the petitioner through their Advocate's Notice dated 12.02.2018 and despite service thereof by personal service, RPAD and pasting, the Respondent No. 1 failed to vacate the premises. The Petitioner, therefore, contended that after expiry of the notice period, Respondent No.1 became unauthorized occupant and Respondent Nos. 2 to 9 being the



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unauthorised sublessees are also the unauthorized occupants and therefore all of them are liable to be evicted under the provisions of Public Premises Act, 1971.

f) The Petitioners, therefore, prayed as under; -

- a) Summary proceedings may be Initiated against the Respondents under Sections 4 to 7 of P.P.E. Act, 1971;
 - b) The Respondents may be decreed and ordered to handover to the Petitioners vacant and peaceful possession of premises in petition, viz. Plot of land bearing Old RR. No. 1710 & 1785, admeasuring 826.74 sq.mtrs. or thereabouts, situated at Mazagaon Reclamation Estate, Mumbai and bounded: On or towards the North by MCGM Road, On or towards the South by MbPT Plot No. 354, On or towards the East by Harbour Central Railway Line, On or towards the West by Barrister Nath Pai Marg, after removing the building/s and all structures standing thereon, if any, within such period of as this Hon'ble Authority may deem fit to grant;
 - c) In case of failure of the Respondents to comply with prayer(b) within the time specified by the Hon'ble Authority, then the Respondents may be decreed and ordered to hand over to the Petitioners vacant and peaceful possession of premises In Petition, alongwith all the structures existing at the material time.
 - d) Orders maybe passed u/s 5A of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, ordering the Respondents to remove unauthorised construction of 5 huts, tin shed between petrol pump office & Railway wall, within such period as this Hon'ble Authority deems fit to grant;
 - e) In the event of Respondents' failure and neglect to obey the orders issued under prayer clause (d) above, the Petitioners may be allowed to remove unauthorized construction of 5 huts, tin shed between petrol pump office & Railway wall from the said premises at the costs of the Respondents;
 - f) The Respondents may be decreed and ordered to pay to Petitioners the arrears of compensation amounting to Rs.89,63,083.46 as Per the statement enclosed herewith and which is marked as Exhibit-D;
 - g) The Respondents may be ordered to pay to Petitioners damages/mesne profits for wrongful use and occupation of the 'premises in Petition from the date of the Petition upto the date of recovery of the premises at the rate of three times of Rs. 83.25 per sq. mtr. per month (FSI-1), excluding service tax with 4% p.a increase every October with interest on the said sum @ 18% p.a. on delayed and outstanding arrears as per Petitioners' Board Policy or at such rates as may be sanctioned by the Board of Petitioners w.e.f. October, 2012 by Resolution during pendency of the said Petitioner recovery of the possession of premises in Petition or sanctioned the Central Government, whichever is higher between the said rates;
 - h) The Respondents may be restrained by an order and injunction of this Hon'ble Authority from illegally parting with possession of the premises in Petition or part thereof in favour of third party, from carrying out any illegal additions/alterations in the premises in the Petition, and/or changing the user of the said premises or any portion thereof, during pendency of the Petition;
- Such other and further relief as this Hon'ble Authority may deem fit to grant, under the facts and circumstances of the case.



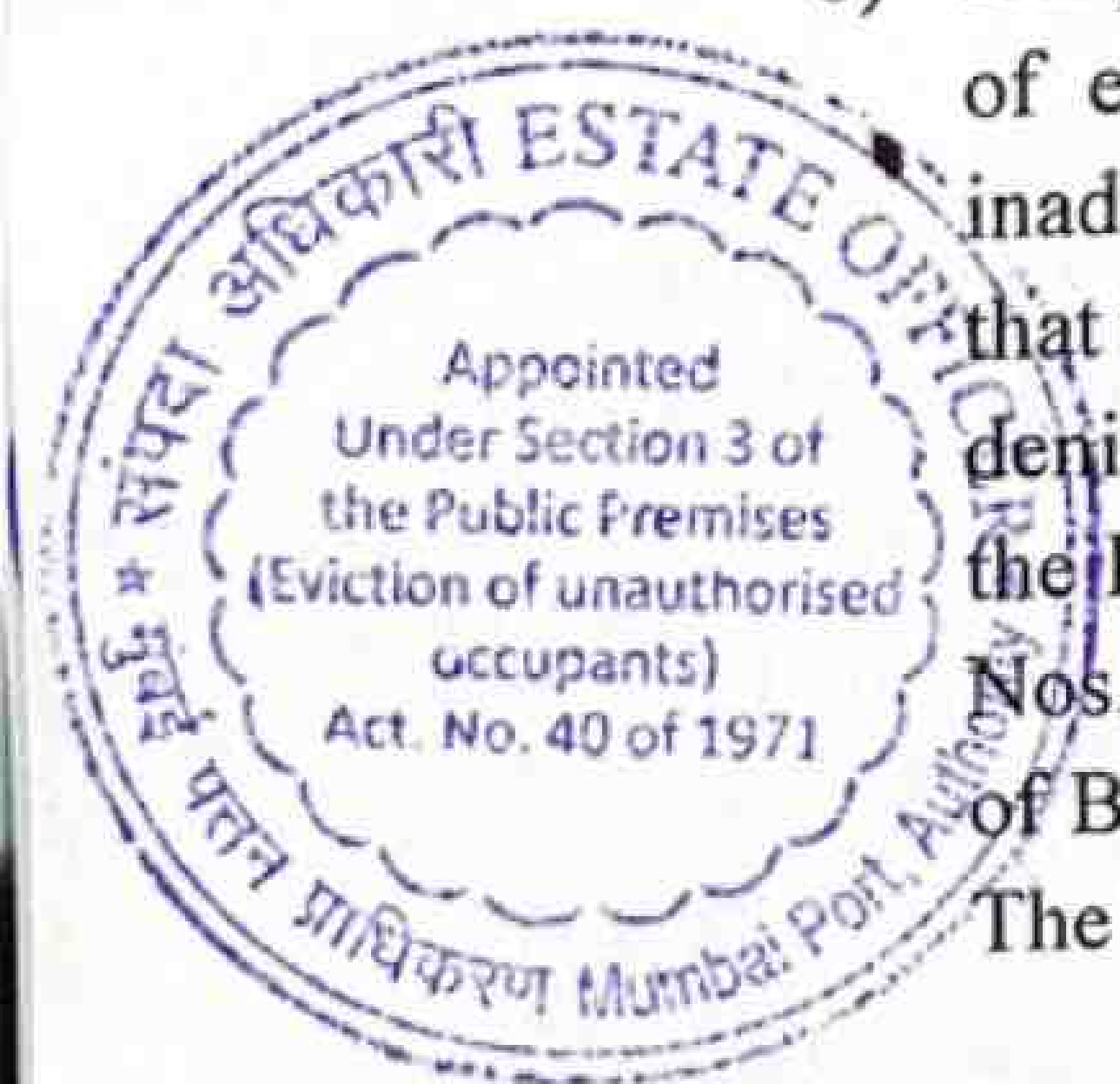
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j) Costs of the Petition may be provided for;

- 3) Pending the petition, the petitioner had carried out amendments 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, 5 -A & 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971(hereinafter referred to as PPE Act) to the Respondents via RPAD and show cause Notices were also pasted on the disputed premises.
- 5) The Respondent No. 1 appeared in the present proceeding and filed its Written Statement. However, other Respondents failed to appear despite service of the notices issued by this Authority. However, the Respondent No. 2 to 9 have neither entered their appearance nor filed their Reply to Show Cause or Written Statement on record till date. Therefore, the case proceeded ex-parte against Respondent No.2 to 9.
- 6) The Respondent No.1, namely Bharat Petroleum Corporation Ltd., filed detailed Written Statement, Additional Written Statement and other pleadings opposing the Petitioner's case as well as the amendment carried out by the Petitioner regarding revised Scale of Rates (SOR), damages and compensation. The Respondent No.1 contended that the Estate Officer lacked jurisdiction to entertain the proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 on the ground that the Respondent No.1 is a lawful and protected tenant occupying the premises since long prior to the enactment of the PPE Act. It was specifically pleaded that the tenancy rights originated much prior to the PPE Act and therefore the Respondent No.1 was protected under the Maharashtra Rent Control Act, 1999 and earlier Bombay Rent Act, 1947.
- 7) The Respondent No.1 pleaded that the invocation of the PPE Act by the Petitioner was arbitrary, illegal, discriminatory and mala fide and intended only to evict the Respondent No.1 from valuable commercial premises. According to the Respondent No.1, the Petitioner had misused statutory powers under the PPE Act for purposes not contemplated under law. The Respondent No.1 contended that the notices issued under Section 4, 5-A and Section 7 of the PPE Act were bad in law, unsupported by material particulars and liable to be set aside on the ground that the allegations of breaches were not supported by cogent evidence.
- 8) It is pleaded by the Respondent No 1 that the Petitioner had failed to establish any valid grounds of eviction and the photographs relied upon by the Petitioner were vague, unclear and inadmissible in evidence. According to the Respondent No.1, the photographs did not establish that the alleged structures or activities pertained to the petition premises. The Respondent No.1 denied allegations regarding unauthorized subletting and contended that the persons named by the Petitioner were not unauthorized sub-tenants. It was specifically pleaded that Respondent Nos. 2 and 3 were merely authorized signatories and dealers operating the retail outlet on behalf of BPCL and their presence on the premises was fully within the knowledge of the Petitioner. The Respondent No.1 further denied that Respondent Nos. 4 to 9 were unauthorized occupants



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and denied allegations of unauthorized residential use, scrap storage and illegal induction of third parties.

