

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

WRIT PETITION NO. 4415 OF 2022

Shri. Keshav Aaba Patil

..Petitioner

V/s.

The State of Maharashtra & Ors.

..Respondents

Mr. D.V.Sutar a/w. Ms.Kavita D.Vijapure and Kiran G.Kulkarni
for the Petitioner.

Mr. A.I.Patel Addl.G.P. a/w. Ms.M.S.Bane AGP for the
State/Respondent No.1 to 4.

Mr. Prashant Bhavake Advocate for Respondent No.7.

Mr. Kedar Lad for Respondent No.5.

**CORAM : R.D.DHANUKA, AND
GAURI GODSE, JJ.**

DATE : 13 APRIL 2023

P.C.

. Rule. Learned counsel for Respondents waives service
for the Respondents. Rule is made returnable forthwith. By
consent of the parties, the Petition is taken up for final
hearing.

2. By this petition, filed under Article 226 of Constitution of
India, direction is sought against Respondents to execute
notice dated 24/10/2018 for removing encroachment made by

Respondent No.7 upon the Survey No.1034, bearing House Property No.1183 situated at village Rashivade.

3. Learned counsel appearing for the Respondent No.7 states that regularization application under Section 51 of The Maharashtra Land Revenue Code 1966, is already filed by Respondent No.7 before the Respondent No.2/District Collector, Kolhapur. He further states that the said regularization application was referred to learned Tahsildar and by an order dated 27/11/2017, the learned Tahsildar has already forwarded the regularization application to the learned Collector by recording that the learned Tahsildar has the jurisdiction to decide the said application for regularization.

4. Learned Counsel for the Petitioner invited our attention to the direction issued by Collector on 24/10/2018, thereby directing the Collector, Kolhapur to immediately remove the unauthorised structure. The regularization application filed by Respondent No.7 is not yet decided by the Collector. Since the application for regularization made by Respondent No.7 is not yet decided, the Collector Kolhapur is directed to give personal hearing to the Respondent No.7 as well as the Petitioner, who

has objected the regularization application. In view thereof we pass following order :

Order

1. The Respondent No.7 as well as the Petitioner to appear before the Additional Collector, Kolhapur on 04/05/2023 at 11.00a.m.
2. Respondent No.7 is at liberty to submit the documents, if any .
3. If the learned Additional Collector, Kolhapur finds the scheduled date of hearing inconvenient, then any other early suitable date be given by consent of Respondent No.7 and the Petitioner.
4. The regularization application made by the Respondent No.7 to be decided on its own merits within a period of 8 weeks from the date of granting hearing.
5. In the event the decision is adverse to the Respondent No.7 in that event, the Respondent No.7 will be at liberty to take appropriate steps as permissible in law.
6. It is made clear that, we have not expressed any view on the merits of the application made by Respondent No.7 and the said application be decided on its own merits.

7. Respondent No.7 will not carry out any further construction without taking permission from the concerned authority.

8. If the decision in the Regularization Application is adverse to the Respondent No.7, then no coercive action shall be taken against the structure of the Respondent No.7 for a period of 3 weeks from the said decision. Till application for Regularization is decided, no coercive steps shall be taken against the Petitioner or the offending structure.

9. Writ Petition is allowed in abovesaid terms. Rule is made absolute. No order as to costs.

10. Parties to act on authenticated copy of this order.

GAURI GODSE, J.

R.D.DHANUKA, J.