

Court No. - 39

Case :- FIRST APPEAL No. - 10 of 2022

Appellant :- B.N. Tripathi And 3 Ors.

Respondent :- State of U.P. and Another

Counsel for Appellant :- Anuj Agarwal, B.N.Tripathi In Person, In Person, Shreya Gupta

Counsel for Respondent :- Raj Nath Pandey, Rajesh Kumar Singh

Hon'ble Sandeep Jain,J.

1. The instant appeal has been filed by the plaintiff under Section 96 CPC against the impugned judgment and decree dated 20.4.2016 passed by the 2nd Additional Judge Small Cause Court, Kanpur Nagar in O.S. no. 243 of 2009 B.N. Tripathi and others vs. State of U.P. and another, whereby the plaintiffs suit for the relief of mandatory injunction directing the defendants to deliver the possession of the disputed plot and award of damages of ₹ 41,16,800/- with interest @18% p.a. has been dismissed.

Plaint case

2. The plaintiffs filed O.S. no. 243 of 2009 against the defendant no.1 State of Uttar Pradesh and defendant no. 2 Kanpur Development Authority (KDA) with the averments that they are the joint lessees of plot No. 56, Block 'A', Scheme 39, Jajmau, Kanpur, hereinafter referred to as the disputed plot, admeasuring 2,222 square yards by virtue of lease deed dated 3.12.1984, which was executed by the defendant KDA. It was further averred that the disputed plot was leased to plaintiffs for a period of 999 years commencing from 3.12.1984, for a consideration of the premium reserved under the aforesaid lease deed of ₹ 22,220/-, which was paid by the plaintiffs at the time of execution of the above lease deed, the boundaries of which were duly described in the lease deed and at the foot of the plaint. It was further averred that the above lease deed was registered in the office of sub-Registrar Kanpur at Bahi no.1, Book 562/611 at pages 144/288 and 301 on 07.12.1984.

3. It was further averred by the plaintiffs that before the execution of the lease deed, an unwarranted demand of interest @ 15% per annum was made by the KDA from the plaintiffs, and under protest the payment of interest so illegally demanded, which amounted to ₹

44,420.22 was paid by the plaintiffs to the defendant KDA, and thereafter, the plaintiffs filed O.S.no. 335 of 1985 challenging the legality of the above demand of interest, which was decreed by judgment and decree dated 15.5.1994 in favour of the plaintiffs, thus, the legal interest was refunded to the plaintiffs.

4. It was further averred that for the purpose of harassing the plaintiffs, the defendant KDA initially demanded uncalled for, illegal and unwarranted interest and the possession of the disputed plot was not handed to the plaintiffs under the garb of above illegal demand of interest and whenever the plaintiffs demanded possession of the disputed plot from the defendant KDA, the frivolous ground of the pendency of the above suit no. 335 of 1985 was taken by it, which was untenable.

5. It was further averred that in the meantime, the plaintiffs moved the defendant KDA for sanction of building plan which was sanctioned on 27.2.1998 but since the possession of the disputed plot was not delivered to the plaintiffs as such, it was impossible for them to raise construction on it, hence the validity of the building plan needs to be extended to make it effective after the delivery of possession of the plot.

6. It was further averred that the plaintiffs constantly wrote letters to the defendant KDA asking for delivery of possession but the possession was not delivered. The above letters were written on 21.7.1985, 2.6.1990, 3.6.1990, 9.12.1990, 25.9.2002, 15.11.2002, 29.1.2003, 28.3.2003, 9.10.2003, 27.10.2003, 19.12.2003, 11.3.2004, 17.5.2004, 5.7.2004, 16.10.2004 and 13.1.2005. It was further averred that finally the plaintiffs served a legal notice dated 17.1.2005 on the defendant KDA demanding possession of the disputed plot along with damages at the rate of ₹ 1 lakh per annum within a period of 15 days from the date of receipt of the notice but despite service of notice on 18.1.2005, the defendant failed to deliver the possession.

7. It was specifically averred by the plaintiffs that the disputed plot was purchased for doing some trade or business on it, for the livelihood of the plaintiffs and their family members, but due to non-delivery of the disputed plot, the aspirations and dreams of the plaintiffs were completely crushed by the high-handed, illegal and arbitrary action of the defendants.

8. It was further averred that when the possession of the disputed plot was not delivered, the plaintiffs filed a writ petition no. 425 of 2006 before this Court, which was disposed by order dated 9.5.2006 with the direction that the plaintiffs can approach the civil court for the relief of delivery of possession of the disputed plot, and after the

above order of this Court, the defendant KDA was approached by the plaintiffs but in spite of giving assurance by the senior officials of the defendant, the possession of the disputed plot was not delivered to the plaintiffs, who are senior citizens aged about 70 years, who are at the fag end of their lives. It was further averred that the plaintiffs invested their hard earned money in the disputed plot but its possession was deliberately, without any reason, was not handed to the plaintiffs and as such, by the arbitrary and illegal action of the defendants, the plaintiffs have been deprived of reaping the fruits of the disputed plot, which was still lying vacant. It was further averred that since the possession of the disputed plot was never handed to the plaintiffs, the plaintiffs could not use it or acquire its possession.

