

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2942 OF 2025
WITH
INTERIM APPLICATION (L) NO. 37748 OF 2025

Hasmukh N. Malkan

...Petitioner

Versus

Brihanmumbai Municipal Corporation & Ors.

...Respondents

Mr. Nikhil Sakhardande, Senior Counsel, with Mr. Akshay Petkar, Mr. Ashish Venogopal, Ms. Sonal Awasthi, Mr. Ronish Mehta and Mr. Manee Vishwakarma i/b. Vinod Mistry & Co. for Petitioner.

Ms. Pushpa Yadav for Respondent/BMC.

Mr. Saurabh Pakale for Respondent No.2/SRA.

Mr. Suraj Gupte, AGP for State.

Ms. Armin Wandrewala with Mr. Manan Jaiswal and Ms. Anuska Shetty i/b. MLS Vani & Associates for Respondent Nos.5 & 6.

Mr. Amogh Singh with Mr. Rahul Arora i/b. Jeet Gandhi for Respondent No.7.

Mr. Aniket Bankar, Junior Engineer, P/North Ward, Maintenance Department, present.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.
DATE: 03 FEBRUARY 2026

P.C.

1. This writ petition under Article 226 of the Constitution of India is filed praying for the following substantial relief:-

“(a) that this Hon’ble Court be pleased to issue a writ of mandamus and/or certiorari or writ in the nature of mandamus and/or certiorari or any other appropriate writ under Article 226 of the Constitution of India, calling for all papers and proceedings from Respondent No.1 pertaining to Impugned Letter and after examining the validity, legality and propriety thereof, to quash and set aside the Impugned Letter and/or any other permissions, sanctions and/or grant based on the Impugned Letter (being Exhibit “B” hereto).”

2. On this petition, a substantial order came to be passed by this Court on 20 August 2025, which is required to be noted. The said order reads thus:-

“1. Mr. Singh, learned counsel for respondent No.7 states that no construction is being undertaken by his client on the subject property belonging to the petitioner.

2. We accept the statement.

3. In the meantime, let the SRA as also the Brihanmumbai Municipal Corporation file reply affidavit. Copy of the same be served on the Advocate for the petitioner and other parties well in advance.

4. We also accept the submission made at the bar that there is a possibility of issue being resolved, in the event, there is an appropriate demarcation of the land in question. We accordingly direct the City Survey Officer to undertake appropriate demarcation and with prior notice to all the parties and in the presence of all the parties. Let the same take place and the report to that effect be also placed on record. The expenditure for the such exercise undertaken be shared between the petitioner and respondent No.7 in equal proportion.

5. Permission to file additional affidavit with the Registry after four weeks.

6. Stand over to 10.09.2025. High on board.

7. This order be communicated to the concerned official for demarcation by the learned AGP by tomorrow i.e. on 21.08.2025.”

3. In pursuance of the said order, an exercise of measurement was undertaken. A compliance affidavit of Amar Kantilal Dhokale, City Survey Officer, Malad/respondent no.3, has also been placed on record.

4. Considering the nature of the dispute and the grievance of the petitioner that a small portion of the petitioner's land is alleged to be affected by the development being undertaken by respondent nos.5 and 6, we are of the opinion that since steps have already been taken by the City Survey Officer, Malad, pursuant to the orders of this Court, the question as to whether the respective claims of the parties in regard to the disputed portion of the land are correct, and as to what rights, if any, either party has in respect thereof, would be required to be settled and determined in accordance with law by approaching the Civil Court. The adjudication of title and demarcation of the disputed land can only be gone

into and decided on the basis of documentary and other evidence which may be led in a civil suit. Needless to observe that the parties are permitted to refer to the record/documents pertaining to the proceedings of this writ petition.

5. With the aforesaid observations, we are not inclined to entertain this petition. The remedy of the petitioner to approach the Civil Court is expressly kept open.

6. All rights and contentions of the parties are expressly kept open.

7. The petition is disposed of in the aforesaid terms. No costs.

8. Interim application would not survive. It is accordingly disposed of.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)