

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13316 OF 2022

Sadashiv Appa KaspatePetitioner

Vs.

The State Of Maharashtra & Ors.Respondents

Mr. Hemant Ghadigaonkar for Petitioner.

Mr. Manish Pable, AGP for State.

Mr. Deepak R. More a/w Mr. Shivram Gawade for Respondent Nos.2 & 3.

**CORAM : S. V. GANGAPURWALA &
ARIF S. DOCTOR, JJ.**

DATE : 24th NOVEMBER, 2022.

PC.:-

1. Learned AGP waives service for Respondent Nos.1 and 4.

Learned counsel Mr. Gawade waives service for Respondent Nos.2 and 3.

Rule. Rule made 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 29th April, 2022 issued by Respondent No.3 under Section 478(1) & 433 (C) of the Maharashtra Municipal Corporation Act, 1949.

3. Learned counsel for the Petitioner states that the Petitioner has already applied for measurement to City Survey Officer on 14th November, 2022 in respect of the land in question. However, measurement has not been conducted by City Survey Officer till date.

4. It is submitted by learned counsel for the Petitioner that Petitioner would 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 conduct measurement of the land in question in presence of the Petitioner and the Respondent Nos.2 and 3 within four weeks from today. 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 Petitioner 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 Petitioner.

6. It is made clear that, if application is not made by the Petitioner 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.

7. Till such time that the measurement sheet is issued by City Survey Officer and the application for permission under section 44 of the MRTP 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 29th April, 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 Petitioner 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 Petitioner 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 Petitioner. All questions on merits of said application are kept open.

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

(ARIE S. DOCTOR, J.)

(S. V. GANGAPURWALA, J.)