9. It was further averred that in the year 1992, the plaintiffs even obtained registration of the business concern from Directorate of Industries, U.P. in the name of Narayan Krishi Yantra Udyog and according to the project report, the plaintiffs were supposed to earn profit of ₹ 13,700/- per month from the above business, but since the possession of the disputed plot was not handed to the plaintiffs, they failed to establish their factory, which was the basic object of acquiring the disputed plot, due to which the plaintiffs have suffered financial loss, because the capital cost of establishing the factory has increased and due to this, the plaintiffs have suffered a loss of ₹ 5 lakhs.

10. It was further averred that the plaintiffs have assessed the loss on a flat rate of ₹ 13,700/- per month, which amounts to ₹ 1,64,400/- per annum and till the end of the month of December, 2006 the total loss was ₹ 36,16,800/- which was due to the non-delivery of possession of the disputed plot and if, amount the loss of increased capital cost of ₹ 5 lakhs was added, then the plaintiffs have suffered a total loss of ₹ 41,16,800/- to which they are entitled along with interest @ 18% per annum from the defendants.

11. In the above backdrop, the plaintiffs claimed the following reliefs :-

(A) A decree of mandatory injunction, thereby directing the defendant to deliver the possession of plot No. 56, Block 'A', Scheme 39, Jajmau, Kanpur, admeasuring 2,222 square yards, fully bounded at the foot of the plaint, to the plaintiffs and also deliver its sanction letter regarding the sanctioned building plan in respect of that plot.

(B) Money decree be passed for a sum of ₹ 41,16,800/- together with up-to-date interest @18% per annum in favour of the plaintiffs and against the defendant.

(C) A decree be passed declaring that the building plan in respect of the aforesaid plot sanctioned by KDA no. 214/489/Bhau/92-93 dated 27.2.1998 shall be effective and operative after delivery of possession of

that plot by KDA to the plaintiff.

(D)Cost of the suit.

(E)Any other relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

Written Statement on behalf of defendant Kanpur Development Authority(KDA)

12. The defendant denied the plaint averments, which were evasive and not specific. It was averred that the answering defendant was not the least concerned with the object of the purchase of the disputed plot. The plaintiffs claim of damages was vague and imaginary. It was further averred that no cause of action has accrued to the plaintiffs to file the present suit.

13. It was specifically averred that the possession of the disputed plot has been given to the plaintiffs, as per rules of the KDA, on payment of entire dues, which were payable from time to time. The plaintiffs deliberately failed to make payment, as demanded by the answering defendant and instead, entered into uncalled for litigation, only to harass the officials of the KDA. It was further averred that the plaintiffs are fond of litigation and it is for this reason, earlier suit no. 335 of 1985 and the Writ before the High Court was filed. It was further averred that the instant suit was filed on whims, which was barred under Section 34 and 41(h) of the Specific Relief Act.

Documentary evidence of the parties

14. The plaintiffs filed original lease deed dated 3.12.1984 executed by KDA in their favour, certified copy of the judgment dated 17.5.1994 passed in O.S. no. 335 of 1985, copy of the letters written to the KDA, copy of the legal notice dated 17.1.2005 given to the KDA, certificate of Directorate of Industries Uttar Pradesh, project report, etc.

15. The defendants have not filed any documentary evidence.

Issues framed by the trial court

16. No written statement was filed by the defendant State of U.P. On the basis of the pleadings of the plaintiffs and the defendant KDA, the following issues were framed :-

(i) Whether without any legal and reasonable cause, the defendant failed to hand over the possession of the disputed plot No. 56, Block 'A', Scheme 39, Jajmau to the plaintiffs? If so, its effect?

(ii) Whether the suit has been less valued?

- (iii) Whether the court fees paid is insufficient?*
(iv) Whether the plaintiff's suit is barred by Section 34 and Section 41(h) of the Specific Relief Act ?
(v) Whether the plaintiffs are entitled to get any relief ?

Oral evidence adduced by the parties

17. The plaintiff B.N.Tripathi examined himself as PW-1, who in his examination-in-chief proved the plaint averments. He deposed that the lease deed dated 3.12.1984 was executed in favour of the plaintiffs by the power-of-attorney holder of Kanpur Development Authority(KDA), K.N.Bhalla, and thereafter, the lease deed was got registered. He further deposed that the entire premium of ₹ 22,220/- was paid by the plaintiffs to the KDA, but, an illegal demand of interest @ 15% per annum was made by the KDA, which was fulfilled under protest by depositing an amount of ₹44,420.22 as interest with the KDA, which was later on challenged by filing O.S. no. 335 of 1985 against the KDA, which was decreed in favour of plaintiffs on 15.5.1994. He further deposed that inspite of fulfilling the illegal demand of KDA, the plaintiffs were not handed the possession of the disputed plot on the ground that the above suit no. 335 of 1985 was pending. He further deposed that even after the decision of the suit no. 335 of 1985, the plaintiffs were not handed the possession of the disputed plot, regarding which several letters were written to the KDA by registered post and a representation was also made, but to no effect. The plaintiff has proved the above letters sent by registered post to the defendant KDA from time to time. The plaintiff has further proved the legal notice given by his counsel Yatindra Shukla dated 17.1.2005 through registered post to the KDA. The plaintiff further deposed that they obtained the disputed plot for doing business on it, in order to sustain their livelihood but they were not handed its possession, due to which they have suffered a loss of ₹ 41,16,800/-, for the recovery of which they have filed the suit, along with interest @ 18% per annum. He further deposed that the plaintiffs have also filed a writ petition no. 25403 of 2006 before this Court, in which by order dated 9.5.2006 it was ordered that for getting possession, the plaintiffs may file a suit before the civil court. He further deposed that after the passing of the above order by this Court, the plaintiffs met senior officers of KDA and requested them to give possession of the disputed plot, on which they assured the plaintiffs, which proved to be false, and as such they filed the instant suit on 9.2.2007. It was further deposed that the deponent was more than 80 years old and the plaintiff no. 2 died on 13.9.2011. He further deposed that in the year 1992 the plaintiffs have got registered the intended business in the name and style of Narayan Krishi Yantra Udyog, with the Directorate of Industries, Government of U.P. and the project report was also prepared, according to which the plaintiffs

