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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

\+ **CS (COMM) 12 of 2021**

1. **RAJIV SARIN**
   SON OF LATE SHRI H.K. SARIN,
   6002, ROXBURY AVENUE, SPRINGFIELD
   VIRGINIA, USA 22152
2. **DEEPAK SARIN**
   SON OF LATE SHRI H.K. SARIN
   2D CHARLES COURT, REST HOUSE ROAD
   BANGALORE 560 001, KARNATAKA
3. **RADHIKA SARIN**
   (SINCE DECEASED THROUGH LEGAL HEIR)
   a) **VEERA SARIN**
      VILLA NO. 113, RAJPUR ROAD,
      DHORAN KHAS, OPP IT PARK,
      RAJPUR ROAD ENCLAVE, DEHRADUN,
      DEHRADUN G.P., UTTARAKHAND – 248001.

....PLAINTIFFS

(Through: Mr. Sidhant Kumar, Ms. Manya Chandok and Mr. Om Batra, Advocates.)

Versus

1. **DIRECTORATE OF ESTATES**
   MINISTRY OF HOUSING & URBAN AFFAIRS
   GOVERNMENT OF INDIA
   THROUGH ITS DIRECTOR
   NIRMAN BHAWAN
   MAULANA AZAD ROAD
   NEW DELHI-110001

2. **MINISTRY OF LABOUR & EMPLOYMENT**
GOVERNMENT OF INDIA
THROUGH ITS SECRETARY
SHRAM SHAKTI BHAWAN
RAFI MARG, NEW DELHI-110001

3. **COMPETENT AUTHORITY UNDER SMUGGLERS AND FOREIGN EXCHANGE MANIPULATORS (FORFEITURE OF PROPERTY) ACT, 1976.**
THROUGH ITS JOINT COMMISSIONER
9TH FLOOR B WING,
LOK NAYAK BHAVAN
NEW DELHI 110001 ....DEFENDANTS

(Through: Mr. Vikrant N. Goyal, Mr. Nitin Chandra, Mr. Aditya Shukla and Ms. Nishu, Advocates.)

% Reserved on: 19.03.2025
Pronounced on: 02.05.2025

JUDGMENT

The instant civil suit seeks for damages of *mesne* profits, loss of market rent and the damages arising out of outstanding property tax, along with *pendente lite* and future interest, etc.

2. The plaintiffs are the owners of Flat No.1108, Ansal Bhawan, Kasturba Gandhi Marg, New Delhi-11000, admeasuring 820 sq. ft. (*hereinafter referred to as ' the suit property'*).

3. The plaintiffs, on 01.09.1976, leased out the suit property to defendant No.1. Thereafter, further lease agreements were executed, which stood expired on 25.11.1995.

4. The facts of the case would further indicate that on 05.08.1998, defendant No.3 i.e. Competent Authority under Smugglers and Foreign

Exchange Manipulators (Forfeiture of Property) Act, 1976 (*hereinafter referred to as SAFEMA*), forfeited the suit property in purported exercise of power under Section 7 thereof. Resultantly, with effect from 01.05.1999, defendant No.1 stopped paying the rent to the plaintiffs, citing that the suit property was forfeited.

5. Thereafter, the order dated 05.08.1998 came to be challenged by the plaintiffs in W.P. (Crl.) 1606 of 2008 before this Court. The Division Bench of this Court, *vide* judgment dated 01.12.2014, quashed the order of forfeiture holding the same to be without jurisdiction.

6. Despite the aforesaid judgment, defendant No.1 failed to hand over the possession of the suit property to the plaintiffs, and consequently, the plaintiffs filed a fresh writ petition bearing W.P. (C) No.10395 of 2019. This Court *vide* order dated 16.07.2020 directed defendant No.1 to hand over the possession of the suit property and to pay arrears of rent from 01.05.1999 to 02.07.2020, based on the last admitted rent, i.e., Rs. 20,500/- per month.

7. *Vide* the aforenoted order, this Court recorded the statement of respondent No.3 therein, who is defendant No.1 in the instant civil suit, that without prejudice to the rights and contentions of the parties, the said defendant was ready to pay the arrears at the same rate as the last rent paid to the plaintiffs. The Court also observed in paragraph 6 of the said order that the right to compensation, interest, and *mesne* profits in respect of the use of the suit property would be adjudicated independently in appropriate proceedings, as the aforementioned aspect was not amenable to the writ jurisdiction of the Court under Article 226 of the Constitution of India, 1950 *(hereinafter referred to as the Constitution)*.

8. The Court finally *vide* order dated 28.07.2020 clarified that in terms of the earlier order dated 16.07.2020, all rights of the parties were directed to be reserved.

9. The plaintiffs, therefore, instituted the instant civil suit for the following reliefs: -

> *"A. Pass a decree in favour of the Plaintiffs and against the Defendant No. 1 directing payment of Rs.Rs.2,20,70,954/- (Rupees Two Crores Twenty Lakhs Seventy Thousand Nine Hundred and Fifty Four Only) towards damages for mesne profits and loss of market rent due to the illegal use and occupation of Flat No.ll08, Ansal Bhawan, Kasturba Gandhi Marg, New Delhi for the period 01.05.1999 to 02.07.2020;*
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> *B. Pass a decree in favour of the Plaintiffs and against the Defendant No. 1 directing payment of Rs.9,89,077/- (Rupees Nine Lakhs Eighty-Nine Thousand Seventy-Seven Only) towards damages arising out of outstanding maintenance charges (including water charges) in relation to illegal use and occupation of Flat No.1108, Ansal Bhawan, Kasturba Gandhi Marg, New Delhi for the period 01.05.1999 to 02.07.2020;*
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> *C. Pass a decree in favour of the Plaintiffs and against the Defendant No. 1 directing payment of Rs. 43,53,912/- (Rupees Forty-Three Lakhs Fifty-Three Thousand Nine Hundred and Twelve Only) towards damages arising out of outstanding Property Tax in relation to illegal use and occupation of Flat No. l108, Ansal Bhawan, Kasturba Gandhi Marg, New Delhi for the period 01.05.1999 to 02.07.2020;*
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> *D. Pass a decree in favour of the Plaintiffs and against the Defendant No. 1 awarding pre-suit, pendent lite and future interest at the rate of 12%p.a."*

SUBMISSIONS BY THE PARTIES

10. *Mr. Sidhant Kumar*, learned counsel for the plaintiffs, at the outset, submits that the plaintiffs are the rightful and legal owners of the suit property by virtue of the Article of Agreement dated 06.03.1972. According to him, the record unequivocally establishes a systematic violation of the proprietary rights of the plaintiffs, which commenced during the period of

proclamation of Emergency in 1977 and has resulted in protracted and multifaceted litigation.

11. Learned counsel for the plaintiffs further submits that possession, admittedly, remained with the defendants from 01.05.1999 until 02.07.2020 without any renewal of the lease. It is further submitted by the learned counsel that the crux of the defense taken by the defendants is predicated upon the forfeiture order dated 05.08.1998, which was already quashed *vide* order dated 01.12.2014 by the Division Bench of this Court on the ground of it being without jurisdiction. He further asserts that it is a settled position of law that an order passed without jurisdiction is non-est and confers no legal sanctity or authority upon the actions flowing therefrom. Accordingly, he states that the possession of the suit property by the defendants was patently unlawful and constitutes wrongful occupation for which the plaintiffs are liable for compensation.

12. *Mr. Kumar*, therefore, submits that the plaintiffs are entitled to be compensated under three independent heads: first, by way of mesne profits for the loss of income and use; second, by way of reimbursement for maintenance charges incurred during the period of unlawful occupation; and third, by way of restitution of the property tax payments made by the plaintiffs during such time when the defendants were in alleged wrongful occupation of the suit property.

13. *Per contra*, *Mr. Vikrant N. Goyal*, learned counsel appearing for the defendants, takes the Court through the written statement filed by them to point out that the plaint instituted by the plaintiffs is *ex facie* untenable both in law and on facts, and is, therefore, liable to be dismissed. He further draws the attention of the Court to the fact that the suit property stood

forfeited to the Central Government under Section 7(3) of SAFEMA *vide* order dated 05.08.1988 passed by the competent authority, and the forfeiture remained in operation until 28.03.2016, when the proceedings under SAFEMA stood closed in accordance with judgment dated 01.12.2014.

14. It is also submitted that, as per the mandate of Section 7(3) of SAFEMA, upon such forfeiture, the suit property vested absolutely in the Central Government free from all encumbrances. Consequently, it is averred by learned counsel that the plaintiffs cannot, in law or equity, assert any right, claim, interest, or benefit whatsoever in respect of the suit property for the period during which it remained forfeited.

15. Learned counsel further submits that the instant suit is also expressly barred by the provisions of Section 23 of SAFEMA, which provides complete statutory immunity to the Central Government and its officers for any action taken, or intended to be taken, in good faith in pursuance of the provisions of the Act or the rules framed thereunder. Accordingly, it is stated that any relief sought against the defendants is not maintainable in law.

