

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

WRIT PETITION NO. 2671 OF 2017

Dattani Park Building
No.7-A Co-operative Housing
Society Ltd. and others ...Petitioners.

Versus

The State of Maharashtra
and others ...Respondents.

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Mr. V.S. Pandey i/b. Mr. SU. Pandey for the Petitioners.
Mr. Rajiv Narula i/b. Jhangiani Narula and Associates for
Respondent Nos.3 and 4.
Ms. Pallavi Thakar for MCGM.
Mr.K.R. Trivedi, AGP for State.

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***CORAM : Smt. Vasanti A Naik &
Riyaz I. Chagla, JJ.***

DATE : 23rd November, 2017.

P.C. :

By this petition, the petitioners seek a direction against the respondent No.2-the Mumbai Municipal Corporation to cause and commence the survey and measurement of recreation ground No.4 by the architect appointed by the Hon'ble Court and to submit accurate measurement of recreation ground No.4 along with all the layout plans, as approved by the Corporation. Certain other directions of similar nature are also sought against the Corporation.

A preliminary objection is raised on behalf of the respondent Nos. 3 and 4 that the petitioners have filed L.C. Suit No.1001/2010 seeking a direction against the respondent Nos .3

and 4 not to carry on any construction on the plot of land which according to the petitioners is allegedly earmarked for 'garden', 'chowk' and 'recreation ground'. It is submitted that while prosecuting the remedy in the suit, the petitioners have filed the writ petition seeking a prayer for a direction to appoint an architect and submit the accurate measurement.

The learned counsel for the petitioners states despite the filing of the suit, the construction is going on in utter violation of the order granting injunction in favour of the petitioners and the Corporation authorities are helping the respondent Nos. 3 and 4 by not filing the written statement.

We find from a reading of the writ petition and the plaint in suit bearing No.1001/2010 that the issue involved in the present petition and the suit pertains to the same property and the petitioners have sought similar relief in the said suit. Merely because the Corporation is not filing the written statement in the suit and the injunction order is allegedly violated by the respondent Nos. 3 and 4, the petitioners would not be entitled to file the writ petition in respect of the same matter. The petitioners have other remedies if the orders of the Court are violated or the written statement is not filed. Instead of availing the other remedies, the petitioners have filed the writ petition in respect of the same subject matter and the questions involved in the two proceedings are similar.

Hence, we dismiss the writ petition with no order as to costs.

(Riyaz I. Chagla J)

(Smt.Vasanti A Naik, J)