

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

**WRIT PETITION NO.9728 OF 2022**

Shri Sainath Makhale & Ors.

.. Petitioners

v/s.

The State of Maharashtra & Ors.

.. Respondents

Mr. Prasad B. Kulkarni for the Petitioner.

Mr. R. P. Kadam for respondent Nos.1 and 4.

Mr. Deepak R. More a/w Mr. Shivram Gawade for Corporation  
respondent Nos.2 and 3.

**CORAM : R.D. DHANUKA &**

**KAMAL KHATA, JJ.**

**DATED : 11 AUGUST, 2022.**

**P.C. :**

1. Leave to amend is granted to carry out corrections in cause title of respondent No.4 to delete the words "Pimpri Chinchwad Municipal Corporation, Pune". Amendment shall be carried out within three weeks from today. Re-verification is dispensed with. Amendment shall be carried out and a copy shall be served to the respondent's advocate. Learned counsel waives service for respondent Nos.1 and 4. Learned counsel waives service for Respondent Nos.2 and 3. Returnable forthwith.
2. By this petition filed under Article 226 of the constitution of India

petitioner seeks writ of certiorari for setting aside the notice dated 4<sup>th</sup> August 2022 issued by Respondent No.3 under Section 55 of the Maharashtra Regional and Town Planning Act, 1966 (for short “MRTP Act”).

3. Learned counsel for the Petitioners states that the petitioners have already applied for measurement to City Survey Officer on 28<sup>th</sup> April, 2021 in respect of the land in question. However, measurement has not been taken by City Survey Officer till date. He tenders a copy of the receipt showing acknowledgment of the said application dated 28<sup>th</sup> April, 2021 issued by the City Survey Officer, Pimpri Chinchwad.
4. It is submitted by learned counsel for the Petitioners that Petitioner shall apply for appropriate permission under Section 44 of MRTP Act read with Rule 6 of the Maharashtra Development Plans Rules, 1970 within four weeks from the date of service of the measurement sheet of the measurement carried out by the City Survey Officer. Statement is accepted.
5. The Petitioner shall comply with all the requirements prescribed under the Maharashtra Development Plans 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 to take measurement of the land in question in presence of the Petitioner and the respondent Nos.2 and 3 on 24<sup>th</sup> August 2022 at 11:00 am. The Petitioners are directed to remain present on site. If the Respondent No.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.

6. It is made clear that, if application is not made by the Petitioner for permission under Section 44 of the MRTTP 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 to 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.
7. 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 4<sup>th</sup> August 2022. The Respondent No.3 shall make an endeavour to dispose off 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. If Application under Section 44 of MRTP 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 Petitioner would be at liberty to file appropriate proceedings permissible in law. It is made clear that this Court has not expressed any views on the application for seeking permission under Section 44 of the MRTP Act that would be made by the Petitioners. All questions on merits of said application are kept open.

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

**(KAMAL KHATA, J.)**

**(R.D.DHANUKA, J.)**