were expecting to earn monthly income of ₹ 13,700/-, from which they were deprived. He further deposed that the cost of setting business has also increased due to inflation by ₹ 5 lakhs. He further deposed that the plaintiffs are the lease holders of the disputed plot and they are entitled to its physical possession and are also entitled to get damages with interest from the defendants.

18. PW-1 in cross-examination deposed that the disputed plot was purchased in auction from KDA in the year 1967. His bid was highest @ ₹ 10/- per square yard, among the persons, who participated in the auction. In all 16 plots were auctioned.

19. The defendants neither adduced any documentary or oral evidence nor any arguments were submitted on their behalf, before the trial court.

Reasoning of the Trial Court

(1) The plaintiffs have nowhere mentioned the duration in which, after the execution of the lease deed, they were supposed to get the possession of the disputed plot.

(2) The plaintiffs were supposed to disclose what action was taken by them for getting the possession of the disputed plot and in response to that, what action was taken by the KDA.

(3) After the execution of the lease deed in their favour, the plaintiffs were supposed to disclose what were the other terms and conditions of the KDA.

(4) The plaintiffs have also not disclosed why the possession of the disputed plot was not handed to them by the KDA.

(5) If the possession of the disputed plot was not handed to the plaintiffs, then they should have complained to the KDA.

(6) The plaintiffs have failed to disclose what reply was given by the KDA to the letters sent to it by the plaintiffs. This fact was also required to be proved by the plaintiffs by their oral and documentary evidence.

(7) The plaintiffs have also failed to submit any document to prove that after the execution of lease deed, how the payment was to be effected.

(8) The plaintiffs has only filed attested copy of the lease deed, but have not filed any terms and conditions issued by the KDA.

(9) The plaintiffs have concealed and suppressed material facts from the court, the burden was upon the plaintiffs to prove the above facts, which they have utterly failed to discharge.

20. In view of the above reasons, issue no.(i) was decided against the

plaintiffs. Issue no. (ii) and (iii) were previously by order dated 4.7.2014 decided ex-parte in favour of the plaintiffs. Issue no. (iv) was also decided in favour of the plaintiffs, against the defendants, because it was not pressed by the defendants. Since issue no.(i) was decided against the plaintiffs, as such, in the opinion of the trial court, the plaintiffs were not entitled to get any relief, because they failed to prove their case, hence, the plaintiffs suit was dismissed with costs, aggrieved against which, the plaintiffs have filed the instant appeal under Section 96 CPC.

Submissions of the learned counsel of the parties

21. Ms.Shreya Gupta learned counsel for the plaintiff appellant submitted that the disputed plot was purchased in auction by the plaintiffs way back in the year 1967 and the plaintiffs deposited the whole amount of consideration of the lease amounting to ₹ 22,220/- with the defendant KDA, but still the KDA demanded interest at the rate of 15%, which was illegal, but still the plaintiffs paid the further amount of ₹ 44,420.22 with the KDA under protest and then filed O.S. No. 335 of 1985 for recovery of the amount paid under protest, which was decreed on 15.5.1994 in favour of the plaintiffs, and it was held that the above demand of additional amount of ₹ 44,420.22 was illegal.

22. Learned counsel further submitted that the lease deed was executed by the KDA after obtaining the full consideration of ₹ 22,220/- from the plaintiffs, which is recorded in the lease deed. It was further submitted that since the above demand of the KDA of ₹ 44,420.22 was found to be illegal, and thereafter, no additional demand was ever made by the KDA from the plaintiffs, as such, no money was due from the plaintiffs to the KDA.

23. Learned counsel further submits that the lease deed itself contains all the terms and conditions, but it nowhere mentions that when the possession of the disputed land was to be handed to the plaintiffs. The lease deed is silent on this aspect. Learned counsel further submits that as per the written statement of the KDA, the possession of the disputed plot was handed to the plaintiffs, but no documentary or oral evidence was adduced to prove the above averment. It was further submitted that the plaintiffs always demanded the possession of the disputed plot after the lease deed was executed in their favour on 3.12.19 84 by the KDA, but the possession of the disputed plot was never handed to the plaintiffs.

24. It was further submitted that from the year 1985 till the filing of the suit in the year 2007, the plaintiff continuously demanded possession of the disputed plot from the KDA by writing numerous

letters to it, but there was no response from the other side. She further submitted that the plaintiffs also filed a writ petition before the High Court in the year 2006, which was disposed with the observation that the plaintiffs may file suit before the civil court for getting possession of the disputed plot.

