

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

WRIT PETITION NO.7568 OF 2022

Vishnu Jagannath Gaikwad

.. Petitioner

v/s.

Pimpri Chinchwad Municipal

Corporation & Ors.

.. Respondents

Mr. Jayant Bardeskar i/b. Ms. Shradha Sawant for the petitioner.

Mr. Deepak R. More a/w Shivram Gawade for the respondent nos.1 & 2.

Mr. P.P. Kakade, Govt. Pleader, a/w R.P. Kadam, AGP, for respondent no.3.

CORAM : R.D. DHANUKA &

KAMAL KHATA, JJ.

DATED : 28TH SEPTEMBER, 2022.

P.C. :

1. Leave to amend is granted to implead "City Survey Officer, Pimpri Chinchwad, Pune" as respondent no.3. Amendment to be carried out forthwith. Re-verification is dispensed with. Amendment shall also be carried out in the copy supplied to the respondents forthwith.

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2. Mr. Kakade, the learned Government Pleader accepts service on behalf of City Survey Officer, Pimpri Chinchwad, Pune.
3. By this petition filed under Article 226 of the Constitution of India, petitioners seeks writ of certiorari for setting aside the notice dated 13th April, 2022 issued by Respondent No.3 under Section 55 of the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act").
4. Learned counsel for the petitioners states that the petitioners have already applied for measurement to City Survey Officer on 17th May, 2022 in respect of the land in question. However, measurement has not been taken by the City Survey Officer till date.
5. It is submitted by learned counsel for the petitioners that the petitioners shall apply for appropriate permission under Section 44 of the MRTP Act read with Rule 6 of the Maharashtra Development Plan Rules, 1970 within four weeks from the date of service of the measurement sheet of the measurement, that would be carried out by the City Survey Officer. Statement is accepted.
6. The petitioners shall comply with all the requirements prescribed under the Maharashtra Development Plan Rules and

Development Control Rules while making such application for appropriate permission under Section 44 of the MRTP Act. We direct the City Survey Officer of Pimpri-Chinchwad, Pune to take measurement of the land in question in presence of the petitioners and the respondent nos.2 and 3 on 11th October 2022 at 11:00 am. The petitioners are directed to remain present on site. If the respondent nos.2 and 3 also propose to remain present at the time of taking measurement, they are also allowed to remain present. Copy of the measurement sheet shall be provided to the petitioners as well as to the respondent nos.2 and 3 by the City Survey Officer. If any further payment is required to be made for carrying out measurement, it shall be exclusively paid by the petitioners.

7. It is made clear that, if application is not made by the petitioners for permission under Section 44 of the MRTP Act within a period of four weeks from the date of service of the measurement sheet by the City Survey Officer, the interim protection granted by this Court shall stand vacated without further reference to the Court. In that event, the authority that issued the impugned notice shall be at liberty to proceed with the notice and execute such notice against the offending structure.

8. Till such time that the measurement sheet is issued by City Survey Officer and the application for permission under Section 44 of the MRTTP Act is decided by the respondent no.3, and for period of two weeks from the date of communication of the order, the respondent nos.2 and 3 shall not take any coercive steps against the petitioners and offending structure in pursuance of the notice dated 13th April 2022. Respondent no.3 shall make an endeavour to dispose off the said application for regularization within eight weeks from the date of receipt of such application and shall communicate the order to the petitioners within one week from passing such order.
9. If Application under Section 44 of the MRTTP Act is accepted by respondent nos.2 and 3, appropriate consequential relief shall be granted in favour of the petitioners within four weeks from the date of passing such order. If such application is rejected, the petitioners would be at liberty to file appropriate proceedings permissible in law.
10. It is made clear that this Court has not expressed any views on the application for seeking permission under Section 44 of the MRTTP Act that would be made by the petitioners. All questions on

merits of said application are kept open.

11. Writ petition is disposed off in aforesaid terms. Rule is made absolute. No order as to costs.
12. Parties shall act on the authenticated copy of this order.

(KAMAL KHATA, J.)

(R.D.DHANUKA, J.)