

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 9254 OF 2014

Shri. Rajesh Dattu Kakad

.....Petitioner

V/s.

The Commissioner, Thane Municipal Corporation
and others

....Respondents

Mr. V. P. Sawant i/b Mr. Raju M. Yamgar for the petitioner.

Mr. N. R. Bubna for respondent nos. 1 to 3.

Ms. Prabha U. Badadare for respondent no. 5.

Mr. A. P. Vanarase AGP for the State.

**CORAM : SMT. VASANTI A. NAIK,
RIYAZ I. CHAGLA, JJ.**

DATE : NOVEMBER 28, 2017.

P.C.

By this writ petition, the petitioner has sought a direction against the respondent nos. 1 to 4 to take steps for demolition of the illegal construction made by the respondent no. 5.

According to the petitioner, the respondent no. 5 has made illegal alterations and construction without the permission of the Thane Municipal Corporation and has installed sheets in front of the balcony in the apartment-flat.

The petitioner appears to be a court bird and is in the habit of filing writ petitions against the society and its members. The petitioner had filed writ petition no. 6762 of 2014 against the Society and some of its members which includes the respondent no. 5. The said writ petition was in respect of the illegal construction carried out by the present respondent no. 5 & 2 others. The said writ petition was disposed of by an order dated 19/08/2014 after holding that in view of grant of permission, the petition cannot be entertained. If the petitioner was aggrieved by the illegal construction made by the respondent no. 5, as stated in this writ petition, it was necessary for the petitioner to have sought action against the respondent no. 5 in respect of the illegalities that are alleged in this writ petition, in writ petition no. 6762 of 2014. A party cannot be permitted to vex the other party and the Court time and again when the relief could be sought in one proceedings only. The present writ petition appears to be barred by the principles o akin to the principles of constructive *res-judicata*.

Apart from filing writ petition no. 6762 of 2014, the petitioner had also filed writ petition no. 3036 of 2015 in which the present respondent no. 5 was also made a party. In the said case, the Court did not interfere as the tin sheets were removed before the matter came up for hearing. The Court observed that there was a serious dispute between the petitioner and the other members of the society and the writ jurisdiction cannot be invoked for agitating such grievances. The Court had further observed that the petitioner should avail the other remedies.

In the circumstances of the case, we are not inclined to invoke the writ jurisdiction, specially when the prayers made in the present writ petition would be barred by the principles akin to the principles of constructive res-judicata and when this Court had observed in writ petition no. 3036 of 2015 that serious disputes between the petitioner and the other members of the society cannot be agitated in the writ jurisdiction.

In the circumstances of the case, we dismiss the writ petition with no order as to costs.

[RIYAZ I. CHAGLA J.]

[SMT. VASANTI A. NAIK, J.]