

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

WRIT PETITION NO.13319 OF 2022

Mohan Babanrao Kaspate

.. Petitioner

v/s.

The State of Maharashtra & Ors.

.. Respondents

Mr. Hemant Ghadigaonkar for the petitioner.

Mr. D.R. More a/w Shivram Gawade for respondent nos.2 & 3.

Mr. Ravi P. Kadam, AGP, for the State-respondent nos.1 & 4.

**CORAM : R.D. DHANUKA &
KAMAL KHATA, JJ.**

DATED : 15TH NOVEMBER, 2022.

P.C. :

1. Rule. Learned counsel for the respondents waive service. Rule is made returnable forthwith.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks a writ of certiorari for setting aside the notice dated 29th April, 2022 issued by respondent no.3 under Section 478(1) and 433(c) of the Maharashtra Municipal Corporation Act, 1949 (for short "MMC Act").

3. Learned counsel for the petitioner states that the petitioner would apply for measurement to City Survey Officer within one week from today in respect of the land in question and would pay the requisite charges, if any, simultaneously.
4. It is submitted by learned counsel for the petitioner 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 2nd December, 2022 at 11.00 a.m. The petitioner is directed to remain present on site. If the respondent nos.2 & 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 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 respondent no.3, and for a period of two weeks from the date of communication of the order, respondent nos.2 and 3 shall not take any coercive steps against the petitioner and offending structure in pursuance of the notice dated 29th April, 2022. 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 & 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.

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

(KAMAL KHATA, J.)

(R.D.DHANUKA, J.)