25. She further submitted that the disputed plot was taken on lease for setting up business on it, for sustaining the livelihood of the plaintiffs and their family members from the earning of the business, which was supposed to be established on the disputed plot. She further submitted that in the year 1992 the proposed business in the name and style of 'Narayan Krishi Yantra Udyog' was got registered with the Directorate of Industries, State of Uttar Pradesh and the project report was also got prepared, according to which, the plaintiffs were supposed to earn monthly profit of ₹ 13,700/- after the commencement of the business, but it never materialised, because the possession of the disputed plot was never handed to the plaintiffs. She further submitted that all the hopes and aspirations of the plaintiffs were crushed by the illegal, arbitrary and whimsical acts of the KDA, which without any reason, failed to hand over the possession of the disputed leasehold plot to the plaintiffs.

26. She further submitted that the plaintiffs have proved their case on the basis of oral and documentary evidence, which has not been controverted by the defendants, because the defendants failed to adduce any oral or documentary evidence. She further submitted that the defendant KDA never entered the witness box to deny the plaintiffs case but still the trial court has erroneously held that the plaintiff failed to prove their case, which is a perverse finding.

27. She further submitted that the defendant KDA has not denied the execution of the lease deed of the disputed plot in favour of the plaintiffs. Further, the additional demand of the KDA was found to be illegal by the court in O.S. no. 335 of 1985, which was decreed in plaintiffs favour on 15.5.1994, which was never challenged before any court, as such, the defendant KDA cannot take a stand that the plaintiffs have not paid the full consideration of the lease. She further submitted that the defendant KDA could have submitted documentary evidence of handing over the possession of the disputed plot to the plaintiffs before the court, but no such evidence was submitted by it. She further submitted that the defendant KDA failed to prove any valid reason for not handing the possession of the disputed plot to the plaintiffs. She further submitted that it is not the case of KDA that the allotment of the disputed plot or the lease deed executed in favour of the plaintiffs have been cancelled by it and subsequently, the disputed plot has been leased to some other person or any 3rd party right has been created on it.

28. She further submitted that since the plaintiffs were deprived from the possession of the disputed plot, which they have intended for business purposes, for sustaining their livelihood, as such, they have suffered grave financial loss. Learned counsel submitted that as per the project report the plaintiffs were supposed to earn a minimum profit at the rate of ₹ 13,700/- per month after the business started on the disputed plot, but since its possession was never handed to them, they were deprived from earning that amount. Learned counsel further submitted that the cost of establishing business also escalated due to inflation and on this account the plaintiff suffered the loss of ₹ 5 lakhs. She further submitted that the plaintiffs in all claimed damages of ₹ 41,16,800/- along with interest pendente lite and future at the rate of 18% per annum from the defendant KDA, which they were entitled to get, but the trial court has without appreciating the evidence on record, has all together for perverse reasons dismissed the plaintiffs suit which is legally unsustainable and is liable to be set aside. With these submissions it was prayed that the instant appeal be allowed and the plaintiffs suit be decreed with costs. In support of her submission she has relied upon the following case law :-

- (i) *Iqbal Basith and ors. vs. N.Subbalakshmi and ors. (2021) 2 SCC 718 (by 3 Judges)*
- (ii) *Maula Bux vs. Union of India (1969) 2 SCC 554 (by 3 Judges)*
- (iii) *M/s A.T.Brij Paul Singh and ors. vs. State of Gujarat (1984) 4 SCC 59 (by 3 Judges)*
- (iv) *Bhagwati Prasad Jhunjhunwala & ors.vs.UCO Bank & anr. 2023 Supreme (Cal) 359*

29. Sri Abhinav Krishna Srivastava learned counsel for the Kanpur Development Authority(KDA) justified the decision of the trial court on the ground that the plaintiffs failed to prove their case. It was also submitted that the possession of the disputed plot has been handed to the plaintiffs but the learned counsel could not point out any documentary evidence in support of this contention. Learned counsel admitted that the lease deed mentions that the KDA has received the consideration of the lease deed but it does not mention that the possession of the disputed plot was handed to the plaintiffs. Learned counsel could not point out any reason for not handing the possession of the disputed plot to the plaintiffs. Learned counsel admitted that the lease deed executed in favour of the plaintiffs has not been cancelled and no 3rd party right has been created in the disputed plot. Learned counsel was repeatedly asked by the court to specify the reason for not handing the possession of the disputed plot to the plaintiffs, but he failed to give any reply.

30. I have heard the learned counsel of the parties, perused the impugned judgment and the record of the trial court.

31. The following issues arise for determination in this appeal :-

- (i) Whether the defendant KDA was justified in not handing the possession of the disputed leased plot to the plaintiffs ?*
(ii) Whether the plaintiffs had obtained the plot for commercial purposes for earning their livelihood from it ?
(iii) To what amount of damages are the plaintiffs entitled ?

Conclusion of this Court

32. It is evident that the plaintiffs obtained the disputed leased plot by paying its full premium of ₹ 22,220/- as mentioned in the plaint and the lease deed, the execution of which has not been specifically denied by the defendant KDA, in its written statement. The plaintiffs have filed the original lease deed and also proved it in the court, by examining plaintiff no.1 B.N.Tripathi as PW-1. It is apparent that the lease deed itself contains the terms and conditions of the lease, as such, both the parties were bound by it. This Court has itself perused the lease deed which mentions that the lease has been executed on 3.12.1984 on the terms and conditions printed on it.

