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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO. 729 OF 2022
WITH
INTERIM APPLICATION NO. 16577 OF 2022
IN
APPEAL FROM ORDER NO. 729 OF 2022**

Amchi Sawali Co-operative Housing Society
Limited ... Appellant /Applicant.
Versus

Megha Santaji Sawant ... Respondent.

**WITH
INTERIM APPLICATION NO. 18579 OF 2022
IN
APPEAL FROM ORDER NO. 729 OF 2022**

Megha Santaji Sawant ... Applicant.
Versus

Amchi Sawali Co-operative Housing Society
Limited ... Respondent.

Mr. Santosh Pathak, Advocate a/w. Nimish Lottikar i/by Law Origin
for the Appellant / Applicant in AO No. 729 of 2022.
Ms. Neha Nagotankar, Advocate for the Respondent in AO NO. 729
of 2022.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE : DECEMBER 12, 2022.**

P.C. :-

1. Heard finally with consent.

2. Challenge in this appeal is to the order dated 12.07.2022, dismissing ad-interim reliefs, as prayed in notice of motion no. 2385 of 2022 in suit no. 1522 of 2022.

3. Heard learned counsel for the Appellant and learned counsel for the Respondent. I have perused the record and considered the submissions advanced by the learned counsel for the respective parties.

4. The brief facts necessary to decide the appeal are as under : Vasant Dhondu Bhosale, the father of the Respondent herein, was in service of the Government of Maharashtra. He was allotted room no. 45 on the first floor of Amar Building, Huk Mill Compound, Bombay, under allotment order dated 8th June, 1976, under the Bombay Land Requisition Act 1948. He was permitted to occupy the said room during the tenure of his service. The allottee did not have right to retain the room upon his transfer or on cessation of service. This is evident from Clause 5 of the said allotment order, which stipulates that if the allottee ceases to be in service for any reason whatsoever or is transferred from the Greater Bombay, he / she shall immediately inform the Controller of Accommodation and hand over vacant possession of the premises on being called upon to do so.

5. The records reveal that the request of the allottee to de-requisition the premises was rejected by the Office of Controller of Accommodation. The said building was re-constructed by Mumbai Building Repairs and Reconstruction Board (MBRRB). The father of the Respondent was allotted flat no. 212 in the newly constructed building, in lieu of room no. 45. By order dated 28th December, 1985 the Government of Maharashtra in exercise of powers conferred under sub-section 3 of section 9 of the Act, released the premises from requisition and handed over possession of the subject premises to the appellant society. The certificate produced by the respondent also reveals that the Appellant Society had taken over possession of the suit premises and had treated the father of the respondent as a tenant in respect of the suit premises in lieu of room no. 45. The father of the respondent executed a gift deed in favour of the respondent herein in respect of the flat No.212.

6. As noted above, the father of the respondent was, only a tenant in respect of the suit premises. Learned counsel for the respondent has relied upon allotment letter dated 29th May, 2001, to contend that the Board had transferred the ownership rights in respect of the said flat in favour of the father of the respondent.

Suffice it to say, that the society was the owner of the premises and, prima facie, the Board was not competent to transfer the ownership of the premises. The said letter can only be construed as a letter of handing over possession of the suit premises after re-construction.

7. Ms. Neha Nagotankar, learned counsel for the respondent states that the father of the respondent and other members of the society have contributed towards re-construction. *Prima-facie*, there is no material on record to indicate that the father of the respondent had acquired title in the suit premises and in the absence of title in his favour, his status was that of a tenant. Consequently, he was not competent to transfer title of suit premises in favour of the respondent.

8. In these circumstances, in my considered view, the trial court was not justified in declining to grant the ad-interim relief to the appellant. Hence, the appeal is allowed. The impugned order is set aside. The ad-interim relief granted by this Court vide order dated 18th July, 2022 is made absolute, pending the disposal of the notice of motion.

9. Interim applications stand disposed of in view of the disposal of the appeal itself.

(SMT. ANUJA PRABHUDESSAI, J.)

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