

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

WRIT PETITION NO.1630 OF 2023

Santosh Arun Kaspate

.. Petitioner

Vs.

The State of Maharashtra and Ors.

.. Respondents

Mr. Hemant Ghadigaonkar for the Petitioner.

Mr. Deepak R. More, with Mr. Shivram A. Gawade, for Respondent Nos.2 and 3-Municipal Corporation.

**CORAM : A.S. CHANDURKAR &
M.W. CHANDWANI, JJ**

DATE : 9TH FEBRUARY, 2023.

P.C. :

1. Rule. Mr. More waives service for the respondent nos.2 and 3. 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 quashing and setting aside the notice dated 29th April, 2022 issued by the respondent no.3-Designated Officer of the Municipal Corporation under section 478(1) and 433(c) of the Maharashtra Municipal Corporation Act, 1949.

3. Learned counsel for the petitioner states that the petitioner would apply for measurements to the City Survey Officer within one week in respect of the land in question and pay the requisite charges simultaneously. Statement is accepted.

4. Learned counsel for the petitioner further states that his client would

apply for appropriate permission under section 44 of the MRTTP Act, read with Rule 6 of the Maharashtra Development Plans Rules, 1970, within two weeks from the date of measurements to be carried out by the City Survey Officer. Statement is accepted.

5. The Petitioner shall comply with all the requirements, as prescribed under the Maharashtra Development Plans Rules and Development Control Rules, while making such application for an appropriate permission under Section 44 of the MRTTP Act. We direct the City Survey Officer to take measurements of the land in question in the presence of the Petitioner and Respondent Nos.2 and 3 on 10th March 2023 at 11:00 am. The petitioner is directed to remain present at the site. If Respondent Nos.2 and 3 propose to remain present at the time of taking measurements, they are also allowed to remain present. Copy of the measurements 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 measurements, it shall be exclusively paid by the Petitioner.

6. It is made clear that if an application is not made by the Petitioner for the permission under Section 44 of the MRTTP Act within a period of two 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 measurements sheet is issued by the City Survey Officer and the application for permission under section 44 of the MRTP Act is decided by the Respondent No.3, and for a 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 Petitioner and the offending structure in pursuance of the notice dated 29th April, 2022. The Respondent No.3 shall make an endeavour to dispose of the 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 the passing of such order. If the 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 an application is rejected, the Petitioner would be at liberty to file appropriate proceedings as 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 the merits of the said application are kept open.

8. The Writ Petition is disposed off in aforesaid terms. Rule is made absolute. No order as to costs.

9. Parties to act on the authenticated copy of this order.

[M.W. CHANDWANI, J.]

[A.S. CHANDURKAR, J.]