

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI**

Writ Appeal No.719 of 2018

JUDGMENT: (per Hon'ble the Acting Chief Justice Sri Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred by the appellant-Secunderabad Cantonment Board (for short "the Board") against the order passed by the Learned Single Judge in W.P.No.11960 of 2018 dated 09.04.2018. The respondents herein filed the Writ Petition seeking a mandamus to declare the proceedings of the Board dated 04.04.2018, directing the respondent-writ petitioners to vacate 30 apartments constructed in the name of Sai Dwaraka Complex, as arbitrary and illegal.

In the order under appeal, the Learned Single Judge observed that the respondent-writ petitioners had an alternative remedy of preferring an appeal under Section 340 of the Cantonments Act, 2006; and they should avail the said alternative remedy. However, at the request of the Learned Counsel for the respondent-writ petitioners for grant of protection in the interregnum, the Learned Single Judge disposed of the Writ Petition reserving liberty to the respondent-writ petitioners to prefer an appeal under Section 340 of the Act within four weeks; and directed status-quo till the appeal was disposed of by the appellate authority.

The submission that they had an alternative remedy of appeal was made by the Learned Counsel for the respondent-writ petitioners, and not by the Learned Standing Counsel for the appellant-Board. If the contention urged on behalf of the respondent-writ petitioners, that they had an alternative remedy, were to merit acceptance, the Writ Petition ought to have been dismissed relegating the respondent-writ petitioner to avail the alternative remedy. In any event the Writ

Petition ought not to have been disposed of at the admission stage without giving the appellant-Board an opportunity of filing their counter-affidavit.

While we were initially inclined to set aside the order under appeal, and restore the Writ Petition to file, Sri M.V. Pratap Kumar, Learned Counsel for the respondent-writ petitioners, would submit that the respondent-writ petitioners had made an application to compound the unauthorised construction made by them earlier; and, since their application for compounding is pending consideration before the appellant-Board, the Board could not have directed them to vacate the premises even before their application, for compounding, was considered.

The proviso to Section 185 of the Cantonment Act, 1924, which is similar to Section 248 of the Cantonment Act, 2006, enables the Board, instead of requiring the alteration or demolition of any such building or part thereof, to accept, by way of composition, such sum as it thinks reasonable. While the earlier demolition notice was issued in the year 2000, the application to compound the unauthorised construction was made only on 18.06.2014. Sri K. R. Koteswara Rao, Learned Senior Standing Counsel for the appellant-Board, would fairly state that there is no limitation prescribed under the Act for any such application to be made; and the application submitted by the respondent-writ petitioners, seeking compounding of the unauthorised construction, is pending before the Cantonment Board for its consideration.

As discretion is conferred on the Board to compound the unauthorised construction, instead of directing demolition or alteration of the unauthorised construction, we consider it appropriate to dispose of the Writ Appeal, setting aside the order impugned in the Writ

Petition, and directing the Board to consider the respondent-writ petitioners' application, for compounding the violation of unauthorised construction, with utmost expedition, and preferably within three months from the date of receipt of a copy of this Order. The order under appeal is also set aside. Needless to state that, after an order is passed on the respondent-writ petitioners' application, it is open to the Board to take necessary action in accordance with law.

The Writ Appeal is, accordingly, disposed of. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, ACJ

J. UMA DEVI, J.

Date:04.06.2018.
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