33. The lease deed mentions that it is for the purposes of constructing factory building only, as per the building plan approved by the Vice-Chairman of the KDA. The lease deed also records that the consideration of the premium of ₹ 22,220/- has been paid by the plaintiffs to the KDA @ ₹ 10/- per square yard and the area of the leased plot was 2,222 square yards. The lease deed mentions the description of the disputed plot, which is same, as has been mentioned by the plaintiffs in the plaint and its term as 999 years. It is apparent that the lease of the disputed property was executed by the KDA after obtaining full premium in favour of the plaintiffs for a duration of 999 years on 3.12.1984. It is further mentioned in the lease deed that the lessee will commence the construction of factory building on the plot within a period of one year and will completely finish the same within the period of 2 years from the date of the lease deed or such extended period as may be allowed by the KDA. The lease deed also records that it shall be lawful for the KDA in respect of any breach of agreement to re-enter the demised premises. It also mentions that the KDA can determine the lease in the case of failure on the part of the lessee to fulfil its obligations. It is also apparent that the lease deed has been registered subsequently, in the office of sub-registrar Kanpur on 7.12.1984, as such it is legally enforceable and admissible in evidence. It is also apparent that no oral evidence can be adduced contrary to the terms of the lease deed.

34. The defendant KDA has averred in its written statement that the plaintiff failed to pay the entire dues of the KDA, which is not true, because the lease deed itself mentions that the plaintiffs have paid the

entire premium of the lease amounting to ₹ 22,220/-to the KDA, which has also been accepted by the KDA in the lease deed, at the time of its execution and registration, as such, the assertion of KDA that the entire amount of dues was not paid by the plaintiffs, is not tenable and is liable to be rejected.

35. It is the specific case of the plaintiffs that apart from the premium of the lease amounting to ₹ 22,220/-interest at the rate of 15% per annum was also demanded by KDA from them, which was deposited under protest by the plaintiffs. The plaintiffs have specifically averred that they deposited an amount of ₹ 44,420.22 under protest with KDA and subsequently, for reclaiming it they filed O.S.no. 335 of 1985 B.N.Tripathi and another vs. KDA and another, which was decreed by the court on 17.5.1994, and the KDA was directed to refund the amount of ₹ 44,420.22 by the court. The plaintiffs have filed the certified copy of the above judgment dated 17.5.1994, which clearly mentions that the disputed plot was purchased in auction by the plaintiffs by making highest bid, which was confirmed in favour of plaintiffs on 26.4.1967. It is apparent that O.S. no. 335 of 1985 was filed by the plaintiffs after the execution of lease deed on 3.12.1984 in their favour by the KDA, for recovering the excess amount paid by them to the KDA. The above judgment specifically records that the demand of interest by the KDA from 8.1.1967 to 9.11.1984 was not lawful, and the defendants should have executed the lease deed just after 9.11.1984, but it was executed on 3.12.1984.

36. It is apparent that the lease deed itself mentions that the defendant KDA has received the entire premium of ₹ 22,220/-from the plaintiffs and the additional demand of interest @15% per annum amounting to ₹ 44,420.22 was found illegal by the Court of 11th Additional District Judge, Kanpur Nagar in O.S. no. 335 of 1985, as such, there is no force in the contention of the defendant KDA that the plaintiffs have not paid the entire consideration of the lease deed to the KDA.

37. The Apex Court in the case of ***Iswar Bhai C.Patel vs.Harihar Behera (1999) 3 SCC 457*** has observed as under :-

"17..... Having not entered into the witness box and having not presented himself for cross-examination, an adverse presumption has to be drawn against him on the basis of the principles contained in Illustration (g) of Section 114 of the Evidence Act, 1872."

38. The Apex Court in the case of ***Vidyadhar vs. Manikrao and Anr. (1999) 3 SCC 573*** has again reiterated that where a party to the suit does not appear in the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct.

39. The next controversy is regarding the possession of the disputed plot. The plaintiffs allege that its possession was not handed to them, whereas, as per the KDA the possession was handed to the plaintiffs. It is apparent that the KDA has neither adduced any documentary nor any oral evidence in order to prove the averments of its written statement, as such, the contention of the KDA remains unproved. No official of the KDA has entered in the witness box to prove the case of KDA on oath, as pleaded in the written statement and offer himself for cross-examination by the plaintiffs. In view of the above, an adverse presumption has to be drawn against the KDA, on the basis of principles contained in Section 114(g) of the Evidence Act, 1872, that the case set up by the KDA is false.

40. The terms and conditions of the lease deed does not mention anything about the possession of the disputed plot. It is further apparent that the burden is upon the KDA to prove that the possession of the disputed plot was handed by it to the plaintiffs but that burden has not been discharged by it. The KDA could have filed the possession memo, which is prepared at the time of handing of possession to the lessee, which is also signed by 2 witnesses. By producing the possession memo and examining its witnesses in the court, the KDA could have proved that it has handed over the possession of the disputed plot to the plaintiffs, but no such evidence was led by the KDA. Mere bald assertion by the KDA in its written statement is not sufficient to prove that it has handed the possession of the disputed plot to the plaintiffs.

