

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.5107-5108 OF 2017  
(Arising out of S.L.P. (Civil) Nos.15025-15026 of 2015)

Secunderabad Cantonment Board ...Appellant

VS.

Narinder Kumar Dhingra & Ors. ...Respondents

O R D E R

Delay condoned.

Leave granted.

We have heard the learned counsel for the parties and perused the impugned judgment and order dated 22<sup>nd</sup> January, 2013 passed by the Division Bench of the High Court of Judicature of Andhra Pradesh at Hyderabad in Writ Appeal No.44 of 2013 and also judgment and order dated 14<sup>th</sup> November, 2014 rejecting the Review Petition preferred by the appellant-Board.

It is not in dispute that notice under Section 248(1) of the Cantonments Act, 2006 was issued on 19<sup>th</sup> January, 2011 to the respondents to remove the unauthorised construction within thirty days from the receipt of the notice. Notice was received by the respondents on 25<sup>th</sup> January, 2011. On receipt of the aforesaid notice, the respondents submitted their reply.

Simultaneously, the respondents preferred an appeal before the Appellate Authority General Officer, Commanding in Chief, Southern Command, Pune on 26<sup>th</sup> March, 2011 along with an application under Section 5 of the Limitation Act, seeking condonation of delay and an application for Stay. For some reasons or the other, no orders were passed on the application seeking condonation delay by the Appellate Authority. Notice for sealing was issued, whereupon the respondents approached the High Court. The learned Single Judge of the High Court dismissed the Writ Petition preferred by the respondents.

Being aggrieved, the respondents filed Writ Appeal before the Division Bench of the High Court. The Division Bench, while allowing the Writ Appeal, has held that the fact that the appeal has been preferred under Section 340 of the Cantonment Act itself will make the provisions of Section 342 applicable and Cantonment Board cannot take any further steps for sealing etc.

The submission of Mr. Vikas Singh, learned senior counsel appearing for the appellant is that until and unless the appeal has been admitted which has been specifically provided in Section 340 of the Act and order of admission having been passed, the provisions of Section 342 of the Act will not come into play at all. From reading of the provisions of Sections 340 and 342 of the Cantonment Act, we find that the provisions of Section 340 of the Act specifically provides that an

order admitting the appeal has to be passed and only thereafter provisions of Section 342 of the Act will come into force.

It is borne out from records that no order has been passed on the application for condonation of delay of about thirty days in filing the appeal and therefore, the Division Bench was not correct in holding that merely filing of the appeal will make the provisions of Section 342 of the Act applicable. In the present case, no order was passed by the Appellate Authority admitting the appeal because of the pendency of the application filed under Section 5 of the Limitation Act for condonation of delay.

However, in the facts and circumstances of the case, we deem it fit and proper to condone the delay of thirty days in preferring the appeal. The appeal shall stand admitted.

We direct the Appellate Authority to pass appropriate orders on the application for grant of stay preferred by the respondents within one month from the date of filing of the certified copy before the said authority. Premises in question has already been de-sealed because of the order passed by the Division Bench.

No further action shall be taken by the appellant, till the stay application is decided by the Appellate Authority.

The appeals stand allowed in part in the above terms.

Interim order granted earlier stands vacated.

.....J.  
[R.K. AGRAWAL]

.....J.  
[ABHAY MANOHAR SAPRE]

New Delhi;  
April 10, 2017.

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) Nos.15025-15026/2015

(Arising out of impugned final judgment and orders dated 22/01/2013 in WA No. 44/2013 and 14/11/2014 in RWAMP No. 205/2013 passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh)

SECUNDERABAD CANTONMENT BOARD

Petitioner(s)

VERSUS

NARINDER KUMAR DHINGRA & ORS

Respondent(s)

(With appln. (s) for bringing on record the additional facts and c/delay in filing SLP and exemption from filing c/c of the impugned order and interim relief and office report)

Date : 10/04/2017 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.K. AGRAWAL

HON'BLE MR. JUSTICE ABHAY MANOHAR SAPRE

For Petitioner(s)    Mr. Vikas Singh, Sr. Adv.  
                                 Mr. Amitesh Kumar, Adv.  
                                 Mr. Mritunjay Kumar Sinha, Adv.

For Respondent(s)    Mr. R.K. Rathore, Adv.  
                                 Mr. Sudarshan Singh Rawat, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Delay condoned.

Leave granted.

The appeals are partly allowed in terms of the signed order.

Pending applications also stand disposed of.

(Anita Malhotra)  
Court Master

(Chander Bala)  
Court Master

(Signed order is placed on the file.)