

Who gets the gains from illegally occupied property?

The lawful owner of a property has a right to stake a claim to 'mesne' profits received by the person in wrongful possession of the structure

htestates LEGAL REMEDIES

Sunil Tyagi
htestates@hindustantimes.com

Many cases of unlawful possession of immovable property are pending in various courts around the country. Settling and adjudication of such disputes usually take a long time.

Now the question is: What happens to the gains made by the 'illegal' possessor from the property during the period of possession? Can the lawful owner also stake a claim to such gains? The Code of Civil Procedure provides for 'mesne'

profits, which are profits that the person in wrongful possession of a property receives together with interest on the profit. As a principle, the lawful owner has a right to mesne profits.

The issue of mesne profits is likely to arise during a suit for ejectment or recovery of possession of immovable property. For instance, 'A' leased his immovable property to 'B' for a period of 40 years. After the end of the lease eviction proceedings were instituted against B and the case was finally decided in favour of A. The court asked B to pay A the rent at market rate for the period after expiry of the lease term.

As it is not practicable to set out a uniform standard for evaluating the quantum of mesne profits, courts consider certain factors to ascertain the value of

mesne profits such as location of the property, comparative value of the property, condition of the property and the profits actually gained or that may be gained from reasonable use of the property.

While calculating the mesne profits, the profits due to improvements made by the person in wrongful possession are not included.

For instance, if the unlawful possessor furnished the flat before renting it out, then the additional rent earned by him due to the added furnishings will not be included while calculating mesne profits, ie if the actual rent to be received is ₹30,000 but due to interiors work

adding value to the property he receives ₹40,000 as rent, then the mesne profits would amount to ₹30,000 only along with interest.

The Honourable Supreme Court has held that mesne profits will be granted by the court of law only if the same are specifically prayed for by the person who has filed the suit and claims ownership of the immovable property.

The court of law will not on its own account grant mesne profits to the owner of the property after the dispute has been adjudicated upon.

Therefore, if one is claiming

ownership to an immovable property in the appropriate court of law, one must pray for mesne profits along with possession and occupation of the property as this is also a right of the lawful owner of the property against illegal possessors of the immovable property.

The author is a senior partner at Zeus Law, a corporate commercial law firm. One of its areas of specialisations is real estate transactional and litigation work. If you have any queries, email us at ht@zeus.firm.in and htestates@hindustantimes.com

ASK FOR MESNE PROFITS

- While calculating the mesne profits, the profits due to improvements made by the person in wrongful possession are not included
- The Supreme Court has held that mesne profits will be granted by the court of law only if the same are specifically prayed for by the person who has filed the suit
- The court of law will not on its own account grant mesne profits to the owner of the property after the dispute has been adjudicated upon



SHUTTERSTOCK