

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

**WRIT PETITION NO.1075 OF 2021**

Monish Chintaman Patil

..... Petitioner

Vs.

State of Maharashtra Through  
Principal Secretary

..... Respondent

Mr.Kishor Patil a/w Mr.Amol Mhatre i/b Mr.Sameer P.  
Mhatre for the Petitioner

Mr.A.I.Patel, Addl. G.P. for the State

Mr.Sandeep Marne for the Respondent no.2

Mr.B.B.Sharma for Respondent no.3

**CORAM: K.K.TATED &  
ABHAY AHUJA, JJ.**

**DATED : MAY 11, 2021**

**(VACATION COURT THROUGH  
VIDEO CONFERENCING)**

**P.C.**

. Heard.

2. By this petition, under Article 226 of the Constitution of India, Petitioner is seeking direction against the Respondent Corporation as well as CIDCO to take

appropriate action in respect of unauthorised construction carried out by Respondent nos.4 to 7 in land bearing Survey No.316 at Ghansoli, Navi Mumbai.

3. The learned Counsel for the Petitioner submits that earlier the Respondent Corporation demolished part of the structure and he relies on photograph placed on record at page nos.17 and 18 of the present petition. He submits that even the Respondent Corporation admitted that there is no permission granted by them to carry out any construction on the said land. Hence, Respondent Corporation and CIDCO may be directed to remove unauthorised construction carried out by Respondent nos.4 to 7.

4. At this stage, the learned Counsel for the Respondent no.3 submitted that in the present proceedings, Regular Civil Suit No.233 of 2020 is pending before 3<sup>rd</sup> Joint Civil Judge, Junior Division, Vashi, Navi Mumbai. He submits that in that proceeding, Trial Court passed order on 15.02.2021 below Exhibit 5 in an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 restraining them from demolishing the suit property or any part thereof in view of the notice dated 31.08.2020 till the final decision without following due process of law. He placed on record photocopy of the said order dated 15.02.2021. Same is taken on record and marked 'X' for identification. Same is accepted. He submits that in view of subsequent development that there is an injunction order from Trial Court, there is no question of entertaining the present Writ Petition.

5. When this court declined to entertain the present Writ Petition on the ground that Regular Civil Suit No.233 of 2020 is pending before Trial Court, the learned Counsel for the Petitioner after taking instruction from his client made a statement before this court that they may be permitted to withdraw the present Writ Petition with liberty to file appropriate application in Regular Civil Suit No.233 of 2020. He submits that if such application is filed, Trial Court to decide the same on its own merits.

6. In view of these facts, following order is passed:

a. Writ Petition stands dismissed as withdrawn with liberty to file appropriate application in Regular Civil Suit No.233 of 2020 pending before the 3<sup>rd</sup> Joint Civil Judge, Junior Division, Vashi, Navi Mumbai.

b. If such application is filed, Trial Court to decide the same on its own merits, after hearing all the parties.

c. No order as to costs.

d. All contentions of both the parties are kept open.

(ABHAY AHUJA, J.)

(K.K.TATED, J.)