- 9) In respect of the alleged unauthorized construction, the Respondent No.1 contended that the tin shed structures were erected only for safety and security purposes because unknown persons from the adjoining railway track were throwing bottles and garbage into the premises, thereby creating security concerns. According to the Respondent No.1, the structures were purely protective and not illegal constructions. The Respondent No.1 specifically denied having committed any breach of the terms and conditions of the Memorandum of Understanding dated 03.07.1991 and asserted that the Respondent No.1 had lawful rights in respect of the premises under the said MOU.
- 10) It was further contended that the Petitioner had continuously accepted rent/compensation from the Respondent No.1 without protest and had regularly issued invoices and receipts for monthly occupation charges. The Respondent No. 1 therefore pleaded waiver and acquiescence on the part of the Petitioner and contended that by continuously accepting rent, the Petitioner had waived all alleged breaches and was estopped from seeking eviction. The Respondent No.1 specifically denied being in arrears of rent and disputed the calculations of arrears, damages and mesne profits made by the Petitioner. According to the Respondent No.1, the amounts claimed were inflated, arbitrary and unsupported by law.
- 11) In the Additional Written Statement filed after amendment of the Petition, the Respondent No 1 strongly opposed the revised claims based upon revised Scale of Rates (SOR), TAMP Notifications and Policy Guidelines for Land Management, 2015. The Respondent No 1 contended that the enhanced claims for arrears, damages and mesne profits introduced by amendment were arbitrary, excessive and retrospective in nature. The Respondent No 1 specifically challenged the applicability of TAMP Notification No.54 of 2021, revised Scale of Rates, Government Gazette Notification dated 25.04.2023 and revised policy resolutions relied upon by the Petitioner. It was contended that such revised rates and enhancement policies could not be retrospectively imposed upon a lawful tenant. According to the Respondent No 1, the revised Scale of Rates and enhanced damages were applicable only to unauthorized occupants and expired leases and not to a lawful tenant whose tenancy rights subsisted under the Maharashtra Rent Control Act, 1999.
- 12) The Respondent No. 1 further pleaded that the claims for damages at three times the market rate together with annual escalation, GST, interest at 18% and revised compensation under TAMP notifications were contrary to settled legal principles and amounted to arbitrary enrichment by the Petitioner. The Respondent No 1 also contended that the Petitioner could not rely upon subsequent policy changes and revised rates during pendency of proceedings to enlarge monetary claims without proper adjudication and evidence. It was further pleaded that the proceedings under the PPE Act were liable to be dismissed because the Respondent No 1 had continuously paid occupation charges raised by the Petitioner and therefore the Petitioner could not simultaneously accept rent and allege unauthorized occupation.



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13) The Respondent No 1 relied upon the judgment of the Hon'ble Supreme Court in *Jams Hormusji Wadia* and contended that the Petitioner ought to have renewed the tenancy regularized the alleged breaches instead of initiating eviction proceedings. It was contended that the alleged breaches, if any, were regularizable in nature and therefore eviction was harsh, arbitrary and disproportionate. The Respondent No 1 further contended that the Petitioner had acted discriminatorily and selectively against the Respondent No 1 while allegedly permitting similarly situated occupants to continue occupation. The Respondent No 1 also raised technical objections regarding admissibility and proof of Petitioner's documents including:

- a) Trustees Resolution No.137 of 1991,
- b) MOU dated 03.07.1991,
- c) Inspection reports,
- d) Trustees Resolution No.13 of 2018,
- e) Trustees Resolution No.365 of 1991,
- f) Termination notice dated 12.02.2018,

on the ground that the documents were not proved through competent witnesses or original authors.

The Respondent No 1, in addition to the contentions already recorded, further submitted in terms of the written notes of arguments that the Petition is liable to be dismissed on the ground that the Petitioner has approached this Authority with unclean hands by suppressing material facts and withholding crucial documents. It was contended that during the pendency of the proceedings, the Petitioner accepted substantial amounts towards rental arrears aggregating to Rs.25,47,005.19 from Respondent no 1 and, therefore, acknowledged the subsistence of the leasehold rights of Respondent no 1 and waived the alleged breaches. The Respondent No 1 further contended that the Petitioner cannot simultaneously claim enhanced rent and compensation from Respondent No.1 as a lessee and, on the other hand, seek its eviction as an unauthorised occupant, as the Petitioner cannot be permitted to approbate and reprobate. It was further submitted that the claims based upon revised Scale of Rates, TAMP Notifications, TR No.13 of 2018, TR No.21 of 2011 and other revised policies were introduced for the first time during evidence without carrying out any amendment to the Petition and, therefore, no relief can be granted beyond the pleadings. The Respondent No 1 further challenged the admissibility and evidentiary value of the inspection reports, survey reports and photographs relied upon by the Petitioner on the ground that the authors thereof were never examined and the documents were not duly proved in accordance with law. It was also contended that the Memorandum of Understanding dated 03.07.1991 is insufficiently stamped and unregistered and, therefore, cannot be relied upon for claiming damages, interest or enhanced compensation. The Respondent No 1 further contended that the claim for arrears is barred by limitation, that interest, GST and other monetary liabilities cannot be imposed in the absence of a specific and quantified demand in the pleadings and notices, and that the Petitioner failed to establish the authority of the officer who issued the notice of termination. According to the Respondent No 1, the claims for arrears, damages and mesne profits are arbitrary, inflated, uncrystallised and unsupported by cogent evidence and, therefore, the Petition deserves to be dismissed with exemplary costs.



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- 14) It was further submitted that the claim towards interest is wholly unsustainable as neither the original notice nor the Petition quantified or demanded any interest. Reliance was placed upon Sections 75(7) and 75(9) of the Central Goods and Services Tax Act, 2017 to contend that no adjudicating authority can travel beyond the demand contained in the notice. It was therefore argued that the claim towards interest is legally unsustainable.
- 15) The Respondent No. 1) further submitted that the Petitioner has failed to produce any documentary evidence supporting the alleged liability towards service tax, interest or other statutory dues. It was contended that no monetary liability can be presumed merely on assumptions and every claim must be supported by documentary evidence existing on the date of institution of the proceedings.
- 16) The Respondent No. 1) further contended that the statements of arrears and compensation produced by the Petitioner do not disclose the basis of calculation or the methodology adopted in arriving at the figures claimed. It was argued that in the absence of proper calculation sheets and supporting records, the monetary claims are incapable of verification and therefore liable to be rejected.
- 17) It was further submitted that the Notice of Termination has not been proved in accordance with law. According to the Respondent No 1), the authority of the officer issuing the notice has not been established and the competence of such officer to initiate proceedings has not been proved.
- 18) The Respondent No. 1) further argued that mere filing of an Affidavit in Examination-in-Chief does not constitute legal evidence unless the deponent enters the witness box and the affidavit is duly proved through examination-in-chief. It was contended that mere marking of documents as exhibits does not dispense with the requirement of proving the documents in accordance with the provisions of the Indian Evidence Act.
- 19) The Respondent No. 1) finally prayed for dismissal of the Petition with costs and for setting aside the notices issued under Sections 4, 5-A and 7 of the PPE Act. Further the Respondent No. 2 to 9 have neither entered their appearance nor filed their Reply to Show Cause or Written Statement on record till date. Therefore the case proceeded ex-parte against Respondent No.2 to 9.
- 20) In view of the rival case presented by the parties, this authority framed the following issues-

NO.	ISSUES
1	Do the Petitioners prove that the tenancy of the Respondent No.1 is properly terminated and the Notice dated 12.02.2018 is valid and lawful and the same was duly served on Respondents?
2	Do the Petitioners prove that the suit premises are Public Premises within the meaning of PPE Act, 1971?
3	Do the Respondent No.1 prove that the suit is not maintainable?
4	Do the Respondent No.1 prove that the Petitioners by accepting the accruing rent/compensation have waived the breaches of the terms and conditions of the lease?



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5	Do the Respondent No.1 prove that the provisions of Bombay Rent Act, 1947 and Maharashtra Rent Control Act, 1999 are applicable to the premises in the Petition?
6	Do the Petitioners prove that the Respondents are the unlawful occupant of the premises in the Petition?
7	Do the Petitioners prove that the Respondent No.1 are in arrears of rent/compensation and interest in respect of the demised premises, amounting to Rs.89,63,083.46 as shown in the statement to the Petition as Exhibit-D?
8	Do the Petitioners prove that they are entitled to recover from the Respondent, damages for wrongful use and occupation of premises in Petition, from the date of filing of the Petition till the date of recovery of possession of premises in Petition?
9	Do the Petitioners prove that the Respondent No.1 have illegally carried out additions and alterations of permanent nature in the premises in the Petition as mentioned in the Petition?
10	Do the Petitioners prove that the Respondent No.1 have illegally and without permission of the Petitioners sub-let the premises in the Petition to the Respondent Nos.2 to 6?
11	Do the Petitioners prove that the Respondent No.1 have changed the sanctioned user of the premises or part thereof?
12	Do the Petitioners prove that the premises in the Petition are affected under the projects of the petitioners and therefore, required by Petitioners for their own use?
13	Do the Petitioners prove that they are entitled to recover from the Respondent vacant and peaceful possession of the premises in Petition, as per detailed particulars mentioned in prayer (b) of the Petition?
14	What Decree?
15	What order?

21) The petitioner has adduced evidence by examining one witness (PW-1) and also produced documentary evidence, which shall be referred to hereinafter.

22) The Respondent No. 1) and other Respondents have failed to adduce any evidence. Therefore, the case proceeded without their evidence.

23) The Petitioner examined PW-1 Shri Ganesh Lavakumar Rele, Officer on Special Duty (Legal), who filed affidavit of evidence and produced documentary record including authority letters, Trustees Resolutions and Memorandum of Understanding. The evidence on record establishes that the Petitioner is a statutory authority constituted under the Major Port Trusts Act and successor of the Trustees of the Port of Bombay. The property in question belongs to the Petitioner Authority.

24) In support of the Petition, the Petitioner examined PW-1 Shri Ganesh Lavakumar Rele, Officer on Special Duty (Legal), Mumbai Port Authority, who filed his Affidavit of Examination-in-Chief on the basis of records maintained by the Petitioner Authority in ordinary course of business and official discharge of duties. PW-1 reiterated the contents of the Petition and supported the case of the Petitioner regarding unauthorized occupation, unauthorized



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subletting, unauthorized constructions, change of use and arrears of compensation and lawful termination of occupation rights of Respondent No.1.