16. It is also contended by learned counsel that at no point were the defendants in unlawful or unauthorised possession of the suit property. In this regard, it is further submitted that defendant No. 1 had been remitting rental payments to the plaintiffs initially, which were subsequently discontinued in compliance with directions received from the competent seizure authorities with effect from 01.05.1999. Thereafter, according to the learned counsel, pursuant to the directions of this Court, a cumulative amount of Rs. 52,08,323/- has already been remitted by defendant no.1 to the plaintiffs towards arrears of rent.

17. The Court *vide* order dated 10.02.2022 framed the following issues for adjudication: -

> *"(i) Whether the occupation of the defendant No. 1 of flat No. 1108, Ansal Bhawan, Kasturba Gandhi Marg, New Delhi-110001, for the period 1st May, 1999 to 2nd July, 2020 was illegal? OPP*
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> *(ii) Whether the plaintiffs are entitled to a sum of Rs.2,20,70,954/- towards damages, mesne profits and loss of market rent for the period May, 1999 to 2nd July, 2020 on account of such illegal occupation? OPP*
>
> *(iii) Whether the plaintiffs are entitled to a sum of Rs.9,89,077/- towards outstanding maintenance charges, including water charges, for the period 1st May, 1999 to 2ne July, 2020? OPP*
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> *(iv) Whether the plaintiffs are entitled to a sum of Rs.43,53,912/- towards outstanding property tax for the period 1st May, 1999 to 2nd July, 2020? OPP*
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> *(v) Whether the defendants are not liable to pay property tax, as claimed by the plaintiffs? OPD*
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> *(vi) Whether the sum of Rs.52,08,323/- was towards a full and final settlement of the dues, as claimed by the defendants? OPD*
>
> *(vii) Whether the plaintiffs are entitled to interest? If so,at what rate and for what period? OPP*
>
> *(viii) Relief."*

18. The plaintiffs, in order to prove their case, have examined as many as four witnesses. PW-1 is plaintiff No.1 himself, namely, Mr. Rajiv Sarin, PW-2 is Mr. Shankar Singh, who is the Sub-Registrar and the witness to two of the lease deeds executed between the parties. PW-3 is Mr. Amit Sharma, Tax Inspector in the office of NDMC Palika Kendra, New Delhi and PW-4 is Mr. Sunil Kumar, Superintendent L&DO Office, Nirman Bhawan, New

Delhi.

19. Plaintiffs have exhibited the following documents: -

Ex.P/1: True copy of Articles of Agreement dated 06.03.1972;

Ex.P/2: True copy of Forfeiture Order dt. 05.08.1998;

Ex.P/3: True copy of Judgment in W.P. (Crl.) No. 1606/2008 dated 01.12.2014;

Ex.P/4: True copy of Quashing of forfeiture order dated. 28.03.2016;

Ex. P/5: True copy of the letter dated 07.04.2017

Ex. P/6 : True copy of the letter dated 01.09.2017

Ex. P/7: True copy of the letter dated 02.11.2017

Ex. P/8: True copy of the letter dated 25.07.2018

Ex. P/9: True copy of the representation dated 01.07.2019

Ex. P/10: Order dt. 02.12.2019 in W.P. (C) No. 10395/2019;

Ex.P/11: Order dt. 12.12.2019 in W.P. (C) No. 10395/2019;

Ex.P/12: True copy of the letter dated 30.12.2019 issued by Defendant No.l

Ex.P/13: True copy of the response letter dated 07.01.2020 issued by the Plaintiffs

Ex.P/14: True Copy of the Joint Inspection report dated. 16.01.2020

Ex.P/15: True Copy of the Demand letter dated 01.01.2020 by Ansal Bhawan Flat Owners Society;

Ex.P/16: True copy of the letter dated 22.01.2020 issued by the Plaintiffs

Ex.P/17: True copy of the Property Tax Bill 2019-2020

Ex.P/18: True copy of Order dated 12.06.2020 in W.P. (C) No. 10395/2019;

Ex.P/19: True copy of Order dated 16.07.2020 in W.P. (C) No. 10395/2019;

Ex.P/20: True copy of Order dated 28.07.2020 in W.P. (C) No. 10395/2019;

Ex.P/21: True copy of Notice U/S. 80 CPC dated 09.09.2020 to the defendants;

Ex.P/22: True copy of the reply to Notice dated 14.09.2020 by defendant No.3

Ex. P/23: True copy of Defendant No. 1 in its Counter Affidavit in Reply dated 05.06.2020 in response to the Writ Petition bearing number W.P. (C) No. 10395 of 2019

Ex. P/24: True copy of the Counter Affidavit in Reply to the Application bearing number C.M. 3099 of 2020 in W.P. (C) No. 10395 of 2019 filed by Defendant No.l

Ex. PW1/25: True copy of online property tax information showing the latest outstanding property tax

Ex. PW1/26: True copy of Section 65 B, Evidence Act Affidavit

Ex. PW1/D1: True copy of Lease deed dated 12.02.1996

Ex.PW-2/1: True copy of Covering letter bearing No. F.SR-VII/Court Matter/New Delhi/634 dated 06.09.2022

Ex.PW-2/2(Colly): Certified Copy of the Lease deeds of the adjoining properties in Ansal Bhawan.

Ex. PW-3/1 (Colly): Photocopy of the letter of demand dated 26.03.2019 along with the property details (Original Seen and Returned).

Ex. PW-4/1: True copy of Letter No. LDO/Conversion Cell/237 dated 18.07.2014

Ex. PW-4/2: True copy of Letter dated 10.02.2014

Ex. PW-4/3: True copy of Demand Order issued on 08.10.2013

Ex. PW-4/4: True copy of the Original Perpetual Lease dated 08.11.1930

Ex. PW4/5: True copy of letter No. Ll-9/148(56)/72 dated 25.09.1972 issued by the Government of India, Ministry of Works and Housing, Land and Development Office, Nirman Bhawan, New Delhi

20. The defendants have examined only one witness, namely, Sh. Kiran Pal, Deputy Director, Directorate of Estates, Ministry of Housing and Urban Affairs, Nirman Bhawan, New Delhi, has exhibited a photocopy of OM dated 25.08.2014 as **Ex. DW/1.**

ISSUE-WISE DISCUSSION

Issue no.1- *Whether the occupation of the defendant No. 1 of flat No. 1108, Ansal Bhawan, Kasturba Gandhi Marg, New Delhi-110001, for the period 1st May, 1999 to 2nd July, 2020 was illegal? OPP.*

21. The possession of defendant Nos. 1 and 2 over the suit property from 01.05.1999 to 02.07.2020 is a matter of record and is expressly admitted by the defendants. Learned counsel appearing for the plaintiffs has pointed out that the factum of possession of the suit property by the defendants stands unequivocally admitted in the pleadings as well as in the evidence placed on record. In particular, reliance is placed on paragraph no. 40 of the written statement filed by the defendants, wherein it is clearly stated that the flat

was in possession of defendant No. 2 and that no lease agreement existed during the seizure period. Accordingly, rent was not paid until directed by this Court. Further, in the evidence affidavit of DW-1, defendant no. 1 has categorically stated that electricity bills for the said premises were paid by defendant No. 2 up to November 2019, thereby affirming continued possession of the premises during that period.

22. Moreover, learned counsel places reliance on the order dated 28.07.2020 passed in W.P. (C) No. 10395 of 2019, wherein this Court, on the basis of an affidavit filed on behalf of defendant No. 1 herein, has recorded a finding that rent was only paid till April 1999, and thereafter directed defendant No.1 to pay arrears of rent from 01.05.1999 to 02.07.2020, the date on which goods were finally removed from the premises, at the rate of Rs.20,500/- per month.

23. A perusal of the order dated 28.07.2020 passed by this Court in W.P.(C) 10395 of 2019 unequivocally records that defendant No. 3 had vacated and removed its belongings from the suit property only on 02.07.2020. The order dated 28.07.2020 is reproduced herein: -

> "*1. On 16.07.2020, this Court has passed an order recording the statement made on behalf of respondent no.3 that it shall pay the arrears of rent for the property in question (Flat No. 1108, Ansal Bhawan, Kasturba Gandhi Marg, New Delhi) on the basis of the last rent paid to the petitioner,*
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> *2. Mr Kumar, learned counsel appearing for the petitioner had shared a receipt, which indicated that the rent paid for the month of October, 1998 was paid at the rate of Rs.34.850/- per month. Mr Dheeraj Kumar who had joined the proceedings on that date on behalf of Director of Estates (respondent no.3) had sought time to verify the same and the petition was adjourned for today.*

3.An affidavit has been filed on behalf of respondent no.3, which indicates that the monthly rent payable for the property in question was Rs.20,500/- and the same was paid till April, 1999. It is affirmed that the payments were stopped after 30.04.1999.

