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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7798 OF 2025**

Pune Cantonment Board ... Petitioner

vs.

Yogesh Behram Anklesaria and Anr ... Respondents

Mr. Tushad Kakalia a/w. Mr. Sandeep Goyal i/b. Mulla and Mulla and
Craigie Blunt and Caroe for the Petitioner

Mr. Anil Sakhare, Senior Advocate a/w. Mr. Ajinkya Udane for
Respondent.

Ms. Savita Ganoo for Respondent No.3.

CORAM : GAURI GODSE, J.

DATED : 19th AUGUST 2025

ORDER:

1. This petition is filed by the original defendant-Pune Cantonment Board, to challenge the order dated 17th February 2025, passed by the learned District Judge in an appeal filed by the Cantonment Board. The appeal was filed by the cantonment board to challenge the order of temporary injunction granted in favour of the respondent no.1(plaintiff). The suit is filed by the respondent (plaintiff) for a decree of injunction.

2. The respondent-plaintiff has filed a suit for permanent

injunction restraining the Cantonment Board from taking action, without following due process of law, against the construction allegedly carried out by the plaintiff based on plaintiff's claim that there is a deemed sanction pursuant to the Building Application No. 369. In this suit, a temporary injunction was granted by the trial court, which reads as under:-

“ ORDER

- i] Application is partly allowed.*
- ii] Defendant, it's agent or servant are hereby temporarily restrained from obstructing plaintiff's construction of the building in the suit property as per application No. 369 and as per the revised land policy dated 09/02/1995, without following due process of law.*
- iii] It is hereby declared that, the plaintiffs building application no. 369 was deemed sanctioned as provided under section 238(6) of the Cantonment Act, 2006.*
- iv] Plaintiff shall file an undertaking before the this Court that he will not claim an amount of building construction if possession of suit property is taken by defendant by following due process of law.*
- v] The suit is hereby expedited. Parties to take note and comply.*
- vi] Cost shall be costs in cause.*
- vii] Decree be drawn accordingly.”*

3. Being aggrieved by this injunction the Cantonment Board filed a Regular Civil Appeal No. 38 of 2025. Pending this appeal an application for stay was filed which is partly allowed by passing the following order on 17th February 2025:

“ORDER

1] The application (Exh.5) is partly allowed.

2] The preliminary declaratory decree dated 25/10/2024 declaring the building application No. 369 of the father of respondent No.1 has deemed sanction as provided under Section 238(6) of the Cantonments Act, 2006, is hereby stayed, till the disposal of the present appeal.

3] The rest of the prayers in this application are rejected.”

4. Learned counsel for the Cantonment Board submits that the first part of the trial court's order accepting the plaintiff's contention regarding deemed sanction as per the Building Application No. 369 is stayed by the first appellate court. He submits that in view of the stay granted by the first appellate court to the first part of the operative part of the trial court's injunction, the Cantonment Board has already initiated action under the provisions of the Cantonments Act, 2006. He however, submits that since the plaintiff has initiated a contempt action, by way of precaution, the Cantonment Board has filed this writ petition.

5. Learned counsel for the Cantonment Board submits that, if liberty is granted to the Cantonment Board to take appropriate action as permissible under the Cantonment Act, the present writ

petition will not be pressed by the Cantonment Board as the petition was filed for a limited purpose. He therefore seeks leave to withdraw this writ petition with liberty to the Cantonment Board to take appropriate action as permissible under the Cantonment Act, 2006 based on the stay granted by the first appellate court vide order dated 17th February 2025 to the preliminary declaration granted by the trial court. Considering the order passed by the trial court and the impugned order of stay passed by the appeal court, and that it is not challenged by the plaintiff, I see no reason to refuse the leave with the liberty as prayed on behalf of the Cantonment Board.

6. The writ petition is therefore disposed of as withdrawn with liberty to the Cantonment Board to take appropriate action as permissible in law under the provisions of Cantonments Act, 2006, in view of the stay granted by order dated 17th February 2025 to the preliminary declaratory relief granted by the trial court.

7. The Writ Petition is disposed of as withdrawn with liberty as recorded above.

8. All the rival contentions of the parties on merits in the pending appeal are kept open.

(GAURI GODSE, J.)