

Shabnoor

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

WRIT PETITION NO.2259 OF 2025

Guruprabha Cooperative Housing
Society Limited

... Petitioner

V/s.

Shankar D. Shinde

... Respondent

Mr. Piyush M. Shah a/w Ms. Vibhute P. Gala, for
petitioner.

Mr. Kishor Patil a/w Om Gandhi & Hitendra Gandhi i/b
Mr. Hemant Ghadigaonkar, for respondent.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 18, 2025

P.C.:

1. The present writ petition has been filed challenging the interim order passed by the Co-operative Appellate Court whereby the application of the petitioner seeking a mandatory injunction against the respondent was rejected. The petitioner sought a direction compelling the respondent to vacate and hand over peaceful possession of the stilt parking area after removing the grills affixed by the respondent. The Trial Court had granted the relief of mandatory injunction in favor of the petitioner. However, on appeal, the Co-operative Appellate Court, relying upon the letter of allotment issued by the developer dated 5th May 1999, which purportedly allotted the stilt parking area to the respondent, reversed the order and rejected the petitioner's application for

temporary injunction.

2. Upon perusal of the record, it is evident that the stilt parking area allotted in favor of the respondent was not designated as a common area in the agreement or sanctioned plan. In the absence of such a designation, prima facie, the developer was within its rights to allot the said parking space to the respondent. However, whether such an allotment confers any right, title, or interest in favor of the respondent is a substantive issue requiring adjudication by the Co-operative Court in the final determination of the dispute. At this interlocutory stage, the grant of a mandatory interim injunction would be justified only in exceptional circumstances, as laid down by the Hon'ble Supreme Court in *Dorab Cawasji Warden v. Coomi Sorab Warden*, AIR 1990 SC 867, wherein it was held that mandatory injunctions at an interim stage should be granted only in cases where (i) there exists a strong prima facie case, (ii) the balance of convenience is in favor of the grant, and (iii) irreparable loss and injury would be caused if the injunction is not granted. The Appellate Court, in the exercise of its discretion, has found that such conditions were not satisfied, and accordingly, it rightly interfered with the mandatory interim relief granted by the Trial Court. In light of this legal position, no interference is warranted with the impugned order.

3. It is made clear that the observations made in this order, as well as in the impugned order of the Appellate Court, are purely prima facie and shall not prejudice or influence the Co-operative Court in the final adjudication of the dispute. The Co-operative Court shall render its decision on the merits based on the material

and evidence presented by the parties.

4. It is also noted that the society has already removed the grill affixed in front of the stilt parking area. Therefore, no further orders are required in this regard.

5. The petitioner is at liberty to move an application before the Co-operative Court for expeditious disposal of the suit, and if such an application is made, the Co-operative Court shall endeavor to decide the matter within a reasonable timeframe in accordance with law.

6. In view of the aforesaid observations, the writ petition stands disposed of in the above terms. There shall be no order as to costs.

7. Pending interlocutory application(s), if any, stands disposed of.

(AMIT BORKAR, J.)