4. In view of the said affidavit, respondent no.3 would require to pay the arrears of rent with effect from 01.05.1999 till 02.07.2020 being the date of on which respondent no 3 had removed its goods from the premises in question (Flat No. 1108, Ansal Bhawan, Kasturba Gandhi Marg, New Delhi) at the rate of Rs.20,500/- per month. The said payment shall be made within a period of six weeks from today.

5. It is clarified that in terms of the order dated 16.07.2020 all rights of the parties are reserved, which includes the right, if any, of the petitioner to claim mesne profits, compensation, interest, etc.

6.No further orders are required to be passed in this petition.

7.The petition is disposed of. All pending applications are also disposed"

24. Thus, it is evident that the defendants retained possession of the suit property till 02.07.2020. It may be noted that it has also been admitted that there exists neither any documentation nor an assertion from the defendants indicating an extension of the valid lease period beyond 25.11.1995.

25. In view of the foregoing, the only controversy that remains is whether such an occupation was illegal. Learned counsel for the defendants has averred that during the period when the property was forfeited, i.e, from 05.08.1998 to 28.03.2016, the plaintiffs cannot claim any benefits related to the suit property. He has further substantiated the aforesaid submission with reliance on the provision of Section 23 of the SAFEMA.

26. Section 23 of the SAFEMA reads as under: -

"23. Protection of action taken in good faith-

No suit, prosecution or other proceeding shall lie against the Central Government or any officers of the Central or State Government for anything which is done or intended to be done, in good faith in pursuance of this Act or the rules made thereunder."

27. Before dealing with the aforesaid objection raised by the defendants, it is appropriate to first lay out the brief history of the protracted *lis* between the parties.

28. Late Shri H.K. Sarin (father of plaintiff Nos.1 and 2), who was engaged in business under the name '*Sarin Gem House*,' was subjected to raids between 1974 and 1976, and a preventive detention order was issued against him on 12.07.1975 under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (*hereinafter referred to as COFEPOSA*) by the Government of NCT of Delhi. However, the said order was never executed, and Sh. Sarin was never detained. Thereafter, a notice under Section 6(1) of SAFEMA was issued on 20.04.1980, calling upon Sh. Sarin to disclose the source of income of certain properties. He filed representations between 1981 and 1982, but no further action was taken until 05.08.1998, when an *ex parte* forfeiture order was issued without a hearing. Aggrieved with the same, Sh. Sarin filed a writ petition bearing no. W.P. (C) No. 1124 of 1999 and also preferred an appeal, which was rejected on 19.12.2001, after his demise on 16.10.2000.

29. Upon issuance of a subsequent show cause notice dated 29.03.2005, another writ petition bearing W.P. (C) No. 23717 of 2005 was filed by the legal heirs of Sh. Sarin, where, for the first time, the respondents therein disclosed that the original detention order had been revoked on 21.03.1977, on cessation of the Emergency. It was also stated that the detention records were untraceable. Subsequently, the writ petition was withdrawn on 14.05.2007 with liberty to challenge the SAFEMA proceedings. A request to drop the proceedings was rejected by the competent authority *vide* order

dated 04/08.02.2008, stating therein that a revocation under Section 11(1) of COFEPOSA did not affect the applicability of SAFEMA. Thereafter, the plaintiffs herein assailed the forfeiture order in a third writ petition bearing W.P.(CRL) No. 1606/2008, contending that the detention order, made during the Emergency and admittedly revoked upon its cessation on 21.03.1977, fell within the third *proviso* to Section 2(2)(b) of SAFEMA, rendering the proceedings without jurisdiction and legally untenable.

30. The Division Bench of this Court *vide* judgment dated 01.12.2014, held that the proceedings initiated under SAFEMA were without jurisdiction and a nullity in law, as the requirement under Section 2(2)(b) of SAFEMA was satisfied. (*The proviso to Section 2(2)(b) of SAFEMA excludes its applicability to persons whose COFEPOSA detention orders were revoked or set aside*). The Court observed that as the detention order was never implemented and stood revoked by operation of law, the initiation and continuation of forfeiture proceedings under SAFEMA were held to be unsustainable, inapplicable, and without jurisdiction. Consequently, the Court quashed the orders passed by the competent and appellate authorities under SAFEMA and allowed the writ petition. The relevant extract is reproduced hereinunder: -

> "*12. By virtue of Section 2(2) (b) of SAFEMA. jurisdiction extends to every person against whom a COFEPOSA detention order "has been made". However, the third proviso (to Section 2 (2) (b))specifically excepts its operation those against whom orders of detention are made under Section 12-A of COFEPOSA if:*
>
> *(a) orders of detention are not revoked before expiry of time (for such detention); or*
>
> *(b) orders of detention are revoked on the basis of first review; or*
>
> *(c) revocation of detention is on the basis of the report of the Advisory*

Board, under Section 8 read with Section 12A (6).

Now, a detention order under Section 12A - as noticed in Amritlal Prajivandas (supra) - was made under extraordinary circumstances, when Fundamental Rights were suspended. The non-obstante clause in Section 12-A overrode other safeguards which every individual was assured before a valid detention order could be issued, recommendation and review by Advisory Boards as essential preconditions. Such orders made by virtue of Section 12A, importantly, were to be in force for the duration of Emergency, i.e. till the Proclamation lasted, or for two years (twenty four months) from the date of the order, whichever was shorter. In the present case, the detention order was apparently made on 12.07.1975 i.e. after the Proclamation of Emergency was issued on 25.06.1975 Therefore, late H.K. Sarin's detention order fell into the category of those which were made under Section 12-A (l). It was to be in force, in terrns of that provision, for the duration of the Emergency, or twenty-four months, whichever was shorter. The Emergency was lifted and the Proclamation rescinded on 21.03.1977; the same day, pursuant to the mandate of Section 12-A, Shri Sarin's detention order was revoked. These facts show that the first contingency envisioned in the third proviso to Section 2(2) (b) of SAFEMA, "such order of detention, being an order to which the provisions of Section 12A of the said Act apply, has not been revoked before the expily o{ the time {or ... " was fulfilled. In other words, the detention order of Shri Sarin was an Emergency detention order, and ran its course and thus fell within the description of one which had not been revoked before the expiry of its time. It was revoked and got revoked by operation of law, upon the cessation of the Emergency, itself, due to Section 12A (1) – of COFEPOSA

13. This court is also aware of the fact that Shri Sarin was never served with the detention order, nor even made aware of it ever, during the time it was in force. The respondents were unable to show any material to say that they tried to serve it upon him, and that he could have in any manner known of its existence, in order to challenge it. In these circumstances, it was impossible for him to impugn it, for the period July 1975 to March 1977. Once the Emergency was revoked, and the detention order suffered a similar fate, there was no manner for him again to challenge the detention order as it had no consequence. Another very important aspect is that when the Emergency was in force, individuals whose personal liberty was forfeited under preventive detention laws, such as COFEPOSA, were, by reason of the Proclamation of Emergency, prevented from asserting their Fundamental Rights. Initially nine High Courts held notwithstanding this position, orders of detention could be challenged under Article 226 of the Constitution of India. However, the Supreme Court held that

such petitions were not maintainable; effectively barring even the writ remedy to those aggrieved against detention orders, in A.D.M Jabalpur v Shiv Kant Shukla AIR 1976 SC 1207.

14. The submission of the respondents that the revocation order in the present case was not under Section 12-A, but under Section 11 is of not much consequence. The only power of revocation which could have been sought recourse to, by the Central Government, under COFEPOSA during Emergency, in respect of orders under Section12-A, was under Section 12-A (3) after review and recommendation to release the detenu. That class of detention orders too stood excluded by virtue of Section 2 (2) (b) third proviso; however, the first category, i.e. those detention orders that had not been revoked before cessation of Emergency, could have been revoked only under Section 11 of COFEPOSA

15. In the light of the foregoing discussion, it is held that the revocation of the detention order, in the present case, clearly fell within third proviso to Section 2 (2) (b) and was thus excluded from the exercise of jurisdiction under SAFEMA. The writ petition has to consequently succeed; the orders of the competent and appellate authority are hereby quashed. The writ petition is allowed in the above terms without any order as to costs."

