

Municipal Corporation of Greater Bombay

Vs

Premnagar Zopadapatti Committee Society

C.A. Nos. 4619-20 of 1990

(K. N. Singh, K. N. Saikia, Kuldip Singh JJ)

07.09.1990

ORDER

1. Leave granted.

2. Heard counsel for the parties.

3. These appeals are directed against the order of the High Court of Bombay dated 15-6-1989 granting injunction restraining the appellant from evicting the respondents who have encroached upon the land in dispute..

4. Briefly, the facts are that the Bombay Municipal Corporation acquired the land in dispute in 1974 for public purposes, namely, for establishing nursing college, medical college, primary school, garden etc. It appears that a number of members, including the respondents encroached upon the land and made unauthorised construction in the shape of huts. The Corporation issued notice under Section 314 of the Bombay Municipal Corporation Act, 1888 for evicting the respondents. The respondents filed a suit in the Court of City Civil Judge, Bombay, they also prayed for an interim injunction against the Corporation. The City Civil Court rejected the application for the interim injunction thereupon the respondents approached the High Court in appeal. A learned single Judge of the Bombay High Court has by means of the impugned order dated 15-6-1989 granted interim injunction restraining the Corporation from evicting the respondents from the land in dispute in proceedings under Sections 313 and 314 of the Bombay Municipal Corporation Act. Hence these appeals.

5. After hearing learned counsel for the parties, we are of the opinion that the view taken by the High Court that the land was not a public place although it had been acquired for a purpose, therefore no proceedings under Sections 313 and 314 of the Act could be taken against the respondents is erroneous in law. The land which had been acquired for the public purpose by the corporation is a public place and any encroachment made on that land by any person could be dealt with under Sections 313 and 314 of the Act. In this view, we allow the appeals and set aside the order of the High Court.

6. Learned counsel for the appellant Corporation undertakes to provide alternative residential accommodation sites (pieces) to those of the respondents who have been occupying the land in dispute in January 1976. The respondents may avail benefit of this undertaking and we hope that the Corporation will act in a sympathetic manner in providing accommodation to the respondents. The

Corporation shall allot the alternative accommodation to the respondents within two months and if the respondents fail to avail themselves of the opportunity within one month thereafter it will be open to the Corporation to evict them in accordance with the provisions of Sections 313 and 314 of the Act. There will be no order as to costs.

Appeal allowed.

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