

Patel Madhavlal Parshottamdas

Vs

Jaitaram Madhavlal and Others

Civil Appeal No. 1516 of 1971

(V. D. Tulzapurkar, R. S. Pathak, P. S. Kailasam JJ)

03.09.1980

JUDGMENT

1. The Housing Society purchased lands bearing S. Nos. 2, 3 and 4 to construct houses for its members. Subsequently the society purchased S. No. 17 for putting up 38 bungalows at the first instance but later they decided to construct ten more bungalows. Applications were called for for allotment with a deposit of Rs. 5,000. The present appellant as well as the first respondent deposited the money on July 2, 1959. It was resolved to allot the bungalows to the three persons, the first respondent, the appellant and one Lilachand Kalidas. Subsequently the General Body of the Society on November 22, 1964 confirmed the resolution.
2. The Society allotted the bungalow in dispute to the appellant. Along with it respondents 3, 4, 5, 7, 8, 9 and 10 were also allotted other bungalows. The first respondent was not allotted any bungalow. A dispute was raised between the appellant and the respondent and matter was referred to the Registrar who nominated his nominee to go into the dispute. The nominee allowed the claim of the first respondent. In pursuance of that decree of the nominee of the Registrar, first respondent filed an execution application. The City Civil Judge who heard the matter in Chambers on December 19, 1968 passed an order appointing a Commissioner to go into the application of the petitioner for executing the decree. The Commissioner after hearing the parties and checking the accounts reported that the appellant's possession was illegal and the first respondent was entitled to possession of the bungalow. The City Civil Judge confirmed the order of the nominee of the Registrar.
3. Against the order of the City Civil Judge, the appellant preferred an appeal. In the appeal appellant contended that he was entitled to preference over the first respondent. He also submitted that between the other allottees viz., respondents 3, 4, 5, 7, 8, 9 and 10, he must be preferred and should be given one of the bungalows. The High Court while setting out the five contentions, did not go into the actual point for determination. It confirmed the finding of the City Civil Court that the first respondent is entitled to priority over the appellant but the question as to whether the appellant would be entitled to a bungalow in preference to the other respondents was not considered. The question has to be decided by the High Court. The matter is remitted to the High Court. The High Court will see that all the respondents to whom the houses were allotted are parties in the proceedings before it, if they are not the High Court will implead them and decide the question as to whether the appellant is entitled to preference over the other respondents. So far as the order of the High Court relating to the first respondent is concerned, it is confirmed.
4. The appellant is granted six months' time to give vacant possession to the first respondent. In view of the short time given for vacating the bungalow, the High Court will expedite the matter.

5. The appellant will file an affidavit in this Court within six weeks from today undertaking not to induct any other person in the bungalow or in any way hamper the first respondent taking possession thereof at the expiry of six months' time granted.

6. The appeal is allowed to the extent indicated above, with no order as to costs.

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