31. At this stage, it is also pertinent to note herein the decision of the Supreme Court in ***Deepak Agro Foods v. State of Rajasthan*** [1], wherein it has been held that where an authority or Court lacks inherent jurisdiction, any order passed by it is *void ab initio*, null, and *non-est*, as the defect of jurisdiction strikes at the root and cannot be cured, even with the consent of the parties. However, it was further held that a wrongful or irregular exercise of jurisdiction does not render an order or decree a nullity; it constitutes an illegality, which is curable through appropriate legal proceedings. The aforesaid finding has been rendered by the Supreme Court in paragraph nos. 17 and 19 of the aforenoted decision, which reads as under: -

[1] (2008) 7 SCC 748

> "*17. All irregular or erroneous or even illegal orders cannot be held to be null and void as there is a fine distinction between the orders which are null and void and orders which are irregular, wrong or illegal. Where an authority making order lacks inherent jurisdiction, such order would be without jurisdiction, null, nonest and void ab initio as defect of jurisdiction of an authority goes to the root of the matter and strikes at its very authority to pass any order and such a defect cannot be cured even by consent of the parties. (See Kiran Singh v. Chaman Paswan [AIR 1954 SC 340] .) However, exercise of jurisdiction in a wrongful manner cannot result in a nullity—it is an illegality, capable of being cured in a duly constituted legal proceedings.*
>
> *19.In Rafique Bibi v. Sayed Waliuddin [(2004) 1 SCC 287] explaining the distinction between null and void decree and illegal decree, this Court has said that a decree can be said to be without jurisdiction, and hence a nullity, if the court passing the decree has usurped a jurisdiction which it did not have; a mere wrong exercise of jurisdiction does not result in a nullity. The lack of jurisdiction in the court passing the decree must be patent on its face in order to enable the executing court to take cognizance of such a nullity based on want of jurisdiction. The Court further held that a distinction exists between a decree passed by a court having no jurisdiction and consequently being a nullity and not executable and a decree of the court which is merely illegal or not passed in accordance with the procedure laid down by law. A decree suffering from illegality or irregularity of procedure cannot be termed inexcutable."*

32. In light of the legal position explicated hereinabove, a perusal of the order of this Court dated 01.12.2014 and the order of the Government of India dated 28.03.2016 indicates that proceedings under SAFEMA and the forfeiture order have been nullified on the ground of lack of jurisdiction. Consequently, the provisions of Section 23 of SAFEMA become inapplicable under the circumstances of the present case.

33. Furthermore, a bare reading of Section 23 of SAFEMA indicates that it only applies when an action is undertaken in good faith or in accordance with the Act or the Rules made thereunder. So far as the action in pursuance of the Act or Rules made thereunder is concerned, this aspect has already

been decided by the Division Bench of this Court, where the action was entirely annulled as being beyond the scope of the Act and Rules.

34. More importantly, with respect to the exception of action undertaken in good faith, it is pertinent to note that in Indian jurisprudence, the doctrine of good faith is pivotal across multiple legal domains. Good faith encompasses honesty in intent, equitable conduct, and adherence to reasonable standards. It necessitates acting with probity and transparency, abjuring deceit or exploitation of the other party. Nevertheless, good faith cannot function as an impregnable defence. For instance, merely demonstrating good faith does not exonerate a party from fulfilling contractual duties or complying with statutory mandates. Invoking the doctrine of good faith cannot shield a party from liability in instances of contractual breach, malfeasance, or statutory violations. Consequently, while good faith remains a cornerstone principle, it does not supersede explicit legal obligations and responsibilities. It is only invoked when a party acts with integrity, exhibits reasonable conduct, and anticipates equitable treatment from the other party.

35. The doctrine of good faith is particularly significant in cases involving the illegal occupation of land or property by governmental authorities. The doctrine, which embodies honesty, fairness, and adherence to legal obligations, is vital in ensuring that public authorities do not exploit their position of power to infringe upon individual rights. Derived from the Latin term *bona fides*, the doctrine mandates that actions of government entities should be conducted with genuine intentions, devoid of any fraud or malice and with utilitarian intentions. In instances where a governmental authority claims good faith in the occupation of an individual's property, it must

convincingly demonstrate that such occupation was based on an honest belief of legal or statutory entitlement, and not marred by any malicious intent.

36. The Bombay High Court has illustrated the application of this doctrine in the case of ***Kailas Sizing Works v. Municipality of Bhivandi and Nizampur***[2]. The Court delineated the contours of acting in good faith, emphasising the necessity of honesty, fairness, and uprightness in governmental conduct. The Court copiously stated that deliberate negligence or conscious injury to others negates the claim of good faith, highlighting the expectation that governmental actions must always align with principles of fairness and reasonableness. The relevant extract of the aforenoted decision reads as under: -

> *".. In order to act in good faith, a person must act honestly. A person cannot be said to act honestly unless he acts with fairness and uprightness. A person who acts in a particular manner in the discharge of his duties in spite of the knowledge and consciousness that injury to someone or group of persons is likely to result from his act or omission or acts with wanton or wilful negligence in spite of such knowledge or consciousness cannot be said to act with fairness or up-rightness and, therefore, he cannot be said to act with honesty or in good faith. Whether in a particular case a person acted with honesty or not will depend on the facts of each case. If, for example, with a view to construct a road a municipality wishes to blast a rock with dynamite near a town and acts against expert opinion that the town is within the range of harm, and the rock should be removed by quarrying it cannot be said to act honestly if it proceeds to blast the rock. It can also not be said to act honestly if it proceeds to blast the rock without taking expert advice. If it refuses to see light and hides its face from the light it would be acting with wanton and wilful negligence and its negligence coupled with want of honesty and good faith would be actionable. In the matter before us it is common ground that in laying the slab complained of the defendants were carrying out a duty authorised by Section 54(1)(i) of the Act. But if they carried out the said duty with the knowledge of*

[2] AIR 1969 Bom 127

demolition of Varala Dam up to a height of six feet and with such knowledge narrowed the nullah or allowed the centring to remain and to obstruct the passage of bushes and debris, they would not be said to act honestly. In such case, they knew and ought to have known that the constructed water passage would not be sufficient to carry the water coming from the additional catchment area and the centring would obstruct the passage of bushes and debris brought by the increased velocity of water."

37. Furthermore, in the context of the law of contracts, where the doctrine of good faith finds its foundational basis, the Supreme Court, in the case of ***Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly***[3], adjudicated that a contractual clause permitting the employer to terminate the employment of a permanent employee without cause was capricious and contravened the principle of good faith.

38. Coming back to the facts of the instant case, it is observed that possession of the suit property was restored to the plaintiffs on 02.07.2020, i.e., seven years after the forfeiture order was quashed and the defendants' actions were adjudged to be without any jurisdiction by the Division Bench of this Court.

39. It is, thus, seen that in the absence of any *bona fide* conduct or reasonable explanation being offered by the defendants for their continuous possession of the property in question up to 02.07.2020 without paying the rent, either as per the lease deed or after the expiry of the lease deed as per the market rate would not be amenable to be protected under the doctrine of good faith.

40. Moreover, it may be further noted that the lease agreements executed between the parties stood terminated on 25.11.1995, and no new lease was

[3] 1986 (3) SCC 156

executed in favour of the defendants by the plaintiffs thereafter. Furthermore, it is an admitted position that the defendants were in possession of the suit property during the period of 01.05.1999 to 02.07.2020, and the same admission also stood recorded by the Court in the order dated 28.07.2020. Therefore, it is noted that the defendants' continued occupation of the suit property even after the quashing of the proceedings under SAFEMA, does not exhibit any *bona fide* and good faith on the part of the defendants.

41. In view of the aforementioned elucidation, the Court concludes that the possession and occupation of the suit property by the defendants cannot be justified under the provisions of Section 23 of SAFEMA. Holding otherwise would mean stretching the doctrine of good faith to an extent where an illegal action which has already been found to be impermissible in law would be impliedly approved by this Court.

42. More importantly, the Court is conscious of the fact that immovable property, for an individual, is not merely a corporeal asset or a physical manifestation of ownership. It constitutes a fundamental pillar of economic security, social identity, and personal dignity. The right to property, though no longer a fundamental right post the 44th Amendment to the Constitution, continues to occupy a sacrosanct position within the democratic framework as a constitutional and legal right under Article 300-A of the Constitution. The said Article stipulates that no person shall be deprived of their property except by authority of law. It is a dynamic constitutional safeguard that strikes a delicate balance between the sovereign power of the State and the proprietary rights of individuals. The provision embodies the principles of the rule of law, procedural fairness, and non-arbitrariness, mandating that

any deprivation of property must be sanctioned by law and carried out in a just and equitable manner.