41. It is further apparent that no valid reason has been mentioned by the KDA in its written statement for not handing the possession of the disputed plot to the plaintiffs. It is apparent that the lease deed is silent as to the duration within which the possession was to be handed to the plaintiffs after the execution of the lease deed.

42. It is the specific case of the plaintiffs that they obtained the leased plot for commercial purposes, for earning their livelihood and for the sustenance of their family. The lease deed also mentions that the lease was for construction of a factory, which was to be constructed within a period of 2 years, after getting the building plan approved from the KDA within a period of one year. It also mentions that the KDA had the authority to terminate the lease in violation of the terms and conditions of the lease and re-enter the disputed plot. It also mentions that the KDA was entitled to claim damages for the violation of the terms and conditions of the lease by the plaintiffs.

43. It is also apparent from the documentary and oral evidence of the plaintiffs that after the execution of lease deed on 3.12.1984 they had

continuously written letters to the KDA demanding possession of the disputed plot. The plaintiffs have filed a copy of the letters sent to the KDA between the year 1985 till the filing of the suit, along with the registered post receipts, which proved that the plaintiffs were continuously asserting their rights and demanding possession of the disputed plot. It is further evident that the plaintiffs letters on the above subject were never replied by the KDA, to specify the reason why possession was not being given to the plaintiffs. It is not the case of the KDA that they had duly communicated to the plaintiffs the reason for not handing over the possession of the disputed plot. The KDA could have proved the above fact by adducing evidence, but no such evidence was led by it. It is further apparent that the plaintiffs, prior to the filing of the instant suit, filed a Writ Petition no.25403 of 2006 Smt.Yugrani Devi and another vs. State of U.P. and others for obtaining possession of the disputed plot, which was dismissed by a Division Bench of this Court on 9.5.2006, with the observation that the plaintiffs can file a suit in the subordinate Court in this regard. In the light of the above evidence on record, the conclusion of the trial court that the plaintiffs have failed to prove what steps were taken by them for getting possession of the disputed plot and if any action was taken by them, then what reply was submitted by the KDA, is a perverse finding.

44. It is apparent that the plaintiffs have taken all possible steps, they could have taken to get the possession of the disputed plot. It is apparent that the KDA has neither taken the plea of limitation nor any issue has been framed on it, as such, the question of limitation is not involved in the suit.

45. It is apparent from the above analysis that the trial court has not cared to go through the terms and condition mentioned in the lease deed, and the documentary evidence on record and due to this fatal error, has recorded a series of perverse findings such as – that the plaintiffs failed to prove the terms and conditions of the lease as well as, when the possession was to be handed to them; the plaintiffs failed to prove why the possession of the disputed plot was not handed to them by the KDA; the plaintiffs never complained to the KDA that the possession was not handed to them; the plaintiffs failed to prove what amount was required to be paid after the execution of the lease deed in their favour ; the plaintiffs have not filed the terms and conditions of the KDA, any agreement or the scheme, due to which, the plaintiffs have failed to prove their case and the plaintiffs have also suppressed and concealed material facts from the Court, which they were bound to disclose. It is apparent that all the above findings recorded by the trial court are perverse, because the trial court has not cared to go through the plaint averments, written statement of the KDA, lease deed, the terms and conditions mentioned in it, the

correspondence undertaken by the plaintiffs with the KDA and the judgment of O.S. no. 335 of 1985. Had the trial court gone through the above pleadings and documents carefully, then, perhaps the findings of the trial court could have been different. It is apparent that the trial court has failed to discharge its duties lawfully, and has passed a perverse judgment, which is legally unsustainable.

46. It is apparent that the plaintiffs have been deprived from the possession of the disputed plot, without any valid reason by the KDA. It is further apparent that the plaintiffs obtained the disputed plot for commercial purposes, for earning their livelihood, but since the possession of the plot was not handed to them, the plaintiffs could neither construct the factory on the disputed plot and start the business nor earn anything from it. The plaintiffs purpose of obtaining the plot was frustrated deliberately by the KDA, for which, the plaintiffs are entitled to get damages, for the lost profits they would have generated from the business, they had intended to commence on the disputed plot. From the evidence on record, it is proved, that the plaintiffs registered their business in the name and style of 'Narayan Krishi Yantra Udyog' with the Directorate of Industries, State of Uttar Pradesh, on 21.10.1992. The plaintiffs also got prepared the project report for manufacturing agricultural implements such as cultivator, sprayer, paddy thresher, leveller, disc-harrow, etc. which was filed and proved before the trial court, according to which, from the alleged business they would have earned a monthly profit of ₹ 13,700/- against which no contra evidence has been led by the KDA. In view of the above unrebutted evidence on record, more particularly, when the trial court has not examined this issue on merits, this Court has to determine what amount of reasonable damages could be awarded to the plaintiffs against the KDA, in the above facts and circumstances.

