

MHKO070001051998



ORDER BELOW EXH.163 IN R.C.S.NO.150/1998

**(Swastishri Jinsen Bhattacharak Pattacharya Mahaswami
Mathsansthan, Kolhapur & Ors; V/S Smt.Kamal Shamgonda
Patil & Ors;)**

This is an application filed by defendant no.3 for granting stay to the present suit till decision of Writ petition No.10656/2014.

02. Defendant no.3 has made contention that the plaintiff no.1 is public trust registered in the year-1955. The suit property is possessed by of defendant in a capacity of tenant. But the plaintiff has obtained exemption certificate as per Section 88-B of Bombay Tenancy and Agricultural Lands Act and accordingly he has filed this suit. Defendant has challenged the said exemption certificate before the Hon'ble Bombay High Court which is pending as writ petition no.10656/2014. Therefore, validity of the said certificate will be decided in the said petition. Hence, defendant no.3 prayed to stay the present suit till decision of the writ petition no.10656/2014.

03. Plaintiff denied this application by filing say vide Exh.165. He contended that plaintiff has obtained exemption certificate (Exh.132) regarding suit property on 30/11/1958 as per Section 88B of Bombay Tenancy and Agricultural Lands Act. Defendant had filed inspection application bearing MRT/KP/132/2006 before Revenue tribunal, Pune against

exemption certificate (Exh.132), however, the said application was dismissed on 11/08/2014 on the ground that delay of 48 years was not satisfactorily explained. Therefore, defendant has filed writ petition no 10656/2014 challenging the said inspection application which is not still admitted and no stay has been granted. Defendant has not filed copy of writ petition no.10656/2014 and Hon'ble High Court has not granted stay in the trial of present suit. The dispute is pending between parties since 1998 but defendant has not shown his promptness of challenging the exemption certificate till 2006. Pendency of the said writ petition in the Hon'ble High court is not sufficient reason to stay the trial of this suit. The defendant has failed to inform the court about pendency of this writ petition within last 7 years.

04. The plaintiff further contended that the plaintiff has closed his evidence and the suit is pending for evidence of defendant and therefore with intention to prolong the suit, defendant has filed this application. Hon'ble High court has pleased to pass order in the writ petition no.1636/2007 dated 25/07/2007 which was filed by defendant challenging the order passed on Exh.49 in this suit. The hon'ble High Court has passed order that "even in the event of the suit being decreed, it will always be open to the petitioners to adopt proceedings in accordance with law in respect thereof, depending upon the outcome of the proceedings adopted by the petitioners to challenges the certificate under Section 88b of the said Act." The subject matter of this suit is not to decide the validity of the said certificate. Therefore, this application is liable to be rejected for above mentioned reasons. Hence, plaintiff prayed to reject this application on cost of Rs.5000/-.

05. I heard both the sides at length.

06. Perused the record. It appears that the present suit is filed for possession of the suit property. From the record, I find that the plaintiff no.1 is public trust registered in the year 1955 and exemption certificate (Exh.132) as per Section 88b of Bombay Tenancy and Agricultural Lands Act has been obtained by plaintiff no.1 regarding the suit property on 30/11/1958.. The plaintiff no.1 has lands at various villages in Kolhapur district and lands mentioned in the said certificate are owned by the plaintiff no.1. It is not disputed that the said certificate has been obtained by plaintiff on 30/11/1958. the present suit is filed for possession of the suit property mentioned in the plaint. The defendants have challenged the validity of the said certificate and prayed to frame issue regarding issuance of exemption certificate and its validity. But this court rejected the said application on the ground that this Civil Court has no jurisdiction to decide validity of the said certificate and defendants are at liberty to challenge the validity of the certificate before proper forum. Thereafter, Defendants filed writ petition bearing no.1636/2007 in Bombay High Court challenging the order passed on application (Exh.49) but the said petition was dismissed in which Hon'ble High court observed that "even in the event of the suit being decreed, it will always be open to the petitioners to adopt proceedings in accordance with law in respect thereof, depending upon the outcome of the proceedings adopted by the petitioners to challenges the certificate under Section 88b of the said Act."

07. Other than that defendant has filed inspection application bearing MRT/KP/132/2006 before Revenue tribunal, Pune against exemption certificate (Exh.132), however, the said

application was dismissed on 11/08/2014 on the ground that delay of 48 years was not satisfactorily explained. Therefore, defendant has filed writ petition bearing no.10656/2014 before Hon'ble Bombay High Court challenging the said inspection application which is not still admitted and no stay has been granted.

08. Therefore, from the record, it can be seen that even though defendants have challenged the validity of the exemption certificate before proper forum, the superior court has not granted any stay to the trial and proceedings of this suit. Other than that, this suit is filed for possession and not for deciding validity of said exemption certificate. As observed by Hon'ble High court, even if suit is decreed, it will always be open to defendants to adopt proceedings according with law. Defendants had sufficient opportunities for challenging the validity of certificate since institution of this suit but they have not availed the same and delayed the proceedings. The present suit is very old and if the suit is stayed till decision of the said writ petition then justice will be delayed.

09. Having taken into consideration above discussion, reasons and subsequent effects, I do not think proper to stay trial of this suit till decision of writ petition bearing no.10656/2014. Accordingly, I pass following order.-

ORDER

The application (Exh.163) is rejected.

Date – 07.09.2022.
Jaysingpur.

Sd/-
(Rohini A. Jadhav)
2nd Jt. Civil Judge (Jr. Div.),
Jaysingpur.