

LUMBINI NAGAR COOP. HOUSING SOCIETY LTD. AND ORS. A

v.

UNION OF INDIA AND ORS.

AUGUST 17, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.] B

Constitution of India :

Article 136—Scope of—Injunction refused by Single Judge as also by Division Bench of High Court—Held : injunction is a discretionary order—High Court having refused to exercise discretion, it would not be expedient to interfere with order of High Court. C

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 :

Ss.4, 5—Public premises—Residential tenements—Some allottees alleged to have alienated the premises—Eviction proceedings—Held; no action to be taken against any person other than the allottees said to have parted with their right to remain in possession of their respective tenements. D

The respondents initiated proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 against nine allottees out of 169 original allottees of the tenements in question. These nine allottees were said to have parted with their right to remain in possession of their respective tenements. Some of these allottees filed a suit for specific performance of contract before the High Court, and prayed for ad interim injunction. The High Court refused the injunction. The appeal was also dismissed by the Division Bench of the High Court. Aggrieved, the Society and some of the allottees filed the appeal by special leave. E F

Disposing of the appeal, this Court

HELD : 1. Injunction is a discretionary order. The Single Judge as also the Division Bench of the High Court have refused to exercise the discretion in favour of the nine allottees. Under the circumstances, it would not be expedient under Article 136 of the Constitution to upset the order of the High Court. [817-A] G

2. The respondents would not take action against any person other H

- A** than the nine allottees who are said to have parted with their right to remain in possession of their respective tenements. [816-F-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7896 of 1995.

- B** From the Judgment and Order dated 11.10.89 of the Bombay High Court in 1135 of 1989.

B.A. Desai, Ms. Reema Bhandari and M.N. Shroff for the Appellants.

- C** A.S. Nambiar, A.S. Rawat, D.S. Mehra, Ms. Sushma Suri and Ms. Binu Tamta for the Respondents.

The following Order of the Court was delivered :

Leave granted.

- D** Pursuant to the directions issued by this Court on July 28, 1995 and the order dated August 11, 1995, affidavit has been filed in which it has categorically been stated that out of 169 original allottees, 57 are employees of respondent No. 2 and are described as departmental employees. Out of 112 other allottees, 9 allottees were given notice under the Public Premises
- E** (Eviction of Unauthorised Occupants) Act, 1971. Remaining 103 persons are the original allottees who are still in occupation of their respective tenements with their families. They neither sold nor transferred their tenements and they are continuing to reside in the respective tenements even till date.

- F** Mr. Nambiar, learned senior counsel for the respondents, has stated across the bar that no action is being taken against any person other than the nine allottees who are said to have parted with their right to remain in possession of their respective tenements. The learned counsel for the appellants contended that these 9 allottees, though have entered into agreements to sell their properties, the same is subject matter of the
- G** pending suit in the High Court. Therefore, their possession cannot be disturbed.

- Since the High Court, both the Learned Judge as well as the Division Bench, was not inclined to grant injunction as sought for, we are not
- H** persuaded to take a different view in that behalf. Injunction being a

discretionary order, the High Court has refused to exercise the discretion **A**
in favour of the nine persons. Under these circumstances, we do not deem
it expedient under Article 136 to upset the order of the High Court.

The appeal is accordingly disposed of. No costs.

R.P.

Appeal disposed of.