

Wadhwa

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3674 OF 2023

Shrikant Studio Pvt Ltd

...Petitioner

Versus

Mumbai Municipal Corporation & Ors.

...Respondents

Mr Mukesh Vashi, Senior Advocate, with Aparna Deokar, i/b MP Vashi & Associates, for the Petitioner.

Mr Mayur Khandeparkar, with Viraj Parikh, Samit Shukla, Saloni Shah & Sayali Diwadkar, i/b DSK Legal, for Respondent No 3.

Mr Kunal Waghmare, for the Respondent - MCGM.

**CORAM G.S. Patel &
 Kamal Khata, JJ.**

DATED: 27th February 2024

PC:-

1. It all began as many things in this city do with the film industry. There is a parcel of land at Chembur which was once the site of the fabled RK Studios run by the family of the legendary film personality Raj Kapoor.

2. The dispute is between the Petitioner and Respondent No 3 Godrej Development Private Limited (“**Godrej**”) and, as far as we are able to tell it pertains to a narrow strip of land. It also pertains to the emblem or logo of RK Studios which may or may not have a historical, artistic or emotional significance. Between these two parties, that strip of land has been fertile ground for litigation.

3. The Petitioner came to court in Writ Petition No 1336 of 2022. The claim in that Writ Petition was for a direction to the Municipal Corporation of Greater Mumbai (“**MCGM**”) to issue a stop work notice to Godrej on, and this is important, “land owned by” Godrej as well as land bearing CTS No 783 admeasuring 1272.5 sq mts which was jointly owned by the Petitioner and Godrej. On 19th August 2022, Godrej through its Counsel made a statement that it was not utilizing the Floor Space Index (“**FSI**”) on 50% of the land.

4. Ultimately, the Writ Petition was disposed of with an order in terms of signed minutes. We find a copy of these Minutes at pages 61 and 62 at Exhibit ‘K’ and we reproduce these fully below:

MINUTES OF ORDER

1. The Petitioner and Respondent No.3 confirm that each of them is entitled to use 50% undivided right, title and interest in the strip of land bearing CTS No. 783 admeasuring approximately 1272 sq.meters.

2. The Petitioner and the Respondent No. 3 both state that neither of them has till date utilised any FSI arising out of the said strip of land bearing CTS No. 783.

3. The Petitioner and the Respondent No. 3 both state that they shall respectively apply, if not already applied, to the concerned authority for sub-division of the said strip of land bearing CTS No. 783 in accordance with their respective right and entitlement of 50% thereof each.

4. The concerned authority shall consider and decide the sub-division application in accordance with law, expeditiously.

5. Petition is disposed of in terms of the above.”

5. Mr Vashi for the Petitioner says that this order required two or three distinct things. First, it required both the Petitioner and Godrej not to utilize FSI on this strip of land on CTS No 783 and it recognized that each of them had a 50% undivided share, right, title and interest in that land. Second, the order also required the parties to apply for a sub-division. Mr Vashi says the sub-division has been done by the City Survey Officer and annexed to the Petition are documents showing what has repeatedly been described in the arguments before us as “the red line”. This is a line drawn by the City Survey Officer that bifurcates this strip of land No 783. This is perhaps best seen from Exhibit ‘L’ at page 63.

6. Mr Vashi complains that what Godrej, represented by Mr Khandeparkar, has done is to construct a compound wall not on the red line but on the Petitioner’s side of the red line and has widened the entrance gate on the north-eastern side or has kept a larger gate which straddles the red line. Whether this has been done to preserve the RK Studios emblem on the gate posts on either side of the entrance gate or for some other reason is immaterial according to Mr Vashi. He submits that on the strength of the Minutes of the Order at Exhibit ‘K’, Godrej must be directed by the Writ Court to demolish the wall and, if a wall has to be erected, to have it aligned only along the red line. Mr Vashi says that the Petitioner is in fact willing to pay for this. To ensure that there is no controversy Mr Vashi qualifies this by submitting that the Court should direct the City Survey Officer to ascertain whether the wall constructed by Godrej is on the red line or not and if it is not then to order a removal or demolition of that wall and its reconstruction with all

necessary permissions but only along the alignment of the red line demarcated by the City Survey Officer.

7. Mr Khandeparkar opposes this application tooth and nail. This, he submits, is a complete abuse of the process of the Writ Court. What is being sought is a partition by metes and bounds of undivided interest in that strip of land. All that the Minutes of the Order said was that the two sides would not *utilize the FSI* on that land and that there would be a demarcation line. The Minutes of the Order said nothing at all about *possession*. He maintains that Godrej has always been in possession of the entirety of the land that is on the Godrej side of the wall that has been constructed and the red line has no bearing on this whatsoever. If today such a relief is sought, it is nothing but seeking from the Writ Court a decree for partition and possession, which is impermissible in writ jurisdiction.

8. He points out that the Petitioner has made several attempts after the Minutes of the Order of 30th August 2022 to achieve this purpose. There was an attempt made on 10th August 2023 in a Review Petition (L) No 11427 of 2023. The Court expressed no opinion. Then, the Review Petition was argued fully and was dismissed by a detailed order in the Judgment of 10th August 2023. The Division Bench held that the Review Petition was not maintainable. There was no error in the order of 30th August 2022. It permitted the Petitioner to put up a gate and barbed wire fencing if entitled in law. Nobody has questioned that. We are not deviating from that position either. We may note however that the submission in the Review Petition was that in the guise of a review what was

being sought was a modification and (paragraph 7 at page 102) an order for possession. Mr Khandeparkar points out that the Division Bench hearing the Review Petition also noted that the wall has been where it now is for the last 50 years and it cannot now be ordered to be summarily removed.

9. In light of these facts, we do not see how it is possible for us to enter into what appear to us to be matters that pertain to the jurisdiction of a Civil Court relating to partition, possession and possessory title. The Minutes of the Order of 30th August 2022 obviously continue in regard to the non-utilization of the FSI attributable to that strip of land. The demarcation contemplated in that order and which was to be effected by the City Survey Officer, has already been done. Even at the time of the Minutes of the Order there was no agreement between the parties that a compound wall would be put up along the red line demarcated by the City Survey Officer.

10. We dispose of the Petition without granting relief but reserving to the Petitioner the express liberty to adopt appropriate proceedings in a court of competent jurisdiction and leaving all contentions open in that regard on both sides.

(Kamal Khata, J)

(G. S. Patel, J)