25) Further PW-1 deposed that the petition premises belong to the Petitioner Authority and constitute public premises within the meaning of Section 2(e) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. PW-1 further deposed that Respondent No.1 was permitted to occupy the premises pursuant to Trustees Resolution No.137 dated 03.05.1991 and Memorandum of Understanding dated 03.07.1991 for limited purpose of running Petrol Pump Service Station and Depot for Petrol and Motor Accessories.

26) PW-1 further deposed that Respondent No.1 committed breaches of the terms and conditions governing occupation by unauthorizedly subletting portions of the premises to Respondent Nos. 2 to 9 and other third parties without prior written permission of the Petitioner. PW-1 also deposed regarding unauthorized erection of hutments, sheds and tin sheet structures and unauthorized change of use noticed during inspections conducted by officials of the Petitioner.

27) PW-1 specifically relied upon inspection reports dated 07.02.2018 and 28.03.2018 and deposed that the said inspections revealed unauthorized structures, unauthorized occupants and unauthorized activities being carried out on the premises. PW-1 also relied upon survey reports and photographs annexed thereto in support of the Petitioner's case.

28) PW-1 further deposed that due to continuing breaches and unauthorized occupation, the Petitioner terminated occupation rights of Respondent No.1 by Advocate's Notice dated 12.02.2018 which was duly served upon the Respondents by RPAD, personal delivery and pasting.

29) PW-1 further deposed that despite termination notice, the Respondents failed to hand over peaceful and vacant possession of the premises and continued in unauthorized occupation. PW-1 also deposed regarding arrears of compensation, damages and mesne profits payable by the Respondents and produced statement of arrears and damages calculation statements.

30) During the course of evidence, the following documents were marked and exhibited on behalf of the Petitioner:

No.	Exhibit No.	Description of Document
1	Exhibit PW-1/1	Photocopy of Letter of Authority (the Original tendered before this Authority and the same was returned back and a copy thereof was taken on record) along with Certified True Copy of Trustees Resolution No.96 of 2018 dated 12.10.2018 authorizing PW-1
2	Exhibit PW-1/2	Certified True Copy of Trustees Resolution No.137 dated 03.05.1991
	Exhibit PW-1/3	Office Copy of Memorandum of Understanding dated 03.07.1991
	Exhibit PW-1/4	Inspection Report dated 07.02.2018 prepared by Inspector Mr. A.P. Waghambare



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5	Exhibit PW-1/5	Inspection Report dated 28.03.2018 prepared by Inspector Mr. Shembekar
6	Exhibit PW-1/6 (Colly)	Survey Report dated 07.02.2018 along with photographs of petition premises
7	Exhibit PW-1/7	Statement of Rent / Compensation Arrears
8	Exhibit PW-1/8 (Colly)	Statement showing rates for claim of damages along with Certified True Copy of Trustees Resolution No.21 of 2011
9	Exhibit PW-1/9	Certified True Copy of Trustees Resolution No.13 of 2018
10	Exhibit PW-1/10 (Colly)	Advocate's Notice dated 12.02.2018 together with RPAD receipts, acknowledgements and pasting reports
11	Exhibit PW-1/11	Certified True Copy of Trustees Resolution No.365 of 1991 regarding charging of interest
12	Exhibit PW-1/12 (Colly)	Powers of Attorney executed in favour of Shri Rakesh Saxena and Shri M.S. Mohite

31) The Respondent No.1 did not adduce and prove substantial oral and documentary evidence sufficient to rebut the petitioner's case. The authority given ample number of opportunities to lead the evidence but respondent failed to adduce evidence.

32) I have heard arguments advanced by the Learned Advocates of the petitioner and the Respondent No. 1 respectively. No argument was advanced by other Respondents.

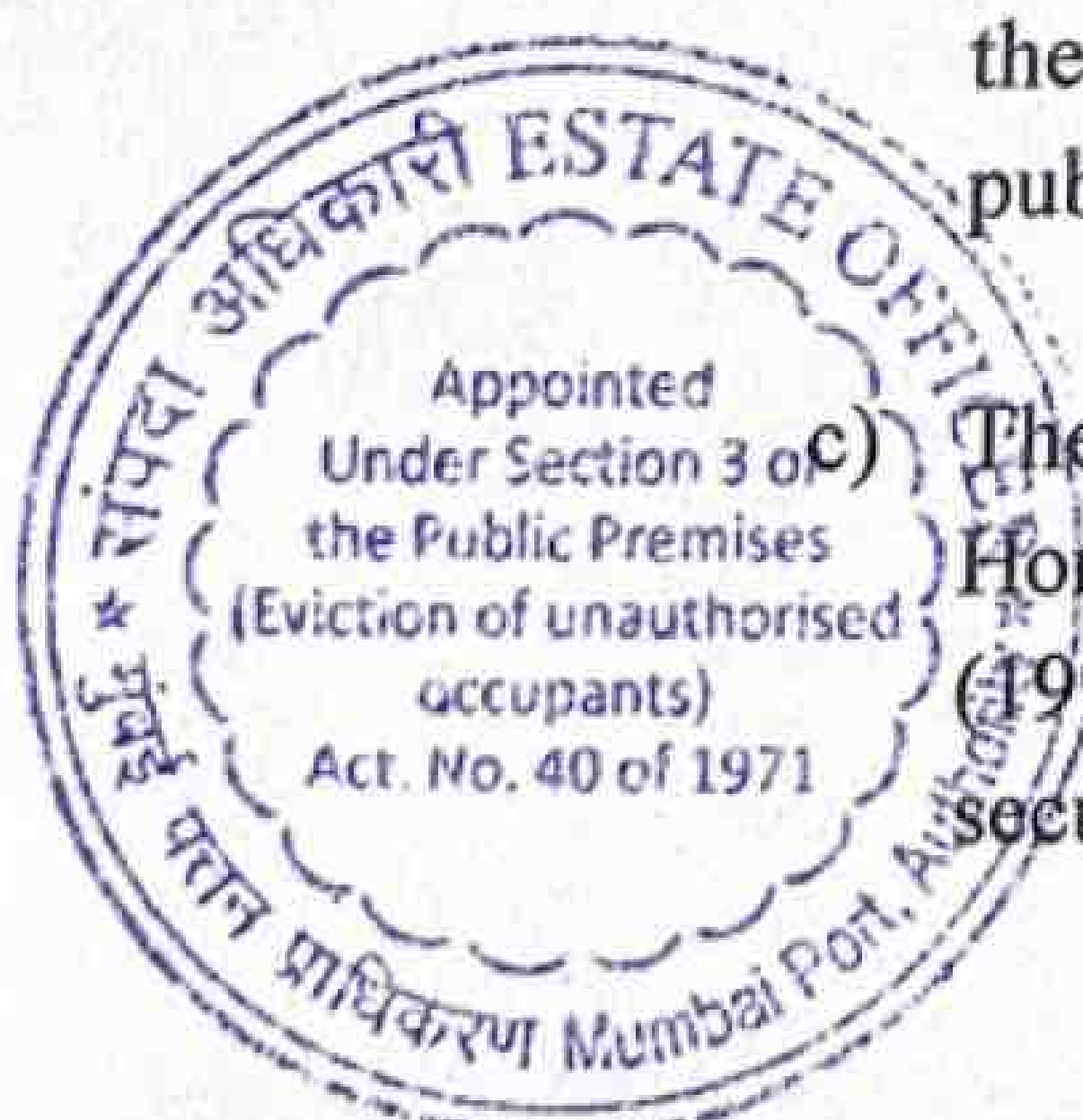
Findings on the above issues and the reasons thereof:

33) As to Issue No.2, 3 & 5

a) The Petitioners have produced Trustees Resolution No.137 of 1991, the Memorandum of Understanding dated 03.07.1991, and the relevant authority documents establishing that the petition premises belong to the Mumbai Port Authority, a statutory authority, and are "public premises" within the meaning of Section 2(e) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 ("PPE Act"). Significantly, the ownership of the petition premises by the Petitioner has not been disputed by Respondent No.1. The principal contention of Respondent No.1 is that notwithstanding the premises being public premises, the present proceedings are not maintainable as its tenancy is allegedly protected under the Maharashtra Rent Control Act, 1999, that the Estate Officer lacks jurisdiction, and that the PPE Act cannot override its pre-existing tenancy rights.

b) The aforesaid contention is devoid of merit. The Hon'ble Supreme Court in Dwarkadas Marfatia & Sons v. Board of Trustees of the Port of Bombay, AIR 1989 SC 1642, recognised the special character of Port Trust properties and held that the Port Trust is governed by public law obligations while dealing with its premises.

The legal position was thereafter authoritatively settled by the Constitution Bench of the Hon'ble Supreme Court in Ashoka Marketing Ltd. & Ors. v. Punjab National Bank & Ors., (1990) 4 SCC 406, wherein it was held that the PPE Act is a special enactment intended to secure expeditious eviction of unauthorised occupants from public premises and, to the



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extent of any inconsistency, overrides the provisions of the State Rent Control legislation. The Constitution Bench categorically held that once premises fall within the definition of "public premises" under the PPE Act and the occupant becomes an "unauthorised occupant" within the meaning of Section 2(g), such occupant cannot invoke the protection of the Rent Control Act to defeat proceedings under the PPE Act.