43. Furthermore, the judiciary, as the ultimate guardian of constitutional values, has the corresponding onus to protect the constitutional, statutory and legal rights of the citizens. The Court in a catena of decisions, have consistently held that property rights cannot be interfered with except by authority of law. In ***K.T. Plantation Pvt. Ltd. v. State of Karnataka*** [4], the Supreme Court held that the right to property, once enshrined as a fundamental right under the Constitution and intrinsically linked to the rights to life and liberty, has since been downgraded to a statutory right following the 44th Amendment. Drawing from philosophical and constitutional traditions, including the theories of philosophers like *Grotius, Locke, Pufendorf, Rousseau,* and *Blackstone*, the Court traced the evolution of the doctrine of *eminent domain*, which permits State acquisition of private property for a public purpose, subject to just compensation. The relevant extract of the aforesaid decision is reproduced hereinunder: -

> *"131. Right to life, liberty and property were once considered to be inalienable rights under the Indian Constitution, each one of these rights was considered to be inextricably bound to the other and none would exist without the other. Of late, right to property parted company with the other two rights under the Indian Constitution and took the position of a statutory right. Since ancient times, debates are going on as to whether the right to property is a "natural" right or merely a creation of "social convention" and "positive law" which reflects the centrality and uniqueness of this right. Property rights at times are compared to right to life which determine access to the basic means of sustenance and considered as prerequisite to the meaningful exercise of other rights guaranteed under Article 21.*

[4] (2011) 9 SCC 1

132. Eminent thinkers like Hugo Grotius, Pufendorf, John Locke, Rousseau and William Blackstone had expressed their own views on the right to property. Lockean rhetoric of property as a natural and absolute right but conventional in civil society has, its roots in Aristotle and Aquinas, for Grotius and Pufendorf property was both natural and conventional. Pufendrof, like Grotius, never recognised that the rights to property on its owners are absolute but involve definite social responsibilities, and also held the view that the private property was not established merely for the purpose of "allowing a man to avoid using it in the service of others, and to brood in solitude over his hoard of riches." Like Grotius, Pufendorf recognised that those in extreme need may have a right to the property of others. For Rousseau, property was a conventional civil right and not a natural right and private property right was subordinate to the public interest, but Rousseau insisted that it would never be in the public interest to violate them.

133. With the emergence of modern written constitutions in the late eighteenth century and thereafter, the right to property was enshrined as a fundamental constitutional right in many of the constitutions in the world and India was not an exception. Blackstone declared that so great is the regime of the law for private property that it will not authorise the least violation of it—no, not even for the general good of the whole community. Writings of the abovementioned political philosophers had also its influence on the Indian Constitution as well.

Eminent domain

134. Hugo Grotius is credited with the invention of the term "eminent domain" (jus or dominium eminens) which implies that public rights always overlap with private rights to property, and in the case of public utility, public rights take precedence. Grotius sets two conditions on the exercise of the power of eminent domain: the first requisite is public advantage and then compensation from the public funds be made, if possible, to the one who has lost his right. Application of the above principle varies from countries to countries. German, American and Australian Constitutions bar uncompensated takings. Canada's Constitution, however, does not contain the equivalent of the taking clause, and eminent domain is solely a matter of statute law. The same is the situation in the United Kingdom which does not have a written constitution as also now in India after the Forty-fourth Constitution Amendment.

144. The above theoretical aspects of the doctrine have been highlighted only to show the reasons, for the inclusion of the principle of eminent domain in the deleted Article 31(2) and in the present

Article 30(1-A) and in the second proviso of Article 31-A(1) of our Constitution and its apparent exclusion from Article 300-A.

145. Our Constitution-makers were greatly influenced by the Western doctrine of eminent domain when they drafted the Indian Constitution and incorporated the right to property as a fundamental right in Article 19(1)(f), and the element of public purpose and compensation in Article 31(2). Of late, it was felt that some of the principles laid down in the directive principles of State policy, which had its influence in the governance of the country, would not be achieved if those articles were literally interpreted and applied.

146. The directive principles of the State policy lay down the fundamental principles for the governance of the country, and through those principles, the State is directed to secure that the ownership and control of the material resources of the community are so distributed as best to subserve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. Further, it was also noticed that the fundamental rights are not absolute but subject to law of reasonable restrictions in the interest of the general public to achieve the above objectives specially to eliminate zamindari system."

44. Furthermore, the Court held that Article 300-A of the Constitution also protects an individual's right to property against arbitrary executive action. The Court observed that public purpose is an indispensable requirement for any legislation that authorizes deprivation of property. It drew upon the doctrine of *eminent domain* and held that although Article 300-A of the Constitution does not explicitly incorporate this doctrine, its principles are implicitly embedded within the provision. Any law which authorises deprivation of property for a primarily private interest, or where public interest is incidental, would be unconstitutional and liable to be struck down upon judicial review.

45. The Court further reiterated that executive authority must conform to the principles of reasonableness and non-arbitrariness, in line with broader constitutional values. The mere existence of a law is not sufficient; the law

must be reasonable, proportionate, and not excessive in its restriction of property rights. The Court clarified that failure to comply with the statutory provisions authorising deprivation, whether procedural or substantive, would result in a violation of Article 300-A. The relevant extracts of the decision in ***K.T. Plantation Pvt. Ltd*** are reproduced hereinunder: -

> *168. Article 300-A proclaims that no person can be deprived of his property save by authority of law, meaning thereby that a person cannot be deprived of his property merely by an executive fiat, without any specific legal authority or without the support of law made by a competent legislature. The expression "property" in Article 300-A confined not to land alone, it includes intangibles like copyrights and other intellectual property and embraces every possible interest recognised by law.*
>
> *170. Article 300-A, therefore, protects private property against executive action. But the question that looms large is as to what extent their rights will be protected when they are sought to be illegally deprived of their properties on the strength of a legislation. Further, it was also argued that the twin requirements of "public purpose" and "compensation" in case of deprivation of property are inherent and essential elements or ingredients, or "inseparable concomitants" of the power of eminent domain and, therefore, of List III Entry 42, as well and, hence, would apply when the validity of a statute is in question.*
>
> *178. The principles of eminent domain, as such, are not seen incorporated in Article 300-A, as we see, in Article 30(1-A), as well as in the second proviso to Article 31-A(1) though we can infer those principles in Article 300-A. The provision for payment of compensation has been specifically incorporated in Article 30(1-A) as well as in the second proviso to Article 31-A(1) for achieving specific objectives. The Constitution (Forty-fourth Amendment) Act, 1978 while omitting Article 31 brought in a substantive provision clause (1-A) to Article 30. Resultantly, though no individual or even educational institution belonging to majority community shall have any fundamental right to compensation in case of compulsory acquisition of his property by the State, an educational institution belonging to a minority community shall have such fundamental right to claim compensation in case the State enacts a law providing for compulsory acquisition of any property of an educational institution established and administered by a minority community. Further, the second proviso to Article 31-A(1) prohibits the legislature from making a law which does not contain a provision for payment of compensation at a rate not less than the market value which*

follows that a law which does not contain such provision shall be invalid and the acquisition proceedings would be rendered void."

Public purpose

180. Deprivation of property within the meaning of Article 300-A, generally speaking, must take place for public purpose or public interest. The concept of eminent domain which applies when a person is deprived of his property postulates that the purpose must be primarily public and not primarily of private interest and merely incidentally beneficial to the public. Any law, which deprives a person of his private property for private interest, will be unlawful and unfair and undermines the rule of law and can be subjected to judicial review. But the question as to whether the purpose is primarily public or private, has to be decided by the legislature, which of course should be made known.

181. The concept of public purpose has been given fairly expansive meaning which has to be justified upon the purpose and object of the statute and the policy of the legislation. Public purpose is, therefore, a condition precedent, for invoking Article 300-A."

46. Therefore, the State, being a constitutional authority and repository of public trust, is duty-bound to protect, rather than transgress, the civil rights of its citizens, including the right to property. The powers of the State are not plenary or absolute but are circumscribed by constitutional and statutory limitations. Any executive or legislative action that seeks to divest a citizen of property without due process, in the absence of an enabling law, would fall foul of Article 300-A and render such action *void ab initio*.

47. It is, thus, imperative that actions of the State, particularly those involving the deprivation or restriction of immovable assets, be subjected to strict judicial scrutiny. The State must not only comply with the letter of the law but also act in a manner that is fair, just, and equitable. Executive overreach beyond the four corners of the law must be met with constitutional censure, for when the protector of rights becomes the violator, the very fabric of the rule of law is imperiled. In a constitutional democracy

governed by the principles of justice, equity, and good conscience, the preservation of legal rights such as that of proprietary must remain an unyielding commitment of the State.

48. It is thus seen that the plaintiffs have been able to sufficiently establish that the occupation of defendant no.1 over the suit property for the period from 01.05.1999 to 02.07.2020 was illegal. Therefore, issue no.1 is decided in favour of the plaintiffs and against the defendants.

> ***Issue no.2 -*** *Whether the plaintiffs are entitled to a sum of Rs.2,20,70,954/- towards damages, mesne profits and loss of market rent for the period May, 1999 to 2nd July, 2020 on account of such illegal occupation? OPP*
>
> ***Issue no. 6:*** *Whether the sum of RS. 52,08,323/- was towards full and final settlement of the dues, as claimed by the Defendants? OPD*
>
> ***Issue no. 7:*** *Whether the plaintiffs are entitled to interest? If so, at what rate and for what period? OPP*

49. A cumulative examination of the facts and orders passed during the legal proceedings between the parties has further demonstrated that the occupation of the defendants became illegal after the termination of the last lease agreement from 01.05.1999 as held, hereinabove, while adjudicating on issue no.1. It has also been noted that the Court *vide* order dated 28.07.2020 directed defendant No.1 to hand over the possession of the suit property and to pay the arrears of rent from 01.05.1999 to 02.07.2020, based on the last admitted rent i.e. Rs.20,500/- per month.

