

Digitally
signed by
BASAVRAJ
GURAPPA
PATIL
Date:
2022.11.24
11:22:57
+0530

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

WRIT PETITION NO. 14425 OF 2022

Mangesh Jaganath Kaspate

..... Petitioner

Vs.

State of Maharashtra & Ors.

..... Respondents

Mr. Hemant Ghadigaonkar for the Petitioner

Mrs. R. A. Salunkhe, AGP for Respondent Nos.1 & 4.

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

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

DATED : NOVEMBER 23, 2022

P.C.

1 Rule.

Rule is made returnable forthwith.

By consent of the parties taken up for final disposal.

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 The learned Counsel for the Petitioner submits that the

Petitioner would make an Application for measurement within a week from today. The statement is accepted.

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 carry out measurement in accordance with law and procedure in presence of the parties concerned expeditiously and preferably within one month from the date the Petitioner makes an Application.

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 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 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 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.

(ARIF S. DOCTOR,J.)

(S.V. GANGAPURWALA, J.)