- d) The aforesaid legal position has now been recently reaffirmed by the Hon'ble Supreme Court in *Life Insurance Corporation of India & Anr. v. Vita Pvt. Ltd. & Anr.*, 2025 INSC 1419, wherein the Supreme Court, after an exhaustive consideration of the earlier precedents, reaffirmed the ratio laid down in *Ashoka Marketing* and held that the PPE Act is a complete code governing eviction from public premises. The Court further clarified that an occupant of public premises cannot continue to claim protection under the State Rent Control legislation merely because the tenancy originated prior to the premises becoming public premises. To that extent, the contrary view expressed in *Suhas H. Pophale v. Oriental Insurance Co. Ltd.* was expressly overruled. The Supreme Court emphasised that once the property answers the description of "public premises" and the authority to occupy has been validly determined, the relationship between the parties is thereafter governed exclusively by the provisions of the PPE Act, and the jurisdiction of the Estate Officer cannot be ousted by invoking the provisions of the State Rent Control Act.
- e) Applying the aforesaid settled principles to the facts of the present case, this Authority finds that the petition premises admittedly belong to the Mumbai Port Authority and squarely fall within the definition of "public premises" under Section 2(e) of the PPE Act. Upon valid termination of Respondent No.1's authority to occupy the premises, its continued occupation, if any, is governed by Section 2(g) of the PPE Act, and the Estate Officer is competent to adjudicate the present proceedings under Sections 4, 5 and 7 of the Act. The plea of protection under the Bombay Rent Act, 1947 or the Maharashtra Rent Control Act, 1999 is therefore legally untenable and cannot defeat the jurisdiction conferred upon this Authority by the PPE Act.
- f) It is further pertinent to note that Section 15 of the PPE Act expressly bars the jurisdiction of Civil Courts in respect of matters which the Estate Officer is empowered to determine under the Act. The legislative object of the PPE Act is to ensure expeditious recovery and proper management of public property. Acceptance of the Respondent's contention would not only run contrary to the statutory scheme but would also defeat the very purpose for which the PPE Act was enacted.
- g) In view of the above discussion and the law laid down by the Hon'ble Supreme Court in *Ashoka Marketing*, as reaffirmed in *LIC v. Vita*, this Authority has no hesitation in holding that the present proceedings are fully maintainable under the PPE Act. The Respondent has failed to establish any subsisting statutory protection or any legal bar to the exercise of jurisdiction by the Estate Officer. Accordingly, Issue No.2 is answered in the Affirmative, whereas Issue Nos.3 and 5 are answered in the Negative.



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34) As to Issue No. 4

- a) The Respondent No 1 heavily relied upon the plea that the Petitioners continuously accepted rent and compensation and therefore waived alleged breaches. However, the Petitioners have established that receipts for payments were accepted "without prejudice" to their rights and contentions. Mere acceptance of occupation charges after breaches or during pendency of proceedings does not amount to waiver of breaches. The Respondent No 1 failed to prove any express condonation or regularization of breaches by the Petitioners. Moreover, the Respondent No1 has also failed to produce any document from Development Authority authorising the unauthorised construction and change of use. The inspection reports demonstrate continuing breaches including unauthorized subletting, unauthorized construction, Change of use and induction of third parties. Therefore, no waiver is established. **Hence, Issue No. 4 is answered in the Negative.**

35) As to Issue No.9

- a) The inspection reports dated 07.02.2018 and 28.03.2018 clearly record existence of unauthorized hutments, sheds, tin structures and additions causing increase in FSI. The Respondent No 1 contended that the sheds were erected for safety purposes. However, no sanctioned plans, approvals or written permission issued by the Petitioners were produced.
- b) The Petitioners have specifically pleaded that Respondent No.1, during the subsistence of its occupation, carried out substantial additions and alterations of a permanent nature on the petition premises without obtaining the prior written consent or approval of the Petitioner Authority. In support thereof, the Petitioners have relied upon the Inspection Reports dated 07.02.2018 and 28.03.2018, the Survey Report and the photographs exhibited on record, all of which consistently disclose the existence of unauthorized hutments, tin-sheet structures, sheds and other permanent constructions erected within the petition premises. The inspection reports further record that such constructions had resulted in an increase in the built-up area/FSI and were wholly inconsistent with the terms governing occupation of the premises.
- c) The contention that the Petitioner's Affidavit of Evidence does not constitute substantive evidence is devoid of merit. The record reveals that the Petitioner's authorised representative (PW-1) duly filed his Affidavit of Evidence in support of the Petition and entered appearance before this Authority for the purpose of tendering evidence. The Respondents were afforded repeated and adequate opportunities to cross-examine PW-1. However, despite such opportunities, the Respondents remained absent and failed to avail themselves of their right to cross-examine the witness. Consequently, the Respondents' right to cross-examine PW-1 was closed. Having failed to exercise the opportunity provided in accordance with Law, the Respondents cannot now be permitted to contend that the Petitioner's evidence remains unproved or that the contents of the affidavit cannot be relied upon. A party who, despite due opportunity, elects not to cross-examine a witness is deemed to have waived its right to challenge such testimony on matters which could have been tested in cross-examination. The oral evidence of PW-1, therefore, remains un rebutted and is entitled to due evidentiary weight. The Respondent No. 1 cannot be permitted to take advantage of their own default. Having consciously failed to challenge



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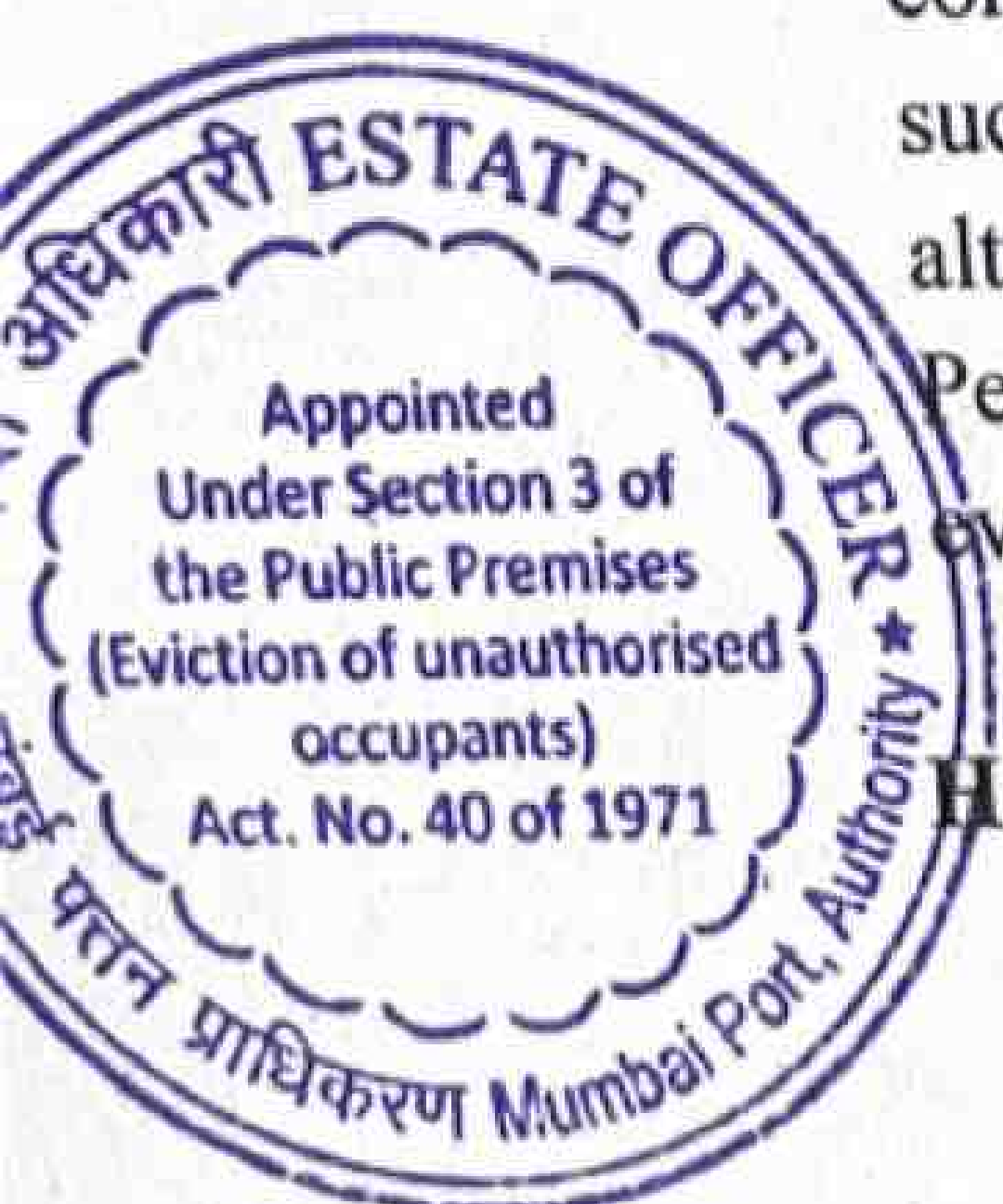
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the testimony of PW-1 despite repeated opportunities, they are estopped from questioning the admissibility, correctness or veracity of the Petitioner's evidence at the stage of final arguments.

- d) The oral testimony of PW-1 fully corroborates the documentary evidence. PW-1 has categorically deposed that these constructions were noticed during official inspections conducted by the officers of the Petitioner Authority in the discharge of their official duties and that no permission whatsoever had been granted by the competent authority of Mumbai Port Authority for raising such structures. Where the evidence of a witness remains substantially unchallenged and is supported by contemporaneous official records, such evidence carries considerable evidentiary value and cannot be discarded merely on the basis of bald denials in the written statement.
- e) The principal defence of the Respondent no 1 is that the tin-sheet structures were erected only as protective measures to prevent bottles, garbage and other objects from being thrown into the premises from the adjoining railway track and were therefore necessary for safety and security. This contention, however, is wholly unsupported by any legally admissible evidence. The Respondent No 1 has not produced any sanctioned building plan, structural approval, No Objection Certificate, permission letter or any document issued either by the Petitioner Authority or by any competent statutory authority authorising such constructions. Even assuming, for the sake of argument, that the structures were erected for security purposes, such necessity cannot, by itself, legalise constructions made upon public premises in violation of the contractual terms governing occupation. No lessee or occupant can unilaterally alter the physical character of public property merely on the ground of convenience or perceived necessity without obtaining prior approval from the competent authority.
- f) It is equally significant that the Respondent, despite disputing the Petitioner's allegations, failed to enter the witness box to substantiate its defence. The Respondent having failed to discharge this burden, an adverse inference necessarily follows against it.
- g) The inspection reports prepared by the officials of the Petitioner in the ordinary course of official duty constitute contemporaneous documentary evidence and there is nothing on record to indicate that the same are fabricated or unreliable. In view of the unrebutted inspection reports, survey records, photographic evidence and the deposition of PW-1, coupled with the complete absence of any permission or approval authorising the constructions, this Authority has no hesitation in holding that the Petitioners have successfully established that Respondent No.1 illegally carried out additions and alterations of a permanent nature upon the petition premises without the consent of the Petitioner Authority. The defence put forth by the Respondent No 1 is unsupported by evidence and is accordingly rejected.