47. The Apex Court in the case of *Maula Bux* (supra) has held that in every case of breach of contract the person aggrieved by the breach is not required to prove actual loss or damage suffered by him before he can claim a decree and the Court is competent to award reasonable compensation in case of breach even if no actual damage is proved to have been suffered in consequence of the breach of contract. In case of breach of some contracts it may be impossible for the Court to assess compensation arising from breach, while in other cases compensation can be calculated in accordance with established rules. Where the Court is unable to assess the compensation, the sum named by the parties if it be regarded as a genuine preestimate may be taken into consideration as the measure of reasonable compensation, but not if the sum named is in the nature of penalty. Where loss in terms of money can be determined, the party claiming compensation must prove the loss suffered by him.

48. The Apex Court in the case of *M/s A.T. Brij Paul Singh* (supra) has held that in a works contract, if the party entrusting the work commits breach of the contract, the contractor would be entitled to claim damages for loss of profit which he expected to earn by undertaking the works contract. What must be the measure of profit and what proof should be tendered to sustain the claim are different matters, but the claim under this head is certainly admissible. It was further held that while estimating the loss of profit that can be claimed for the breach of contract by the other side, it would be unnecessary to go into the minutest details of the work executed in relation to the value of the works contract. A broad evaluation would be sufficient.

49. A Division Bench of the Calcutta High Court in the case of *Bhagwati Prasad Jhunjhunwala* (supra) has held that mesne profit is conceptualised in the form of a damage which is to be determined on a case to case basis. The broad principles for determining the mesne profit is firstly that the defendant is in actual possession of the decretal property. Secondly, such possession is wrongful; thirdly, the person in wrongful occupation have actually received or might with ordinarily diligent(sic) have received a profit because of his wrongful occupation of the immovable property and fourthly, any improvement made by a person in wrongful occupation shall not be included in the mesne profit. There is no quarrel on fact that upon expiration of period of lease by efflux of time, the respondent continued in possession till the actual delivery of possession was given to the appellants. The period between expiry of lease and the delivery of actual possession cannot be assumed as lawful but the possession during such period is wrongful and, therefore, the mesne profit /damages are to be determined and it is a liability of the person in wrongful occupation to compensate a person a profit which he derived or might have derived during such wrongful possession.

50. It was further held that the decree for mesne profits/damages is in effect a money decree and the moment the interest on such profit is imbibed within the definition given under Section 2(12) CPC, the rate of interest on such mesne profit should not exceed 6% per annum. The trial court committed an error in not awarding the interest from the date of the decree till its actual payment.

51. The plaintiffs have filed the project report of the proposed business in the name and style of 'Narayan Krishi Yantra Udyog', which was to be established for manufacturing agricultural implements on the disputed plot, a total investment of ₹ 3,46,800/- was to be incurred for establishing the factory which included cost of building, plant and machinery and working capital, a monthly sale of

₹ 90,000/- was expected and after deducting the cost of monthly production ₹ 76,300/-, a monthly profit of ₹ 13,700/- was expected to be generated from the business, from which they were deprived. The KDA has not led any evidence to dispute the above project report and estimation of profit, submitted by the plaintiffs, which remains uncontroverted. It is further apparent that the estimate submitted by the plaintiffs cannot be minutely examined by this Court.

52. It is further apparent that this issue has not been examined by the trial court but at this stage, after about 19 years of litigation, the matter cannot be remanded to the trial court for the assessment of damages, which will further prolong the agony of the plaintiffs. It is apparent that plaintiff no. 2 Yugrani Devi has died during the pendency of the suit, whereas, plaintiff no.1 B.N.Tripathi is almost 90 years old, as such, this Court has examined the quantum of damages to which the plaintiffs are legally entitled in the facts and circumstances of the case.

53. This Court is satisfied that the quantum of profit which was disclosed by the project report submitted by the plaintiffs, was fair and reasonable. It is also apparent that the plaintiffs are legally entitled to the loss of profit they were expected to earn, from the alleged business. This Court is also conscious that in the business, generation of profit is never guaranteed, sometimes there is a loss, sometimes there is a profit, and even the quantum of profit/loss is not assured, but keeping in view the long duration of more than 41 years, for which the plaintiffs have been deprived of the possession of the disputed plot it would be fair that they are awarded damages at the rate of ₹ 13,700/- per month, along with pendente lite and future interest @ 6% per annum.

54. From the perusal of the lease deed, it is apparent that, the plaintiffs were supposed to get the building plan of the proposed factory sanctioned as per the applicable bye laws of KDA and start construction of the factory building within one year, which was to be completely finished within a period of 2 years from the date of lease, or such extended time granted by the KDA. It is apparent that the construction of the factory was supposed to be completed within a maximum period of 2 years from obtaining the possession of the plot. In view of this, the plaintiffs are not entitled to claim damages from the date of the execution of the lease deed i.e. 3.12.1984. It is further pertinent to mention here that in the meanwhile the plaintiffs also submitted the building plan of the proposed factory, which was sanctioned by the KDA on 27.2.1998 but neither the sanctioned building plan nor the possession of the disputed plot was handed to the plaintiffs, hence the construction of factory on it, could not be started.

55. It is further apparent that the plaintiffs have demanded damages of ₹ 5 lakhs towards cost escalation in establishing the factory, due to inflation. It is apparent that the project report was prepared long back in the year 1992 and since then, the cost of establishing factory i.e. building material, labour charges, cement, iron and steel, etc. has considerably increased as such, the amount of ₹ 5 lakhs claimed by the plaintiffs towards cost escalation, is just and reasonable.

