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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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WRIT PETITION (ST.) NO.35242 OF 2023

Vijay Dagadu Bhondve

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

Mr.Prathamesh Bhargude for the Petitioner.

Mr.N.C. Walimbe, Addl. G.P. for Respondent nos.1 & 4-State.

Mr.Deepak R. More a/w Mr. Shivram A. Gawade for Respondent nos.2 &3-Corporation.

**CORAM : KAMAL KHATA &
JITENDRA S. JAIN, JJ.
DATE : DECEMBER 26, 2023
(Vacation Court)**

P.C.:

. Learned counsel for the petitioner is permitted to amend the Petition and add the Respondent No.4 forthwith.

2. Rule. Learned counsel for the Respondents waives service. Rule is made returnable forthwith.

3. By this petition under Article 226 of the Constitution of India, the petitioner seeks a Writ of Certiorari for setting aside the notice dated 1st December 2023 issued by the Respondent No.3 Municipal Corporation under Section 53 of the Maharashtra Regional and Town

Planning Act, 1966 (for short “MRTP Act”).

4. Learned counsel for the petitioner submits that on 1st December 2023, the petitioner was issued a notice for demolition of illegal and unauthorized structures. As per the notice, demolition would take place after 30 days i.e., on 30th December 2023.

5. On 21st December 2023 the Petitioners applied for measurement to City Survey Officer under the caption of ‘urgent measurement.’ The Respondent No.4 has taken no steps to complete the measurement. The Petitioner therefore submits that if the respondents could be directed to take the measurements their rights would be protected. He submits that only after measurements are taken, he would be entitled to seek regularization under section 44 of the MRTP Act.

6. He submits that pending the completion of the measurements and supply of the copy thereof to the petitioner, no coercive steps should be taken against the petitioner’s offending structure by the Respondent Nos. 2 and 3.

7. We are inclined to grant the Petitioner the relief. We direct the Respondent Nos.1 and 4 shall take measurement of the land in question in presence of the petitioner and the Respondent Nos.2 and 3

on 4th January 2024 at 11.00 a.m. 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. It is made clear that if any further payment is required to be made for carrying out measurement, it shall be exclusively paid by the petitioner.

8. If the application under Section 44 of the MRTP Act so made by the Petitioner is accepted by the 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. No coercive steps shall be taken by the Respondents for a period of three weeks from the communication of the order.

9. The Respondent Nos.2 and 3 shall make an endeavour to dispose of the application under Section 44 of the MRTP Act for regularization/development permission within eight weeks from the date of receipt of such application and shall communicate the order to the petitioner within one week from passing of such order.

10. 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 merits of the application are kept open.

11. Writ petition is disposed of in aforesaid terms. Rule is also made absolute.

12. No order as to costs.

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

[JITENDRA S JAIN, J.]

[KAMAL KHATA, J.]