Hence, Issue No. 9 is answered in the Affirmative.



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36) As to Issue Nos.10

- a) The Petitioners have consistently pleaded that Respondent No.1, in complete violation of the terms and conditions governing its occupation, unlawfully parted with possession of substantial portions of the petition premises in favour of Respondent Nos.2 to 9 /other third parties without obtaining the prior written consent of the Petitioner Authority. The inspection reports dated 07.02.2018 and 28.03.2018, together with the survey report and photographs, specifically identify the various persons found occupying different portions of the premises and record the nature of their occupation. These contemporaneous official records have been duly proved through the evidence of PW-1 and remain substantially un rebutted.
- b) The defence of Respondent No.1 is merely that Respondent Nos.2 and 3 were dealers or authorised signatories connected with the operation of the petrol pump and that Respondent Nos.4 to 9 were not unauthorised occupants. However, the Respondent has failed to produce any document issued by the Petitioner Authority granting permission to induct third parties or to part with possession of any portion of the public premises.
- c) Moreover, this Authority is not unmindful that a dealership/licensee arrangement for operation of a petrol pump outlet, where the oil company retains supervisory and possessory control, is ordinarily distinguishable from subletting. However, Respondent No.1) has produced no dealership agreement, appointment letter, or any document evidencing that Respondent Nos.2 and 3 operated under its continuing supervision and control, nor any material showing that possession of the premises remained with Respondent No.1. In the absence of such evidence, the bare assertion that Respondent Nos. 2) and 3) were "dealers" cannot be accepted, and does not in any event explain the presence of Respondent Nos. 4) to 9), who are not claimed to be dealers, authorised signatories, or connected with the petrol pump operation at all, and whose occupation of separate portions of the premises stands independently established by the inspection reports, survey report and photographs. The Respondent has failed to produce any document issued by the Petitioner Authority granting permission to induct any of Respondent Nos. 2) to 9) or to part with possession of any portion of the public premises, and has completely failed to discharge this burden.
- d) This Authority is therefore satisfied that Respondent No.1 has unlawfully parted with possession of portions of the petition premises and has inducted third parties without obtaining the previous written permission of the Petitioner Authority. Such conduct constitutes a fundamental breach and independently justifies termination of the occupation and eviction proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

Hence, Issue No. 10 is answered in the Affirmative.

As to Issue Nos.11

The documentary evidence on record further establishes that the petition premises were allotted exclusively for the limited purpose of operating a Petrol Pump Service Station and Depot for Petrol and Motor Accessories under the Memorandum of Understanding dated



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03.07.1991. The sanctioned purpose of occupation was therefore specific, restricted and conditional. The inspection reports, however, disclose that substantial portions of the premises were being utilised for purposes wholly alien to the sanctioned use, including storage of scrap material, occupation by third parties and other activities inconsistent with the object for which the premises had originally been allotted. These findings are corroborated by the survey reports, photographs and the oral testimony of PW-1.

- b) The Respondent No 1 has failed to produce any permission, licence, approval, revised sanction or communication issued by the Petitioner Authority authorising such change of use. Nor has any material been placed on record to establish that the competent authority had ever condoned or regularised such deviation. An occupant of public premises cannot unilaterally alter the purpose for which public property has been allotted. Any unauthorized deviation from the sanctioned use constitutes a serious breach affecting the rights of the statutory authority to regulate and manage its public property. Accordingly, this Authority holds that the Petitioners have successfully established unauthorized change of use by Respondent No.1.

Hence, Issue No. 11 is answered in the Affirmative.

38) As to Issue Nos.12

- a) The Petitioners have established through Trustees Resolution No.13 of 2018, Exhibit PW-1/9, corroborated by the oral testimony of PW-1, that the petition premises are required for the Petitioner's own developmental requirements and public projects. This documentary and oral evidence stands unrebutted on record and affirmatively discharges the burden cast upon the Petitioners under Issue No.12.
- b) The has not produced any evidence to displace this proof. The allegations of arbitrariness and discrimination raised by Respondent No.1 remain bald assertions in the written statement, unsupported by any material on record, and do not detract from the Petitioners' evidence establishing the requirement.
- c) Accordingly, the requirement of the petition premises for the Petitioner's own public purposes stands duly established on the evidence on record.

Hence, Issue No. 12 is answered in the **Affirmative**.

39) Issues No. 1 & 6

- a) The record reveals that the Petitioner, through its Advocate's Notice dated 12.02.2018, lawfully terminated the tenancy/lease granted in favour of Respondent No. 1 and unequivocally called upon the Respondent No. 1 to quit, vacate and hand over peaceful, vacant and quiet possession of the premises in question within the stipulated period. The said Notice was personally served on the Respondent No. 1. The Respondent No. 2, 3, 4 and 5 have been served with the notice by way of RPAD and the said notice was also pasted on the premises by this Office Inspector, Mr. Anil P. Waghambare in presence of two witnesses on 07.02.2018. The office copy of Petitioner's Advocate's said notice of termination dated



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12.02.2018, the acknowledgments of personal service and the postal acknowledgments as annexed and marked under 'Exhibit-E (Colly)' in the petition proves the tenancy of the Respondent No. 1 is properly terminated and the Notice dated 12.02.2018 was duly served on Respondents.

- b) The objection that the authority of the officer issuing the termination notice was not established is not borne out by the record. The Petitioner's Advocate issued the notice dated 12.02.2018 pursuant to instructions of the Petitioner Authority, and the Powers of Attorney executed in favour of Shri Rakesh Saxena and Shri M.S. Mohite, exhibited as Exhibit PW-1/12 (Colly), establish that the said persons were duly authorised to act and give instructions on behalf of the Petitioner in this regard. This position stands corroborated by the unrebutted testimony of PW-1. The objection as to authority is accordingly rejected.
- c) The Respondent No. 1 committed various breaches during the subsistence of the lease viz., illegal sub-letting, unauthorized construction, change of user. The inspection reports establish that Respondent Nos. 2 to 9 /other third parties were occupying portions of the premises without authority. The Respondents failed to establish any subsisting authority permitting continued occupation after termination. The said breaches were reported by Petitioner's Inspectors pursuant to which the petitioner terminated the lease by their Advocate's Notice dated 12.02.2018.
- d) It should be noted that after expiry of the notice period, the Respondent No. 1 is an unauthorized occupant in the said premises within the meaning of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and the Respondent No. 2 to 9 are unlawful occupants of the said premises, who have been joined to the Petition for the effective reliefs. Hence, the Respondents 1 to 9 are unlawful occupants in the premises in petition. **Hence, Issue No. 1 & 6 are answered in the Affirmative**

40) As to Issue No. 7 & 8

- a) The Petitioners produced statement of arrears duly signed and maintained in official course showing outstanding arrears of Rs. 89,63,083.46/-, at the time of issuance of show cause notice by this Authority dated 22.06.2018. The Petitioners also produced Trustees Resolutions and policy documents regarding interest and delayed payment charges. The contents of the statement of arrears is also testified by PW1. He has deposed in the affidavit that the aforesaid statement of arrears is as per the records maintained by the petitioner as per the due course of business. Therefore, the arrears of rent, compensation, damages and rates thereof and rates of interest thereon can be said to have been proved by the petitioner, particularly because the Respondent No.1 merely denied the claim but failed to produce any accounts, payment statements or reconciliations disproving the arrears. Therefore, arrears are stand proved.

The answer to this issue necessarily follows from the findings already recorded on Issue Nos. 1, 2, 3, 5 and 6. This Authority has already held that the petition premises are "public



