

Anand

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

WRIT PETITION NO. 4035 OF 2021

Ronnie Lawrence Fernandes

.Petitioner

Vs.

The Commissioner, Thane Municipal Corporation & ors. .Respondents

Ms Eventa A. Gonsalves a/w Mr. Reyden L. Gonsalves, Advocate,
for the Petitioner

Ms Chaitrali A. Deshmukh, Advocate, for Respondent Nos. 1 to 5

Ms Anjali R. Baxi, Advocate, for Respondent No. 6

Mr. Sandesh D. Patil i/b. Ms Anusha P. Amin, Advocate, for
Respondent Nos. 7 to 9

**CORAM : S. B. SHUKRE AND
M. W. CHANDWANI, JJ.**

DATE : 12 JANUARY 2023

P. C.

. Heard learned counsel for the Petitioner and learned
counsel for the Respondents.

2. The prayer made in this Petition is about issuance of
directions to the Thane Municipal Corporation to initiate action
against the Respondent Nos. 7 to 9 in respect of the said
unauthorized construction carried out and illegal commercial
use and illegal installation of diesel generator on parking No. 5.
However, already one Civil Suit, being R. C. S. No. 451 of 2020

has been filed by the Petitioner, wherein similar prayer i. e. prayer (c) has been made. Now, it is submitted by learned counsel for the Petitioner that the Petitioner has preferred an Application before the Civil Court for withdrawal of prayer clause (c) of the plaint filed in R. C. S. No. 451 of 2020 and that the said Application was filed on 03.11.2022. This Petition has been filed in July, 2021 and the said prayer made in the suit was very much there. Even, today, the prayer exists because the Application subsequently filed by the Petitioner is still pending.

3. In the circumstances, we are of the view that the Petitioner ought not to have filed this Petition and ought to have prosecuted remedy which in fact, she has already done before the Civil Court.

4. For these reasons, we are not inclined to entertain this Petition. The Petition stands dismissed accordingly.

(M. W. CHANDWANI, J.)

(S. B. SHUKRE, J.)