

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 15263 OF 2022

Treeza Edgard Dsouza ...Petitioner
Versus
Mira Bhayandar Municipal Corporation through ...Respondents
Commissioner & Ors

Mr Prithviraj S Gole, for the Petitioner.
Mr DV Sawant, i/b PS Chambers, for Respondents Nos. 5, 6 & 7.

CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 13th October 2023

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1. We decline to exercise our discretion under Article 226 because there are not only disputed questions of fact as to the construction and development by private Respondents Nos. 5, 6 and 7 but this also seems to be a private dispute between the Petitioner and those Respondents. We note that the private Respondents, one of whom is a senior citizen of 91 years, were not originally joined as Respondents at all. They had to be joined by an amendment. This tells us that the attempt was clearly to get an order against the private Respondents, possibly behind their backs and certainly without notice to them. This is unacceptable given that there is, as Mr Sawant for Respondents Nos. 5, 6 and 7 points out, a pending

civil suit before the Civil Judge, Senior Division, Thane. This is Suit No. 197 of 2021.

2. The Petitioner is at liberty to make an appropriate application in that suit if not already done.

3. The other reason to reject this Petition is that in a previous proceeding, i.e., Writ Petition No. 3696 of 2022, parties had arrived at an arrangement and there was a consent order of 22nd July 2022. If there is a breach of that undertaking or a breach of the terms of those consent terms, that is not a ground to institute a writ petition.

4. We note that the prayers in the present Writ Petition are actually directed towards punishing certain authorities who are alleged to have “intentionally neglected to perform their duty”. Then there is a request that the representations made by the Petitioner on 14th September 2022 and 4th October 2022 be decided in a time-bound manner. Mr Sawant states that the representations have indeed been decided on 21st July 2023. The statement is noted.

5. The Petition is rejected. All contentions in the civil suit are expressly kept open.

(Kamal Khata, J)

(G. S. Patel, J)