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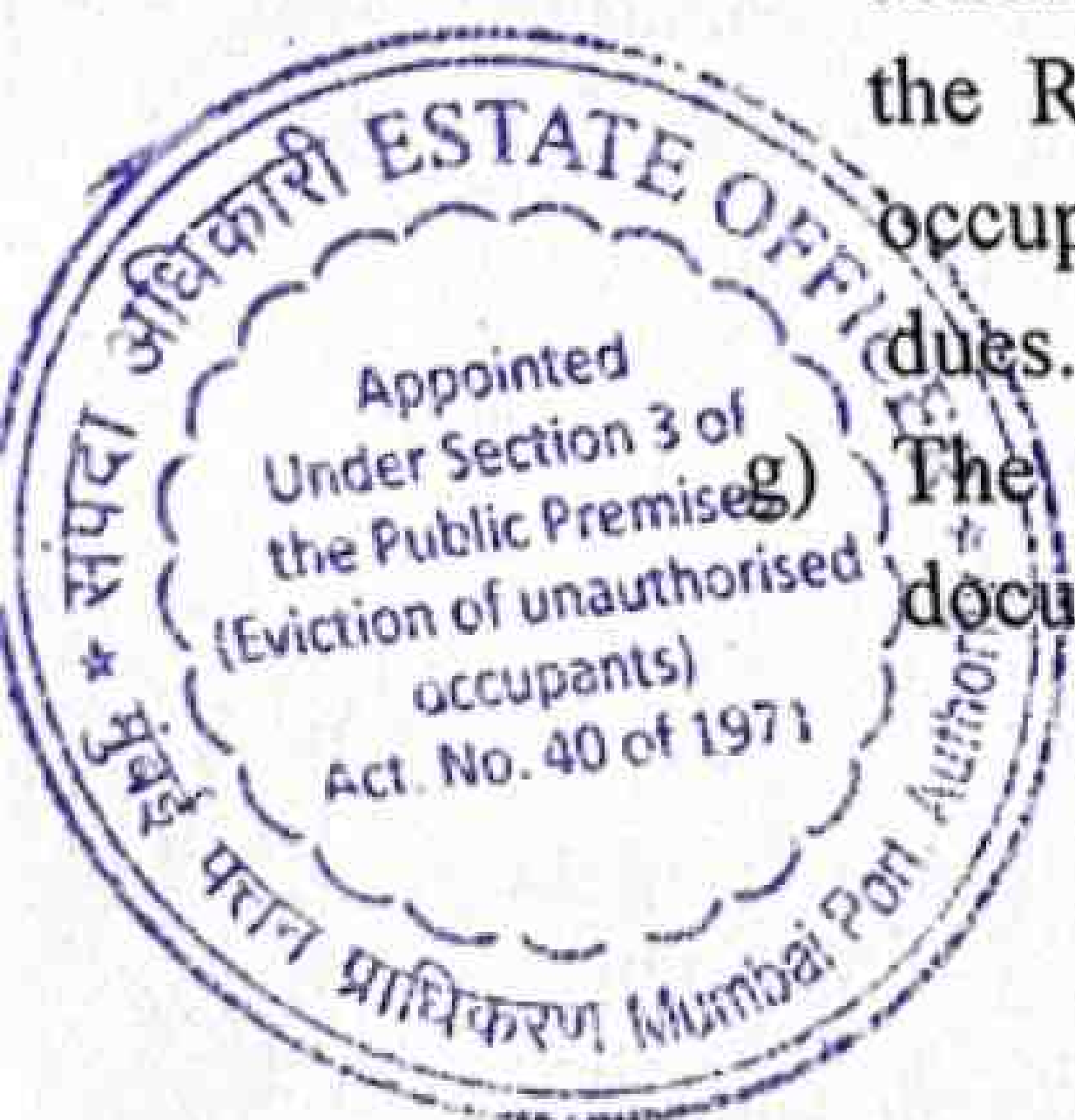
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premises" within the meaning of Section 2(e) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and that the tenancy of Respondent No.1 stood validly and lawfully terminated by the Advocate's Notice dated 12.02.2018; and that upon expiry of the notice period, Respondent No.1 ceased to have any lawful authority to continue in occupation of the petition premises. Consequently, Respondent No.1 became an unauthorised occupant within the meaning of Section 2(g) of the Act and Respondent Nos.2 to 9, claiming through Respondent No.1, also became unauthorised occupants.

- c) The Section 7(2) of the Public Premises Act, 1971 expressly empowers the Estate Officer to assess and recover damages for the period during which the public premises have remained in unauthorised occupation. The legislative intent is to ensure that a person who continues in unlawful occupation of public premises does not derive any benefit from such occupation at the cost of public property and public revenue.
- d) The Petitioners have placed on record the detailed statements showing calculation of damages based on the applicable Scale of Rates, Trustees' Resolutions, Policy Guidelines for Land Management, TAMP Notifications and other policy documents governing assessment of compensation and damages. These documents have remained substantially un rebutted. The methodology adopted for assessment of damages is based upon the policy decisions of the competent authority governing occupation of Mumbai Port Authority lands and cannot be said to be arbitrary merely because the Respondent No 1 dispute the quantum.
- e) The Respondents have challenged the claim for damages on the ground that the revised Scale of Rates, TAMP Notifications and subsequent policy decisions cannot be applied retrospectively and that the Petitioners cannot enhance their monetary claims during the pendency of the proceedings. However, this contention cannot be accepted. Damages under Section 7(2) of the Act are not contractual rent but statutory compensation payable for wrongful occupation of public premises. Such damages continue to accrue for every day the unauthorised occupation subsists. The Petitioners have also amended their pleadings to incorporate the revised rates and policy changes, thereby affording full opportunity to the Respondents to contest the same. The Respondents, despite such opportunity, did not produce any credible material demonstrating that the rates adopted by the Petitioners are contrary to law or inconsistent with the applicable policy.
- f) Equally untenable is the contention that acceptance of certain payments by the Petitioners disentitles them from claiming damages. As already held while deciding Issue No.4, acceptance of occupation charges "without prejudice" cannot amount to recognition of any continuing tenancy or waiver of the termination. Once the occupation became unauthorised, the Respondents remained liable to compensate the Petitioners for continued use and occupation of the premises irrespective of any interim payments made towards outstanding dues.
- The Respondents have also failed to produce any credible alternative calculation, or documentary material to demonstrate that the Petitioners' computation is erroneous. Mere



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denial of the quantum claimed, unsupported by evidence, cannot displace the documentary evidence produced by the Petitioners. It is well settled that where documentary evidence regarding assessment of damages is produced and remains substantially unrebutted, the burden shifts upon the opposite party to establish that the assessment is arbitrary or excessive. The Respondents have failed to discharge such burden.

- h) This Authority is also mindful that the petition premises constitute valuable public property belonging to the Mumbai Port Authority. A person who continues in occupation after lawful termination of his authority cannot be permitted to enjoy the benefits of such occupation without paying appropriate compensation determined in accordance with law. Any contrary interpretation would defeat the very object of the Public Premises Act, 1971, which is intended to ensure expeditious recovery of public premises and compensation for their unauthorised occupation.
- i) Once occupation became unauthorized after termination, the Respondents became liable to pay damages and mesne profits for wrongful use and occupation. The Petitioners produced damages calculation statements, Trustees Resolutions, TAMP notifications, revised Scale of Rates and policy guidelines supporting claim for damages. The Respondents failed to rebut the basis of computation through substantive evidence. The Respondents also failed to establish any lawful authority to continue possession after termination. Therefore, the Petitioners are entitled to damages and mesne profits till recovery of possession.
- j) The Respondent No 1 had contended that the claim for arrears is barred by limitation. This contention proceeds on the premise that the claim is one for arrears of rent under lease, attracting the Limitation Act, 1963. That premise is misconceived. The relationship between the parties, upon expiry of the original tenure without execution of a registered lease deed, continued only as a monthly tenancy, and upon lawful termination thereof by the Advocate's Notice dated 12.02.2018, the Respondents' occupation became unauthorized within the meaning of Section 2(g) of the PPE Act. The sums claimed and assessed thereafter are statutory damages / compensation for unauthorized occupation of public premises assessed under Section 7(2) and 7(2A) of the PPE Act, 1971 — a special enactment which does not prescribe any period of limitation for such assessment. Each day of continued unauthorized occupation constitutes a continuing wrong giving rise to a fresh liability, and the plea of limitation is accordingly rejected.
- k) Accordingly, this Authority is satisfied that the Petitioners have successfully established their entitlement to recover damages for wrongful use and occupation of the petition premises under Section 7(2) of the Public Premises Act, 1971 from the date on which the Respondents' occupation became unauthorised and continuing until the date vacant and peaceful possession of the petition premises is actually delivered to the Petitioners.

Hence, Issue No. 7 & 8 are answered in the Affirmative.



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41) As to **Issue No.13** is concerned

- a) The determination of this issue is the inevitable consequence of the findings already recorded on Issues Nos. 1 to 12. This Authority has categorically held that the petition premises constitute "public premises" within the meaning of Section 2(e) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, that the occupation of Respondent No.1 stood validly and lawfully terminated by the Advocate's Notice dated 12.02.2018, that the Respondents have committed repeated and fundamental breaches of the terms governing their occupation by carrying out unauthorised constructions, changing the sanctioned user of the premises, unlawfully inducting third parties and parting with possession without the Petitioner's consent; and that, upon expiry of the notice period, the Respondents ceased to have any lawful authority to remain in occupation of the petition premises.
- b) Once the authority under which the Respondents entered into possession has lawfully come to an end, their continued occupation becomes unauthorised within the meaning of Section 2(g) of the Act and the objection that the Memorandum of Understanding dated 03.07.1991 is insufficiently stamped and unregistered does not assist the Respondent No.1. The jurisdiction of the Estate Officer under Section 5 is thereafter attracted, and upon recording satisfaction that the occupants are in unauthorised occupation, the Estate Officer is under a statutory obligation to direct eviction. The Public Premises Act is a special legislation enacted with the object of ensuring expeditious recovery of public property from unauthorised occupants and preventing continued deprivation of valuable public assets. Any interpretation permitting an occupant, whose authority has already been lawfully terminated, to indefinitely continue in possession would frustrate the very object and purpose of the enactment.
- c) The Respondent contends that all statutory notices issued by this Authority under Sections 4, 5A and 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, are vitiated in law as they refer to the property comprising Old RR Nos. 1712 and 1785, whereas the present proceedings concerns Old RR No. 1710 and 1785, rendering the notices legally unsustainable. This Authority is unable to accept the aforesaid contention. A plain reading of the petition, the notices issued under the PPE Act, 1971, and the documents forming part of the record clearly establishes that the subject premises have throughout been identified not merely by the old RR number but also by the complete butted and bounded description, specifying the location, area, adjoining boundaries and other identifying particulars. The identity of the public premises, therefore, has remained definite, certain and incapable of any ambiguity. The reference to Old RR No. 1712 in place of Old RR No. 1710 appears to be nothing more than an inadvertent typographical or clerical error, which does not alter the identity of the property nor mislead the Respondents regarding the premises forming the subject matter of these proceedings. Where the property is otherwise clearly identifiable from its butted and bounded description, a clerical error in one of the identifying numbers does not invalidate the proceedings. The Respondents have participated in the proceedings with full knowledge of the premises in question and failed to establish any prejudice occasioned by the said error. Accordingly, this Authority holds that the apparent



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typographical error in the RR number neither vitiates the statutory notices nor renders the proceedings under the Public Premises Act illegal or unsustainable.

d) The Respondent No. 1 relied upon the Supreme Court judgment in Jamshed Hormushji Wadia v. Board of Trustees, Port of Mumbai, (2004) 3 SCC 214 (hereinafter referred to as "the Wadia judgment") to contend that the tenancy ought to have been renewed by the Petitioner as per the guidelines of the Supreme Court in the case of Jamshed Hormushji Wadia and also should have regularized the alleged breaches as per the directions in the said Supreme Court judgment. It is observed by this authority that Hon'ble Supreme Court had set out certain criteria for regularization of breaches, which have not been complied with by the Respondent No.1 and hence no question of regularization of breaches arose. More precisely, this defense is rejected for the following reasons:

i. The Hon'ble Supreme Court in the Wadia judgment prescribed specific preconditions to be fulfilled by a tenant seeking regularization of breaches and renewal of tenancy. The Respondent No. 1 did not produce any evidence to that effect.

ii.

