

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

WRIT PETITION NO. 6429 OF 2023

Amol Babasaheb Nakhate

... Petitioner

Vs.

The State of Maharashtra and Ors.

... Respondents

Mr. Hemant Ghadigaonkar for the Petitioner.

Ms. Kavita Solunke AGP for Respondent No.1 and 4.

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

**CORAM : ABHAY AHUJA AND
M.M. SATHAYE, JJ.
DATE : 22 MAY, 2023
(Vacation Court)**

P.C. :

1. Rule. Rule is made returnable forthwith. Learned AGP waives service for Respondents No. 1 and 4. Learned counsel for Respondents No. 2 and 3 waives service. Taken up for final disposal by consent.

2. By this petition filed under Article 226 of the Constitution of India, petitioner seeks writ of certiorari for setting aside the notice dated 13th April 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 Petitioner states that his clients shall apply for measurement, to the City Survey Officer within one week from today in respect of land in question.

4. It is submitted by learned counsel for Petitioner that Petitioner shall apply for appropriate permission under Section 44 of the MRTP Act read with Rule 6 of the Maharashtra Development Plan Rules, 1970 within four weeks from the date of service of the measurement sheet of the measurement, that would be carried out by the City Survey Officer, i.e. Respondent No. 4 herein. Statement is accepted.

5. Petitioner shall comply with all the requirements prescribed under the Maharashtra Development Plan Rules and Development Control Rules while making such application for appropriate permission under Section 44 of the MRTP Act. We direct Respondent No. 4- City Survey Officer of Pimpri-Chinchwad, Pune to take measurement of the land in question in presence of Petitioner and Respondent nos.2 and 3 on 6th June 2023 at 11.00 am. Petitioner is directed to remain present on site. If Respondent Nos.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 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 Petitioner.

6. It is made clear that, if application is not made by 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 Respondent No. 4- City Survey Officer and the application for permission under Section 44 of the MRTP Act is decided by Respondent no.3, and for period of two weeks from the date of communication of the order, Respondent Nos.2 and 3 shall not take any coercive steps against Petitioner and offending structure in pursuance of the notice dated 13th 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 Petitioner within one week from passing such order. If application under Section 44 of the MRTTP Act is accepted by Respondents no.2 and 3, appropriate consequential relief shall be granted in favour of Petitioner within four weeks from the date of passing such order. If such application is rejected, 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 MRTTP Act that would be made by 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 cost.

9. Parties shall act on authenticated copy of this order.

(M.M. SATHAYE, J.)

(ABHAY AHUJA, J.)