56. Since, the possession of the disputed plot was supposed to be handed soon after the execution of the lease in favour of the plaintiffs on 03.12.1984, and thereafter, within a further period of 2 years the plaintiffs were supposed to complete the construction of factory on it, as such, it will be just and reasonable to award damages for the loss of profit at the rate of ₹ 13,700/- per month from 01.7.1987 till the possession of the disputed plot is not handed to the plaintiffs along with pendente lite and future interest at the rate of 6% per annum. The plaintiffs are also entitled to damages towards escalation of cost of establishing the factory of ₹ 5 lakh along with pendente lite and future interest at the rate of 6% per annum, till the payment is made by the KDA.

Conduct of the defendants

57. India is a country governed by rule of law. It is the solemn duty of the State to protect its citizens and abide by the laws but in this case, the officials of the KDA have acted in an arbitrary, illegal and mala fide manner to deny the plaintiffs the possession of the disputed plot for without any reason. This Court repeatedly asked the Counsel of the KDA to disclose why the possession of the disputed plot was not handed to the plaintiffs, but he failed to give any reason. The plaintiffs were running from pillar to post to obtain the possession of the disputed plot but they were helpless against the might of the State and its functionaries. There was no reason whatsoever for the defendants, to deny the plaintiffs the lawful possession of the disputed plot, once they had paid the entire consideration of the lease way back on 03.12.1984. The plaintiffs obtained the plot in auction in the year 1967, being the highest bidder, the lease of which for 999 years was executed on 03.12.1984 by the KDA after getting excess consideration, which was refunded by the intervention of the court after a separate suit was filed by the plaintiffs, are waiting for 41 years to get the possession of their plot, but still only God knows when they will be able to obtain its possession. In the meanwhile, plaintiff no.2 Smt. Yugrani Devi has died on 13.9.2011 and plaintiff no.1 B.N. Tripathi is now almost 90 years old. Since the KDA, is a statutory body of the State, hence the State of Uttar Pradesh is also vicariously liable for the arbitrary, illegal acts committed by the KDA

and its officials, in not handing over the possession of the disputed plot to the plaintiffs, without any lawful reason.

58. This Court wants the Hon'ble Chief Minister of the State of Uttar Pradesh to look into this matter and order enquiry to fix negligence of the concerned officials and also to recover the damages from them, in accordance with law, which has been awarded to the plaintiffs along with interest, since taxpayers money is involved, and the State must also ensure appropriate disciplinary action against them, for their alleged illegal acts, which were unwarranted, arbitrary and whimsical, which have tarnished the image of the State and its functionary in the public. The State being the protector of the citizens and upholder of the laws, it is never expected from the functionaries of the State that they would act in such an irresponsible and illegal manner.

59. It is apparent that the plaintiffs have been unnecessarily forced to file the suit at the fag end of their lives and despite doing everything in their control, they have been deprived from the lawful possession of the leased plot. There was no reason whatsoever for the defendants, to deny the plaintiffs the lawful possession of the disputed plot, once they had paid the entire consideration of the lease way back on 03.12.1984. In view of the above facts, the plaintiffs are also entitled to get exemplary costs against the defendants.

60. For the aforesaid reasons, the judgment and decree passed by the trial court being perverse, is liable to be set aside.

61. **Accordingly, the appeal is allowed with costs throughout.** The judgment and decree passed by the trial court in O.S.no. 243 of 2009 dated 20.4.2016 is set aside, and the plaintiffs suit is decreed, jointly and severally, against the defendants, for the following reliefs :-

(A) A decree of mandatory injunction is granted in favour of the plaintiffs against the defendants, whereby the defendants are directed to deliver the vacant and physical possession of plot no. 56, Block 'A', Scheme 39, Jajmau, Kanpur, admeasuring 2,222 square yards, to the plaintiffs within a period of one month from today.

(B) The plaintiffs are entitled to get damages for the loss of profit they would have earned from the business at the rate of ₹ 13,700/- per month from 01.7.1987 till the actual and vacant possession of the disputed plot is not handed to them, along with pendente lite and future interest @ 6% per annum, till realisation.

(C) The plaintiffs are entitled to get damages for the cost of escalation for establishing the factory on the disputed plot due to inflation amounting to ₹ 5 lakhs with pendente lite and future interest @ 6%

per annum, till its payment by the defendant.

(D)The defendants are further directed to deliver the sanctioned building plan dated 27.2.1998 regarding the disputed plot to the plaintiffs, for enabling them to construct the factory on the disputed plot.

(E)The plaintiffs are also entitled to costs of the suit and the appeal.

(F) The plaintiffs are also entitled to exemplary costs of ₹ 2 lakh from the defendants under Section 35 CPC, for the harassment, suffering, pain and agony caused to them, in pursuing this litigation.

(G) The defendants are directed to handover the vacant and physical possession of the disputed plot to the plaintiffs and further pay the damages etc. within a period of **one month** from today, failing which, the plaintiffs will be entitled to claim them through Court, by initiating execution proceedings.

62. Registrar (Compliance) is directed to send a copy of this order to the Chief Secretary, Government of Uttar Pradesh, Lucknow for information and necessary action.

Order Date: - 09.04.2026

Jitendra/Himanshu/Mayank

(Sandeep Jain, J.)