50. As noted earlier, the plaintiffs have sought threefold damages under the heads of mesne profits, maintenance charges and outstanding property tax, in respect of the suit property.

51. With regard to relief of *mesne* profits, learned counsel for the plaintiffs submits that *mesne* profits are recoverable under Code of Civil Procedure, 1908 (*hereinafter referred to as CPC*), as a compensatory remedy intended to place the dispossessed owner in the financial position, they would have occupied had possession not been unlawfully withheld. He submits that the suit property is a valuable commercial unit situated in a prime location in Delhi, and as such, has the inherent potential to yield substantial rental income. Learned counsel has also placed on record 19 registered lease deeds of comparable commercial premises in the same building for the years 2005 to 2020, to establish the prevailing market rent. It is further submitted that for the period prior to 2005, the plaintiffs have applied a 15% annual escalation on the last paid rent, in accordance with the settled principles. Therefore, it is submitted that the plaintiffs are entitled to recover mesne profits to the tune of Rs. 1,90,54,953.56/- (as per the calculations provided by plaintiffs) for the period of unauthorized occupation.

52. It may be noted that learned counsel for the defendants have neither challenged the method of computation in their pleadings nor raised any objection during cross-examination.

53. The Supreme Court in ***N. Nagendra Rao & Co. v. State of A.P*** [5] has held that the doctrine of sovereign immunity cannot be invoked where the State or its officers act negligently in discharge of their statutory duties or interfere unlawfully with the life, liberty, or property of citizens. The Court distinguished between acts of State performed in the exercise of sovereign authority, such as in war or diplomacy, and ordinary governmental

functions.

54. It was emphasized that while the State may remain immune from suit in relation to core sovereign functions, such as foreign affairs, defence, and the administration of justice, such immunity does not extend to negligent acts committed by State officials in the exercise of the purported statutory duties. The Court further held that public interest and the rule of law require that the State be held accountable like any other juristic person when it unlawfully deprives a citizen of property or causes injury through negligence. The Court further held that where statutory powers are exercised negligently, particularly in the context of administrative or commercial regulation, the State is vicariously liable for the acts of its officers. The relevant extract of the aforenoted judgment is reproduced hereinunder: -

> *"25. But there the immunity ends. No civilised system can permit an executive to play with the people of its country and claim that it is entitled to act in any manner as it is sovereign. The concept of public interest has changed with structural change in the society. No legal or political system today can place the State above law as it is unjust and unfair for a citizen to be deprived of his property illegally by negligent act of officers of the State without any remedy. From sincerity, efficiency and dignity of State as a juristic person, propounded in nineteenth century as sound sociological basis for State immunity the circle has gone round and the emphasis now is more on liberty, equality and the rule of law. The modern social thinking of progressive societies and the judicial approach is to do away with archaic State protection and place the State or the Government on a par with any other juristic legal entity. Any watertight compartmentalization of the functions of the State as "sovereign and non-sovereign" or "governmental and non-governmental" is not sound. It is contrary to modern jurisprudential thinking. The need of the State to have extraordinary powers cannot be doubted. But with the conceptual change of statutory power being statutory duty for sake of society and the people the claim of a common man or ordinary citizen*

[5] (1994) 6 SCC 205

cannot be thrown out merely because it was done by an officer of the State even though it was against law and negligent. Needs of the State, duty of its officials and right of the citizens are required to be reconciled so that the rule of law in a Welfare State is not shaken. Even in America where this doctrine of sovereignty found its place either because of the "financial instability of the infant American States rather than to the stability of the doctrine's theoretical foundation", or because of "logical and practical ground", or that "there could be no legal right as against the State which made the law" gradually gave way to the movement from, "State irresponsibility to State responsibility". In Welfare State, functions of the State are not only defence of the country or administration of justice or maintaining law and order but it extends to regulating and controlling the activities of people in almost every sphere, educational, commercial, social, economic, political and even marital. The demarcating line between sovereign and non-sovereign powers for which no rational basis survives has largely disappeared. Therefore, barring functions such as administration of justice, maintenance of law and order and repression of crime etc. which are among the primary and inalienable functions of a constitutional Government, the State cannot claim any immunity. The determination of vicarious liability of the State being linked with negligence of its officers, if they can be sued personally for which there is no dearth of authority and the law of misfeasance in discharge of public duty having marched ahead, there is no rationale for the proposition that even if the officer is liable the State cannot be sued. The liability of the officer personally was not doubted even in Viscount Canterbury [1 PH 306 : 41 ER 648] . But the Crown was held immune on doctrine of sovereign immunity. Since the doctrine has become outdated and sovereignty now vests in the people, the State cannot claim any immunity and if a suit is maintainable against the officer personally, then there is no reason to hold that it would not be maintainable against the State.

27. A law may be made to carry out the primary or inalienable functions of the State. Criminal Procedure Code is one such law. A search or seizure effected under such law could be taken to be an exercise of power which may be in domain of inalienable function. Whether the authority to whom this power is delegated is liable for negligence in discharge of duties while performing such functions is a different matter. But when similar powers are conferred under other statute as incidental or ancillary power to carry out the purpose and objective of the Act, then it being an exercise of such State function which is not primary or inalienable, an officer acting negligently is liable personally and the State vicariously.

> *Maintenance of law and order or repression of crime may be inalienable function, for proper exercise of which the State may enact a law and may delegate its functions, the violation of which may not be sueable in torts, unless it trenches into and encroaches on the fundamental rights of life and liberty guaranteed by the Constitution. But that principle would not be attracted where similar powers are conferred on officers who exercise statutory powers which are otherwise than sovereign powers as understood in the modern sense. The Act deals with persons indulging in hoarding and black marketing. Any power for regulating and controlling the essential commodities and the delegation of power to authorised officers to inspect, search and seize the property for carrying out the object of the State cannot be a power for negligent exercise of which the State can claim immunity. No constitutional system can, either on State necessity or public policy, condone negligent functioning of the State or its officeRs. The rule was succinctly stated by Lord Blackburn in Geddis v. Proprietors of Bonn Reservoir [(1878) 3 AC 430, 435] :*
>
> *"No action will lie for doing that which the Legislature has authorised, if it be done without negligence, although it does occasion damage to anyone; but an action does lie for doing that which the Legislature has authorised if it be done negligently."*

55. In view of the foregoing, the Court finds merit in the submissions advanced on behalf of the plaintiffs. It is noted that the defendants herein are authorities under the Government of India, thus forming a part of the State. It is well settled that a property owner is entitled to claim compensation for unlawful deprivation of possession of immovable property, and such a remedy is available even in cases where the impugned forfeiture has been held to be without jurisdiction. In the present case, it already stands conclusively established that the suit property remained in the unlawful possession of the defendants from 01.05.1999 to 02.07.2020.

56. With respect to the submissions advanced by the defendants regarding the payment of Rs. 52,08,323/- towards discharge of alleged dues payable to the plaintiffs, this Court finds, upon a plain reading of the order dated

28.07.2020, that the said amount pertains exclusively to arrears of rent computed at the rate of last rent paid, as mutually agreed between the parties. The payment, as recorded, was confined to undisputed liabilities and did not envisage any escalation in rent that may have accrued during the period of unauthorized/ illegal occupation of the suit property. It is further evident that the aforesaid amount was devoid of any interest component, which would ordinarily be payable in view of the prolonged dispossession of the plaintiffs and the continued deprivation of their proprietary and possessory rights. The Court, therefore, is of the view that the said payment cannot be construed as a full and final settlement of all claims arising from the unlawful occupation of the suit property. Additionally, the Court notes that the payment made does not compensate the plaintiffs for the consequential loss of income, business opportunity, or commercial use that they would have otherwise been entitled to but for the defendants' continued and illegal possession of the suit property.

57. As defined under Section 2(12) of CPC, *mesne* profits encompass the actual or reasonably expected income/profit derived from a property during unauthorized occupation/wrongful possession, excluding gains from improvements made by the occupant, but including interest. This Court in ***Phiraya Lal Alias Piara Lal v. Jia Rani***, [6] distinguished between *mesne* profits and general damages under tort or contract law. The relevant extract of the aforesaid decision is reproduced hereinbelow: -

> *"QUESTION NO. 2:—*

[6] 1972 SCC OnLine Del 46

> *The claim in the suit by Jia Rani against the appellants was firstly for possession and secondly for damages for use and occupation of the site in suit wrongfully by the defendants appellants. When damages are claimed in respect of wrongful occupation of immovable property on the basis of the loss caused by the wrongful possession of the trespasser to the person entitled to the possession of the immovable property, these damages are called "mesne profits". The measure of mesne profits according to the definition in section 2(12) of the Code of Civil Procedure is "those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits". It is to be noted that though mesne profits are awarded because the rightful claimant is excluded from possession of immovable property by a trespasser, it is not what the original claimant loses by such exclusion but what the person in wrongful possession gets or ought to have got out of the property which is the measure of calculation of the mesne profits. (Rattan Lal v. Girdhari Lal, AIR 1972 Delhi 11). (5) This basis of damages for use and occupation of immovable property which are equivalent to mesne profits, is different from that of damages for tort or breach of contract unconnected with possession of immovable property. Section 2(12) and Order XX Rule 12 of the Code of Civil Procedure apply only to the claims in respect of mesne profits but not to claims for damages not connected with wrongful occupation of immovable property. The measure for the determination of the damages for use and occupation payable by the appellants to the respondent Jia Rani is, therefore, the profits which the appellants actually received or might with ordinary diligence have received from the property together with interest on such profits*."