(b) Without proving compliance with the conditions laid down in the Wadia judgment, the Respondent No. 1 cannot avail of the benefit of that judgment as a shield against valid proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

e) In view of the above, this Authority has no hesitation in holding that the Petitioners have successfully established every ingredient necessary for grant of relief under Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The Respondents have no subsisting legal right, title or authority to continue in occupation of the petition premises. Consequently, the Petitioners are fully entitled to recover vacant and peaceful possession of the premises described in Prayer Clause (b) of the Petition, together with all structures standing thereon, in accordance with law.

Hence, Issue No.13 is answered in the Affirmative.

42) As to Issue No.14 & 15 this Petition deserves to be allowed with costs.

43) In view of the above findings recorded on issues No. 1 to 13 and upon perusal of the petition, written arguments, and documents submitted on record, it is observed that the Petitioner validly and lawfully terminated monthly tenancy of Respondent No. 1. In the circumstances, being satisfied as above, I therefore, declare that the Respondent No 1 to 9 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 petition, written arguments and documents submitted on record, it is observed that the Petitioner validly and lawfully terminated monthly tenancy of Respondent No 1. In the circumstances, being satisfied as above, I, therefore, declare that the Respondent are



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in unauthorized occupation of the premises. I hereby declare Respondent as unauthorized occupants and pass orders for payment of arrears of compensation, taxes, and other charges under section 7(1) (2) (2A) of the 1971 Act against the Respondent No 1. Accordingly, orders in Form 'G' are issued.

45) Upon perusal of the evidence, I have assessed Rs 39,04,64,862.33 (Rupees Thirty Nine Crore Four Lakh Sixty Four Thousand Eight Hundred Sixty Two and Thirty Three Paise Only) i.e. the (i) compensation upto 31.03.2018 with interest as on 30.06.2026 amounting to Rs. 2,19,27,037.26 (Rupees Two Crore Nineteen Lakh Twenty Seven Thousand Thirty Seven Rupees and Twenty Six Paise Only) and (ii) damages and compensation arrears as per latest statement amounting to Rs 36,85,37,825.07 (Rupees Thirty Six Crore Eighty Five Lakh Thirty Seven Thousand Eight Hundred Twenty Five Rupees and Seven Paise Only). I hereby pass orders for payment of arrears of compensation, damages, taxes, and other charges under section 7(1) (2) (2A) of the 1971 Act against the Respondent No. 1, who is directed to pay the same. Accordingly, orders in "FORM- G" are issued. The calculation sheet is attached.

SCHEDULE

Description of the Petition Premises

All that piece and parcel of Plot of land bearing Old R.R. No. 1710 & 1785, admeasuring 826.74 sq. meters or thereabouts situated at Mazgaon Reclamation Estate, Mumbai and bounded as under:

On or towards the North by: MCGM Road.
On or towards the South by: MBPT Plot No. 354.
On or towards the East by: Harbour Central Railway Line.
On or towards the West by: Barrister Nath Pai Marg.

Place: Mumbai

Date: 17.07.2026

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(V.M. Sonar)
ESTATE OFFICER



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CASE NO. EO/E (240) of 2018

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) **Bharat Petroleum Corporation Ltd.**

Add- Legal Dept. Western Region,
Western Regional Office.
Plot No. 6, Sector 2,
Kharghar, Navi Mumbai -410 210

2) **Aziz Mansubar Shaikh**

3) **Milind Avinash Dhawle**

4) **Vijay Service Center**

5) **Mehmadullah Aminullah Khan**

6) **Basidalli Akabaralli Siddiqui**

7) **Akbar Mohamed Khan**

8) **Akbar Mohd. Khan**

9) **Aabidalli**

Add - Old RR. No. 1710 & 1785,
Vijay Service Center,
Mazgaon Reclamation Estate,
Mumbai- 400 010.

.... 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 12.02.2018 to the Respondent No. 1 terminated the lease.

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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.

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 BPCL & 8 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 BPCL 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.

SCHEDULE
Description of the Petition Premises

All that piece and parcel of Plot of land bearing Old R.R. No. 1710 & 1785, admeasuring 826.74 sq. meters or thereabouts situated at Mazgaon Reclamation Estate, Mumbai and bounded as under:

On or towards the North by: MCGM Road.
On or towards the South by: MBPT Plot No. 354.
On or towards the East by: Harbour Central Railway Line.
On or towards the West by: Barrister Nath Pai Marg.

Place: Mumbai
Date: 17.07.2026



वि. मा. सोनार
(V.M. Sonar)
ESTATE OFFICER

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 (240) of 2018

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) Bharat Petroleum Corporation Ltd.

Add- Legal Dept. Western Region,
Western Regional Office.
Plot No. 6, Sector 2,
Kharghar, Navi Mumbai -410 210

2) Aziz Mansubar Shaikh

3) Milind Avinash Dhawle

4) Vijay Service Center

5) Mehmadullah Aminullah Khan

6) Basidalli Akabaralli Siddiqui

7) Akbar Mohamed Khan

8) Akbar Mohd. Khan

9) Aabidalli

Add - Old RR. No. 1710 & 1785,
Vijay Service Center,
Mazgaon Reclamation Estate,
Mumbai-400 010

....Respondents

FORM - G

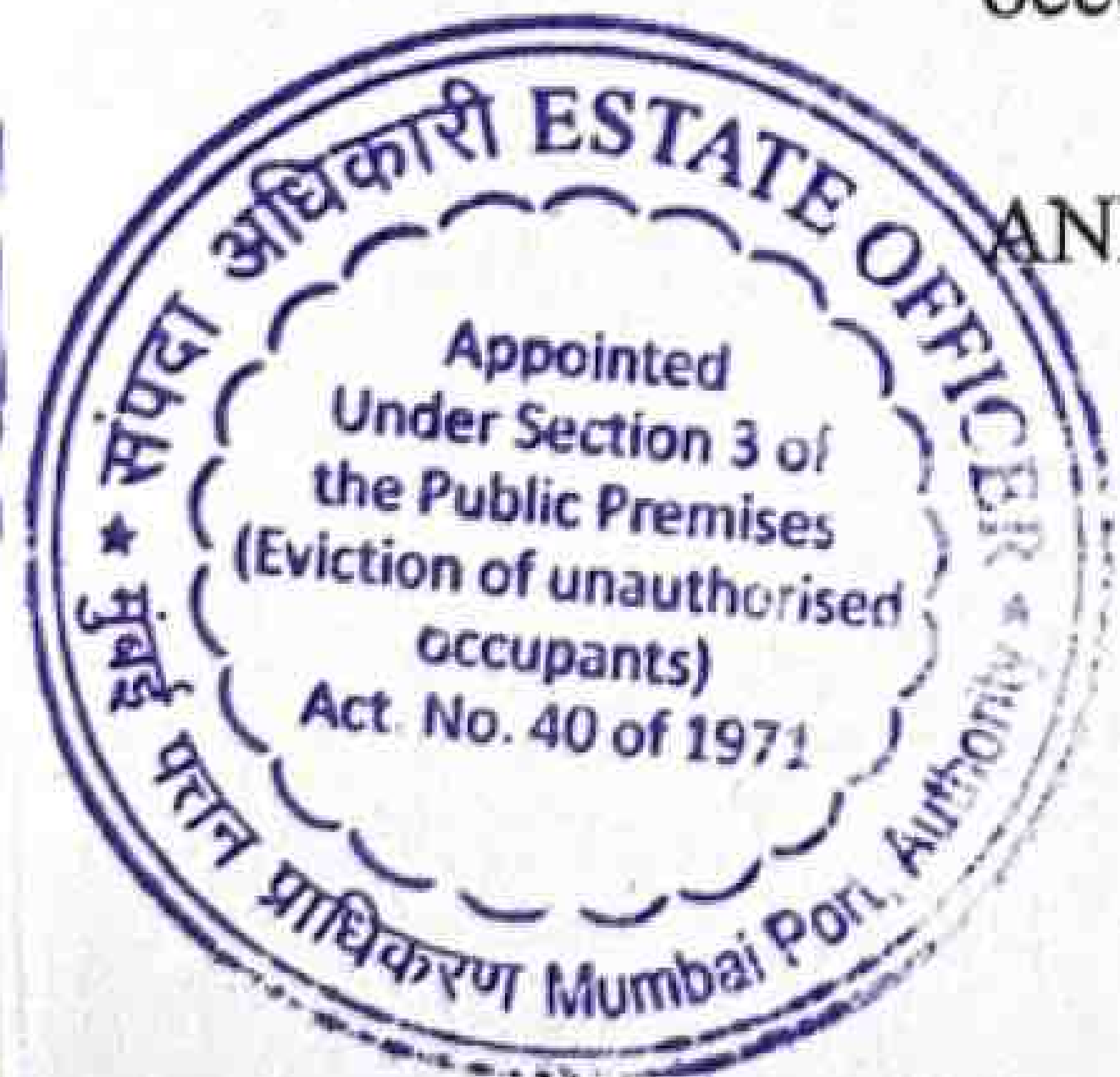
(Order under Sub Section (2) and (2-A) of Section 7 of The Public Premises (Eviction of Unauthorised Occupants) Act 1971)

WHEREAS, I, the undersigned am satisfied that you the Respondents No. 1 to 9 are unauthorized occupation of the Public Premises in the Schedule below.

