

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

WRIT PETITION NO. 408 OF 2014

Ranjankhar Gramastha Mandal,
through Panchas
Shri Sadanand Laxman Patil & ors.

... Petitioners

v/s

Kaivalyadham through its Chairman,
Shri Swami Maheshanandji.

... Respondent

Mr.S.V.Pitre for the petitioners.

Mr.Sanjay Jain along with Nishanth Sashidharan, Pratik Amin and
Ms.Sneha Patil i/by Maniar Srivastava Associates for the respondent.

Coram: N.M. Jamdar, J.

Dated: 6 October 2016

ORAL ORDER:

The Petitioner challenges the order passed by the learned District Judge, Raigad, dated 28 November 2013, staying the judgment and decree passed by the learned Civil Judge, in Regular Civil Suit No.18 of 2006.

2 The suit is filed by the Petitioners bearing Regular Civil Suit No.18 of 2006 in the Court of Civil Judge, Junior Division, Alibaug for perpetual injunction. The suit was decreed by the learned Civil

Judge by an order dated 5 September 2013. The learned Civil Judge directed the Respondent not to obstruct the possession of the Petitioners in the suit property and to carry out any measurement. In the Civil Appeal No.225 of 2013 filed by the Respondent, by the impugned order, the learned District Judge has stayed the order of the Civil Judge.

3 The learned counsel for the Petitioners submitted that, an order of injunction could not have been stayed during the pendency of the appeal which will allow the appeal itself. It was contended that, taking advantage of the impugned order, the Respondent is likely to dispossess the Petitioners.

4 It has to be noted that the impugned order is passed on 28 November 2013 and the appeal is still pending. Since the interim order is passed in the appeal, the learned District Judge ought to have taken the appeal for consideration on priority basis. Therefore, it will be appropriate to direct the learned District Judge to decide the appeal at an early date. The learned District Judge will make an endeavour to dispose of the appeal within a period of six months, if there are no earlier time bound commitments.

5 As regard the apprehension expressed by the learned counsel for the Petitioners that the Petitioners would be dispossessed, learned counsel for the Respondent points out that Regular Civil Suit No.6 of

2014 has been filed by the Respondent seeking possession from the Petitioners and, therefore, there is no question of proceeding in respect of the possession of the Petitioners. Therefore, as on date, there is no warrant for the apprehension that the Petitioners' possession would be disturbed. If any direction is to be passed in the suit filed by the Respondent in respect of possession of the Petitioners, the learned Civil Judge will have to give hearing to both sides.

6 Since the above factual position adequately protect the interest of the Petitioners during the pendency of the appeal, which is already directed to be disposed of at an early date, no further orders are required to be passed in the writ petition. All contentions of the parties on merits are kept open in Regular Civil Suit No.18 of 2006 as well as the pending civil appeal.

7 The writ petition is disposed of in above terms.

(N. M. Jamdar, J.)