58. Further, in determining the quantum of *mesne* profits payable by a tenant in unlawful possession post-termination of tenancy, this Court in ***M.C. Agrawal HUF v. Sahara India & Ors***[7], reiterated that such profits must be assessed in accordance with Section 2(12) of CPC. The aforenoted provision restricts *mesne* profits to the reasonable market rental value that could have been obtained with ordinary diligence, excluding speculative or punitive amounts such as contractual penalties or additional liabilities. Further, in the absence of specific evidentiary proof regarding prevailing

rental rates in the locality of the suit property therein, the Court invoked Sections 114 and 57 of the Indian Evidence Act, 1872, to take notice of a general upward trend in urban commercial rental values in prime areas. Accordingly, *mesne* profits were awarded at a compounded escalation of 15% per annum over the last contractual rent, with each subsequent year witnessing a 15% increment over the previous year's assessed *mesne* profit. The Court noted that such an approach has been upheld by the Division Bench in ***S. Kumar v. G.R. Kathpalia***[8] and serves as a pragmatic and sound methodology for estimating compensation in the absence of concrete market data, ensuring that the landlord is compensated fairly while preventing arbitrary enrichment.

59. The Court, in assessing the appropriate principles for determining *mesne* profits, also takes cognizance of the decision in the case of ***Fateh Chand v. Balkishan Dass***[9] wherein, the Supreme Court held that *mesne profits*, as defined under Section 2(12) of the CPC must reflect the value of the user of the property to the person in wrongful possession and should not be arbitrarily computed based on an estimated return on the capital value of the property. In the aforenoted decision, the reliance by the High Court on only a percentage of the value of the property was rejected by the Supreme Court, and the Court modified the rate of actual comparable rent while also awarding interest at the rate of 6% accruing on the amount due month after month.

60. Further clarity was brought in ***Atma Ram Properties Pvt. Ltd. v.***

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[7] 2011 SCC OnLine Del 3715
[8] 1998 SCC OnLine Del 553
[9] 1963 SCC OnLine SC 49

Federal Motors Pvt. Ltd. [10] where the Supreme Court held that *mesne* profits or compensation for use and occupation post-eviction decree should be calculated based on the market rent the landlord could have fetched had the tenant vacated the premises.

61. Consequently, the unlawful occupation of the suit property by the defendants herein entitles the plaintiffs to seek *mesne* profits as a form of damages, in line with the mentioned provisions and precedents.

62. In calculating *mesne* profits, the table below, placed on record by learned counsel for the plaintiffs, outlines year-wise breakdown of lease payments and a consistent annual statutory escalation of 15% (reference to ***M.C. Agrawal HUF***) applied to the lease amount, starting from the financial year 1999-2000, which is when the defendants ceased paying rent, to financial year 2004 -2005: -

Year	Rent Amount in INR per month	Rent amount after 15 % escalation	Arrears of lease payable per annum
1999-2000	20,500/- (*as recorded in various proceeding before the Court*)	23,575/-	2,82,900/-
2000-2001	23,575/-	27,111.25/-	3,25,335/-
2001-2002	27,111.25/-	31,177.94/-	3,74,135.28/-
2002-2003	31,177.94/-	35,854.63/-	4,30,255.56/-
2003-2004	35,854.63/-	41,232.82/-	4,94,793.84/-
2004-2005	41,232.82/-	47,417.74/-	5,69,012.88/-
Total		RS. 24,76,432.56/-	

[10] (2005) 1 SCC 705

63. Additionally, the learned counsel for the plaintiffs has placed on record the details of the rental/lease amount per annum, paid for the adjoining properties to the suit property in the locality of Ansal Bhawan, New Delhi. It is seen that PW-2, i.e, Mr Shankar Singh, MTS, office of Sub Registrar-VII, INA, Vikas Sadan, DDA, New Delhi, has produced the certified true copies of 19 lease deeds pertaining to the properties analogous to the suit property, for the period spanning from 2005 to 2020. It is also seen that the details of these lease deeds are enumerated in the covering letter bearing No. F.SR-VII/Court Matter/New Delhi/634 dated 06.09.2022 (exhibited as **Ex.PW-2/1**) and certified copies of the lease deeds are also placed on record (exhibited as **Ex.PW-2/2 (Colly)).** A tabulated form of the same is reproduced below: -

S.No	Properties in Ansal Bhawan, 16 Kasturba Gandhi Marg, New Delhi	Lease years	Area (sq. f.t)	Lease per annum (RS.)
1.	Flat No. 104	13 July 2005	393	2,64,000/-
2.	Flat No. 603	28 November 2006	1,043	17,52,240/-
3.	Flat No. 705	10 December 2007	820	24,60,000/-
4.	Flat No. 14, Lower Basement Godown	22 August 2008	721	2,59,560/-
5.	Flat No. 601	23 March 2009	780	5,90,400/-
6.	Flat No. 205	26 March 2010	820	13,20,000/-
7.	Flat No. 212	11 April 2011	740	14,20,800/-
8.	Flat No. 707	24 February 2012	780	10,80,000/-
9.	Flat No. 1010	14 March	1,043	20,65,140/-

		2013		
10.	Flat No. 906	6 January 2014	740	13,20,000/-
11	Flat No. 207	27 January 2014	780	14,97,600/-
12	Flat No. 14, Lower Basement Godown	7 January 2015	721	3,11,472/-
13.	Flat No. 110	8 February 2016	920	18,00,000/-
14.	Flat No. 1009	13 January 2017	1,235	21,60,000/-
15.	Flat No. 1110	23 March 2017	1,043	19,80,000/-
16.	Flat No. 807	5 January 2018	780	15,91,200/-
17.	Flat No. 709	12 February 2018	1,043	19,02,432/-
18.	Flat No. 1102	04 February 2019	918	15,24,000/-
19.	Flat No. 121	18 February 2020	650	13,80,000/-
Total		RS. 2,17,86,844/-		

64. Therefore, the total *mesne profits* claimed by the plaintiffs are tabulated as under: -

Particulars	Amount
Total of lease amount payable from 1999 to 2005	RS. 24,76,432.56/-
Total of lease amount payable from 2005 to 2020	RS. 2,17,86,844/-
Total mesne profit payable	RS. 2,42,63,276.56/-
Amount received in the Writ Petition as arrears of rent (*to be deducted from total amount payable*)	RS. 52,08,323/-
Total *mesne profits* payable	RS. 1,90,54,953.56/-

65. It is seen that the aforesaid computation does not furnish a holistic and comparative assessment of the *mesne* profits accrued in respect of the suit property for the period spanning from 2005 to 2020, thereby rendering the evaluation inadequate for determining the quantum of wrongful gain or loss occasioned during the period of illegal occupation.

66. Upon consideration of the lease deeds adduced by the plaintiffs, delineating property areas and corresponding lease values over the period spanning 2005 to 2020, this Court has undertaken a year-wise computation of the per sq. ft. valuation. In doing the aforesaid exercise, it has been noticed that lease values (s) have fluctuated drastically over the years and there is no coherent pattern in the escalation/de-escalation of the lease amounts(s) over the years, Thus, it is deemed appropriate to clarify that the computation is confined strictly to the peculiar facts and circumstances of the present case and is premised solely upon the market lease rates of properties situated in Ansal Bhawan, as furnished by the plaintiffs. The methodology employed herein shall not be construed as a standardized formula for universal application across other proceedings.