AND WHEREAS, by written notice dated 22.06.2018 you were called up on to show cause on 10.07.2018, why an order requiring you to pay arrears of compensation for wrongful use and occupation of the premises amounting to Rs. 89,63,083.46/- should not be made;

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

वि. मा. सोनार



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

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 April, 2018 at the rate of three times of the rate of Rs. 851.20 i.e. 2553.60 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 section 7 of the said Act, I also hereby order you to pay the (i) compensation upto 31.03.2018 with interest as on 30.06.2026 amounting to Rs. 2,19,27,037.26 (Rupees Two Crore Nineteen Lakh Twenty Seven Thousand Thirty Seven Rupees and Twenty Six Paise Only) and (ii) damages and compensation arrears as per latest statement amounting to Rs 36,85,37,825.07 (Rupees Thirty Six Crore Eighty Five Lakh Thirty Seven Thousand Eight Hundred Twenty Five Rupees and Seven Paise 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

All that piece and parcel of Plot of land bearing Old R.R. No. 1710 & 1785, admeasuring 826.74 sq. meters or thereabouts situated at Mazgaon Reclamation Estate, Mumbai and bounded as under:

On or towards the North by: MCGM Road.
On or towards the South by: MbPT Plot No. 354.
On or towards the East by: Harbour Central Railway Line.
On or towards the West by: Barrister Nath Pai Marg.

Place: Mumbai
Date: 17.07.2026



वि. मा. सोनार
(V.M. Sonar)
ESTATE OFFICER

MUMBAI PORT AUTHORITY
ESTATE DIVISION

DATE : 08/07/2026

STATEMENT OF ARREARS UPTO 31.03.2018 INCLUDING INTEREST AS ON 30.06.2026

Name of Tenant/Lessee	: M/S. BHARAT PETROLEUM CORPORATION LTD.
Plot No.	: 1710 & 1785
File No.	: 20801636
Area (in sqm)	: 826.74
	: 1

ALL CALCULATIONS / RATES ARE SUBJECT TO VERIFICATION / AUDIT.
THIS STATEMENT DOES NOT INCLUDE ANY CHARGES/PENALTIES PAYABLE FOR REGULARISATION OF BREACHES, IF ANY.
ARREARS FROM 01.10.2012 ARE CALCULATED AS PER APPROVED SOR
ERRORS AND OMISSIONS EXCEPTED.

PARTICULARS		ARREARS + IBNP (X)	PRESUMING INTEREST (Y)	TOTAL ARREARS INCLUDING INTEREST Z = (X + Y)
ARREARS PAYABLE AS PER SC JUDGMENT INCLUDING INTEREST ON ARREARS FROM 01.11.1990 TO 31.08.2006 AS ON 30.06.2026 (excluding premium/ penalties for breaches)		11,14,013.88	14,20,572.00	25,34,585.88
LESS: AMOUNT IN MISC. DEPOSIT (MD) A/C		3,02,841.90		3,02,841.90
TOTAL ARREARSAS PER SC JUDG. UPTO 31.08.2006 INCLUDING INTEREST AS ON 30.06.2026 (1-2)		8,11,171.98	14,20,572.00	22,31,743.98 (A)
4	ARREARS AS PER TR 127/2006 WEF 01.09.2006 TO 30.09.2012 INCLUDING INTEREST AS ON 30.06.2026	3,78,890.28	50,95,744.46	54,74,634.74
5	ARREARS TOWARDS SERVICE TAX UPTO 30.09.2012 INCLUDING INTEREST AS ON 30.06.2026	1,91,470.46	3,437.28	1,94,907.74
6	TOTAL ARREARS AS PER TR 127/2006 FROM 01.09.2006 TO 30.09.2012 INCLUDING INTEREST AS ON 30.06.2026 (4+5)	5,70,360.74	50,99,181.74	56,69,542.48 (B)
7	ARREARS AS PER TR-127/2006 W.E.F FROM 01.10.2012 TO 31.03.2018 INCLUDING INTEREST AS ON 30.06.2026	26,26,497.08	4,91,003.82	31,17,500.90
8	ARREARS TOWARDS SERVICE TAX AND GST FROM 01.10.2012 TO 31.03.2018 AS ON 30.06.2026	47,807.23	25,972.61	73,779.84
9	TOTAL ARREARS AS PER TR -127/2006 FROM 01.10.2012 TO 31.03.2018 INCLUDING INTEREST AS ON 30.06.2026 (7+8)	26,74,304.31	5,16,976.43	31,91,280.74 (C)
10	TOTAL ARREARS PAYABLE AS PER SC JUDGMNENT & TR -127/2006 UPTO 31.03.2018 INCLUDING INTEREST AS ON 30.06.2026	40,55,837.03	70,36,730.16	1,10,92,567.20 D = (A + B + C)
DIFFERENTIAL SOR ARREARS				
11	DIFFERENTIAL ARREARS AS PER SOR FROM 01.10.2012 TO 31.03.2018 INCLUDING INTEREST ON INCREASED ARREARS AS ON 30.06.2026	59,08,848.90	31,76,005.98	90,84,854.88
12	GST ON DIFFL. SOR ARREARS FROM 01.10.2012 TO 31.03.2018 INCLUDING INTEREST ON INCREASED GST ARREARS AS ON 30.06.2026	10,63,592.82	6,86,022.36	17,49,615.18
13	TOTAL DIFFERENTIAL SOR ARREARS INCLUDING INTEREST FROM 01.10.2012 TO 31.03.2018 AS ON 30.06.2026 (11+12)	69,72,441.72	38,62,028.34	1,08,34,470.06 (E)
TOTAL ARREARS PAYABLE UPTO 31.03.2018 INCLUDING INTEREST AS ON 30.06.2026		1,10,28,278.75	1,08,98,758.51	2,19,27,037.26 F = (D + E)

2.19 Crs.



[Signature]
Asst. Estate Manager (Gr.-I)
Mumbai Port Authority

MUMBAI PORT AUTHORITY
ESTATE DIVISION

DATE : 08/07/2026

Statement of Damages payable from 01.04.2018 to 30.06.2026 including interest as on 30.06.2026

NAME OF THE TENANT	:	M/S. BHARAT PETROLEUM CORPORATION LTD.
PLOT NO	:	1710 & 1785
CODE NO.	:	20801636
AREA (Sqmts)	:	826.74
FSI	:	1

- NOTE : 1. All THE CALCULATIONS ARE PROVISIONAL AND SUBJECT TO AUDIT / VERIFICATION.
2. ERRORS AND OMISSIONS EXCEPTED.
3. THE RATES ARE INCREASED BY 4% PER ANNUM EVERY OCTOBER UPTO 31.05.2023 AND
2% PER ANNUM EVERY OCTOBER W.E.F.01.06.2023

Particulars	SOR	
	2017-22	2022-27
Zone as per Ready Recknoer 2017 & 2022	10/78B	10/78H
Rate per Sq.mtr. per month for FSI 1 for Non-Home Occupation as on 01.10.2017 and 01.06.2023 for , 2017 & 2023 respectively.	851.20	465.22
TAMP Order no.	52/2021	-
Gazette Notification No.	554	43
Gazette Notification date	12.11.2021	26.04.2023

Rate as per TAMP APPROVED SOR SOR 2017-2022 SOR 2022-2027
Zone 10/78B 10/78H

Period	Rate FSI = 1	Rate FSI = 1
01.10.2017 to 30.09.2018	851.20	
01.10.2018 to 30.09.2019	885.25	
01.10.2019 to 30.09.2020	920.66	
01.10.2020 to 30.09.2021	957.49	
01.10.2021 to 30.09.2022	995.79	
01.10.2022 to 31.05.2023	1035.62	
01.06.2023 to 30.09.2023		465.22
01.10.2023 to 30.09.2024		474.52
01.10.2024 to 30.09.2025		484.01
01.10.2025 to 30.09.2026		493.69

Damages payable from 01.04.2018 (Three times of APPROVED SOR rate)

Period	Rate FOR FSI 1.00 as per SOR	Rate for FSI 1 as per SOR	Three times rate for Damages	Damages p.m
	(A)	(B)	C = (B X 3)	(C x Area)
01.04.2018 to 30.09.2018	851.20	851.20	2553.60	2111163.26
01.10.2018 to 30.09.2019	885.25	885.25	2655.75	2195614.76
01.10.2019 to 30.09.2020	920.66	920.66	2761.98	2283439.35
01.10.2020 to 30.09.2021	957.49	957.49	2872.47	2374785.85
01.10.2021 to 30.09.2022	995.79	995.79	2987.37	2469778.27
01.10.2022 to 31.05.2023	1035.62	1035.62	3106.86	2568565.44
01.06.2023 to 30.09.2023	465.22	465.22	1395.66	1153847.95
01.10.2023 to 30.09.2024	474.52	474.52	1423.56	1176913.99
01.10.2024 to 30.09.2025	484.01	484.01	1452.03	1200451.28
01.10.2025 to 30.09.2026	493.69	493.69	1481.07	1224459.81

DAMAGES FROM 01.04.2018 TO 30.06.2026 AS PER THREE TIMES OF SOR RATE

Sr. No.	PARTICULARS	AMOUNT (in RS.)
1	Damages from 01.04.2018 to 30.06.2026	181656517.90
2	GST on Damages from 01.04.2018 to 30.06.2026	32686779.77
3	Interest on Damages from 01.04.2018 to 30.06.2026 as on 30.06.2026	127047052.42
4	Interest on GST on Damages from 01.04.2018 to 30.06.2026 as on 30.06.2026	27147474.98
Total Damages from 01.04.2018 to 30.06.2026 with interest as on 30.06.2026		368537825.07
		in crs 36.85



Asst. Estate Manager (Gr.-I)
Mumbai Port Authority