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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO. 1031 OF 2017**

Ram Kumar Chaubey .. Petitioner  
Vs.  
State of Maharashtra & Ors. .. Respondents

Mr. R. S. Apte, Sr. Counsel a/w. Mr. Yogesh Palve for the Petitioner.  
Mr. Shrikant V. Doijode a/w. Ms. Rashne Mulla-Feroz, Mr. Saurish Shetye  
i/b Doijode Associates for the Respondent No.8.  
Mr. Mayur Khandeparkar a/w. Mr. Omprakash Jha i/b The Law Point for  
the Respondent No.9.  
Ms. Sheetal Mane for the MCGM.  
Mr. Piyush Raheja a/w. Mr. Sanmish Gala, Mr. Atul Kshtriya, Mr. Jigar  
Shah i/b M/s. Markand Gandhi & Co. for the Respondent No.7.  
Mr. Abhay L. Patki, Additional Govt. Pleader a/w. Mr. Kunal Bhanage,  
Additional Government Pleader for the Respondent-State.

**CORAM : SMT. VASANTI. A. NAIK AND**  
**MR. RIYAZ I. CHAGLA, JJ.**  
**DATE : 8<sup>th</sup> DECEMBER, 2017.**

**P. C. :**

By this writ petition, the petitioner seeks a direction against the corporation authorities to revoke the sanctioned layout plan pertaining to the illegal and unauthorised construction made on the property, bearing CTS No. 866, Survey No. 111-A/B/C.

According to the petitioner, the respondent Nos.6 to 10 have made illegal and unauthorised construction on a field of which the petitioner is a tenant. It is submitted that it would be the bounden duty of the concerned respondents to take appropriate action in accordance with law for the removal of illegal construction.

The learned counsel for the respondents have raised a preliminary objection to the tenability of the writ petition. It is stated that the petitioner had filed a writ petition bearing Writ Petition No. 1012 of 2014 seeking

similar relief and this Court had permitted the petitioner to withdraw the writ petition with liberty to avail the appropriate remedy. It is stated that the petitioner had filed a second writ petition despite the withdrawal of the first one without seeking liberty to file a fresh petition and the same was numbered as Writ Petition No. 1667 of 2016. It is stated that the said writ petition was dismissed and in the order, this Court had observed that the Municipal Corporation of Greater Mumbai should take a decision on the petitioner's representation. It is stated that the petitioner had not only filed two writ petitions but has also filed a civil suit bearing Suit No. 619 of 2014 and in the said suit, similar relief in respect of the same subject matter i.e. survey no. 111-A/B/C and CTS No. 866 is sought. It is stated that during the pendency of the suit, the said writ petition is filed though in the said suit a prayer for grant on temporary injunction restraining the defendants, their servants, agents, successors from carrying out the construction work upon the said property is sought. It is submitted that in the circumstances of the case, this writ petition would not be maintainable.

We are not inclined to entertain the writ petition, specially when the first writ petition filed by the petitioner bearing Writ Petition No. 1012 of 2014 was withdrawn simplicitor with liberty to the petitioner to take alternate appropriate remedy. The alternate appropriate remedy would not mean approaching the High Court again in another writ petition. However, the petitioner did so and filed Writ Petition No. 1667 of 2016 where a preliminary objection in regard to the maintainability of the petition was raised. The Court upheld the preliminary objection and held in para 5 of the order in Writ Petition No. 1667 of 2016 that the prayers made in the earlier writ petition and the said writ petition and the subject matter i.e. the construction allegedly carried out in the buffer zone on 30 mtrs width in CTS No. 866 Survey No. 111-A/B/C was the same. The Court further found that the relief sought in both the petitions was the same. Again, the present petition is filed though the civil suit filed by the petitioner is still

pending. After the first writ petition was withdrawn and it was held that the second petition is not maintainable, the petitioner could not have filed the writ petition pertaining to the same subject matter with similar prayers, only because his representation is not favourably considered. We find that the subject matter involved in the present writ petition and the civil suit is the same. By relying on law laid down by the Hon'ble Supreme Court in the case of **Sarguja Transport Service Vs. State Transport Appellate Tribunal, M. P. Gwalior & Ors. reported in AIR 1987 SC 88**, this writ petition is liable to be dismissed.

Since the civil suit filed by the petitioner is pending, by keeping the points raised in the writ petition open, we dismiss the writ petition with no order as to costs.

**[RIYAZ I. CHAGLA, J.]**

**[SMT. VASANTI A. NAIK J.]**