67. The aforesaid exercise can be conducted by dividing the lease amounts of each year of the properties by their area. The table below summarises the aforesaid exercise in brevity: -

S.No.	Area (sq. f.t)	Lease per annum (Rs.)	Year of lease deeds	Price per sq ft (Rs.) (*rounded of*)
1.	393	2,64,000/-	13 July 2005	672
2.	1,043	17,52,240/-	28 November 2006	1680.0
3.	820	24,60,000/-	10 December	3000

			2007	
4.	721	2,59,560/-	22 August 2008	360
5.	780	5,90,400/-	23 March 2009	757
6.	820	13,20,000/-	26 March 2010	1610
7.	740	14,20,800/-	11 April 2011	1920
8.	780	10,80,000/-	24 February 2012	1385
9.	1,043	20,65,140/-	14 March 2013	1980
10.	740	13,20,000/-	6 January 2014	1784
11.	780	14,97,600/-	27 January 2014	1920
12.	721	3,11,472/-	7 January 2015	432
13.	920	18,00,000/-	8 February 2016	1956
14.	1,235	21,60,000/-	13 January 2017	1749
15.	1,043	19,80,000/-	23 March 2017	1898
16.	780	15,91,200/-	5 January 2018	2040
17.	1,043	19,02,432/-	12 February 2018	1824
18.	918	15,24,000/-	04 February 2019	1660
19.	650	13,80,000/-	18 February 2020	2123

68. Consequently, for the purpose of ascertaining the notional lease value with respect to the suit property for the period spanning 2005 to 2020, the aforenoted rate per sq. ft. may be appropriately multiplied by the total area of the suit property to derive a fair and reasonable estimation of the lease value of the suit property. The aforesaid exercise is further tabulated below:-

S.no.	Year	Price per sq ft (Rs.) (*rounded of*)	Area of the suit property	Notional rent of the suit property

1.	13 July 2005	672	820	Rs.5,51,040
2.	28 November 2006	1680.0	820	Rs.13,77,600
3.	10 December 2007	3000/-	820	Rs.24,60,000
4.	22 August 2008	360/-	820	Rs.2,95,200
5.	23 March 2009	757/-	820	Rs.6,20,740
6.	26 March 2010	1610/-	820	Rs.13,20,200
7.	11 April 2011	1920/-	820	Rs.15,74,400
8.	24 February 2012	1385/-	820	Rs.11,35,700
9.	14 March 2013	1980/-	820	Rs.16,23,600
10.	6 January 2014	1784/-	820	Rs.14,62,880
11.	7 January 2015	432/-	820	Rs.3,54,240
12.	8 February 2016	1956/-	820	Rs.16,03,920
13.	13 January 2017	1749/-	820	Rs.14,34,180
14.	12 February 2018	1824/-	820	Rs.14,95,680
15.	04 February 2019	1660/-	820	Rs.13,61,200
16.	18 February 2020	2123/-	820	Rs.17,40,860
Total	Rs.2,04,11,440.			

69. The total notional lease value for the suit property, calculated by applying the applicable rate per sq. ft. to the area of 820 sq. ft. (*area of the suit property*) for each year from 2005 to 2020, amounts to Rs. 2,04,11,440/. In addition, the plaintiffs have claimed an amount of Rs. 24,76,432.56/- as the total notional lease payable from 1999 to 2005, based on a 15% annual

escalation of the lease amount. Accordingly, the aggregate notional lease value recoverable for the entire period from 1999 to 2020 stands at Rs. 2,28,87,872.56/-. From this aggregate sum, a deduction of Rs. 52,08,323/- is made, accounting for arrears of rent already paid by the defendants before the Writ Court. Thus, the net *mesne* profits stand at Rs. 1,76,79,549.56/- (*rounded of to 1,76,79,550/-*), reflecting the financial loss suffered by the plaintiffs due to the unauthorised/illegal and prolonged occupation of the suit property by the defendants.

70. Therefore, the plaintiffs are held entitled to mesne profits amounting to Rs. 1,76,79,550/- to be paid by the defendants.

71. Moreover, in ***Fateh Chand***, the Court clarified that according to Section 2(12) of the CPC, the expression mesne profits includes not only the profits that the person in wrongful possession actually received or could have received with ordinary diligence but also interest on such profits. Accordingly, the Court directed that the plaintiff therein shall be entitled to interest at the rate of 6% per annum on the mesne profits accruing month after month, calculated from 1.06.1949 until the date of actual delivery of possession, subject to the statutory limitation prescribed under Order XX Rule 12(1)(c) of CPC. The Supreme Court in ***Mahant Narayana Dasjee Varu & Ors. v. The Board of Trustees, the Tirumala Tirupathi Devasthanam***,[11] also held that interest is an integral part of the mesne profits and, therefore, the same has to be allowed in the computation of *mesne* profits itself.

72. In view of the defendants' continued occupation of the suit property despite the quashing of the forfeiture order and considering the nature of the

protracted *lis* between the parties spanning over two decades, the Court finds it appropriate to award interest at a rate of 6% per annum on the mesne profits from the start of the illegal occupation to the date of handover, i.e., from 01.05.1999 to 02.07.2020.

> ***Issue 3*** *Whether the Plaintiffs are entitled to a sum of Rs. 9,89,077/- (Rupees Nine Lakhs Eighty Nine Thousand and Seventy Seven Only) towards outstanding maintenance charges, including water charges, for the Relevant Period? OPP*

73. The plaintiffs are seeking restitution of maintenance charges levied by Ansal Bhawan Flat Owners Welfare Society for an amount of Rs. 9,69,397/- It is contended by the plaintiffs that the maintenance amount is towards the facilities enjoyed by defendant Nos. 1 and 2 during their unlawful possession over the suit property, including elevators, common areas, security, and other infrastructure in the building.

74. *Per contra*, the defendants have contended that liability, if any, pertaining to the payment of maintenance charges arises solely from the lease agreement executed between the parties. It is asserted that, since the said lease agreement has lapsed and is no longer subsisting, the plaintiffs have no legal basis to claim such charges. Furthermore, it has been averred in the written statement that defendant No.2 has already discharged the electricity dues in respect of the suit property up to November 2019.

75. It is seen that the parties are *ad idem* on the fact that the last lease deed had already expired. Furthermore, the continued occupation of the suit property by the defendants for the period spanning from 1999 to 2020 has

[11] 1964 SCC OnLine SC 125

already been held to be unlawful, as elaborated hereinabove.

76. Accordingly, this Court is of the considered view that the possession of the defendants, not being under a valid lease but as unlawful occupants asserting a claim of title, cannot give rise to any contractual liability for the payment of maintenance charges, in the absence of a fresh legal or contractual arrangement imposing such an obligation. Even otherwise, the plaintiffs have already been held entitled to *mesne* profits, which, by their very nature, are intended to encompass any unjust enrichment derived by the defendants to the detriment of the plaintiffs during the period of unauthorised occupation.

77. Therefore, this Court finds that the plaintiffs are not entitled to the claimed maintenance charges amounting to Rs 9,69,397/-.

> ***Issue no. 4*** *Whether the Plaintiffs are entitled to a sum of RS. 43,53,912/- (Rupees Forty Three Lakhs Fifty Three Thousand Nine Hundred and Twelve Only) towards outstanding property tax for the Relevant Period?* ***OPP***
>
> ***Issue no. 5*** *Whether the Defendants are not liable to pay property tax, as claimed by the Plaintiffs?* ***OPD***

78. Learned counsel for the plaintiffs has also claimed restitution of property tax on the assertion that the defendants remained in possession of the suit property without payment of rent and, in doing so, unjustly caused the plaintiffs to incur statutory property tax with respect to the suit property.

79. The defendants, in rebuttal, have relied upon Section 65 of the New Delhi Municipal Council Act, 1994, which provides for the exemption of Union Government properties from property tax.

80. It is noted that the argument of the plaintiffs that the defendants were

obligated to pay property tax, is devoid of merit. As noted hereinabove, it is undisputed that the last lease agreement between the parties expired in 1995, and there is no evidence on record to establish the existence of any valid or subsisting lease that would place such an obligation upon the defendants. The continued possession of the defendants, in the absence of a formal lease or document stating that the defendants were to reimburse the property tax, cannot automatically give rise to liability for statutory dues.

81. Moreover, it is a trite principle that property tax is a statutory burden imposed upon the recorded owner of the property, independent of occupancy. The plaintiffs, being the registered owners for municipal purposes, were primarily liable for such dues. Furthermore, even according to the unsigned lease placed on record by the defendants during the cross-examination of PW-1, marked as Ex, PW/D1, the responsibility for paying government taxes was assigned to the plaintiffs. Although the above document has been objected to by the learned counsel for the plaintiff, and the defendants admit that no lease was in effect after 1995, the obligation to pay the property and government taxes remained with the plaintiffs as they were the rightful owners.

82. In view of the aforesaid, the plaintiffs are not held entitled to payment of the property tax.

RELIEF

83. As elucidated hereinabove, it is seen that issues No.1, 2 , 6 and 7 are decided in favour of the plaintiffs and against the defendants. Further issues No. 3, 4,5 are decided against the plaintiffs.

84. The suit stands decreed in terms of paragraphs No. 70 and 72. Further, the costs of the litigation, including the counsel fees of the plaintiff, shall be borne by the defendants.

85. Accordingly, the Registry is directed to draw a decree sheet and take necessary steps in accordance with the law.

86. The suit, along with pending applications, stands disposed of.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

MAY, 2nd , 2025
p/dp/mj