



**INDIALAW**

**TITLE SEARCH REPORT**

**AS ON 11 JULY 2017**

**SUBMITTED TO**

**KIYANA VENTURES LLP**

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## 1. INTRODUCTION

- 1.1 This title search investigation has been conducted by INDIALAW LLP pursuant to the Title Reports, work, scope and instructions received from M/s. Kiyana Ventures LLP (the "Client" or the "Developer").
- 1.2 We understand that the Client is the Developer of all that piece and parcel of non-agricultural land admeasuring about 17,458.50 square meters, bearing Plot No. R8 and bearing C.T.S. No. 260/5A of Village Pahadi Goregaon (west), in Mumbai Suburban District (the "said Land"). Based on the instructions of the Client, we have conducted this title search investigation in respect of the said Land.
- 1.3 We have conducted this title search investigation, relying on earlier two Title Reports bearing Nos. NL/DJM/10476/4366/2013 and NL/JRS/10022/7753/2016 dated 9 April 2013 and 23 September 2016 respectively issued by M/s. Wadia Ghandy & Co. ("Title Reports"). We have also conducted search at the Sub-Registrar Offices at Borivali (1 to 11) vide Search Receipt No. 6317 dated 19 May 2017 for the period 2012-2017 (6 Years) to ascertain the encumbrance status of the said Land for the purpose of issuing this Title Search Report.

## 2. DOCUMENTS REVIEWED

- 2.1 We are relying on the below mentioned documents for issuance of this Report:
  - i. Indenture of Mortgage dated 28 December 2012 executed by and between Developer and ICICI Bank Limited and registered with Sub-Registrar of Assurances, Mumbai under Serial No. 367 of 2013
  - ii. Indenture of Mortgage dated 25 August 2016 executed by and between Developer and ICICI Bank Limited and registered with Sub-Registrar of Assurances, Mumbai under Serial No. 7566 of 2016
  - iii. Title Report bearing No. NL/DJM/10476/4366/2013 dated 9 April 2013 issued by M/s. Wadia Ghandy & Co. from 1965 till 2012.
  - iv. Title Report bearing No. NL/JRS/10022/7753/2016 dated 23 September 2016 issued by M/s. Wadia Ghandy & Co. from 2013 till 2016.



- v. Certificate of Registration of Charge and Certificate of Registration for modification of Charge bearing Charge Identification No. 10397217
- vi. SRO search vide receipt No. 6317 dated 19 May 2017 for the period 2012-2017.
- vii. Property Register Card of the said Land.

### 3. TITLE HISTORY

3.1 Based on the review of the aforesaid Title Reports, we understand the following:

3.1.1 Maharashtra Housing and Area Development Authority ("MHADA"), a statutory corporation formed under the provisions of Maharashtra Housing and Area Development Act, 1976, is the owner of all those pieces and parcels of land earlier bearing C.T.S. Nos. 260, 260/1-100, 261, 261/1-104, 264, 264/1-296, 265, 265/1-40, 267, 267/17-24, 268 (part), 268/45-86, 347, 347/1-16, 363, 363/1-56 of Village Pahadi Goregaon (West) and CT.S. Nos. 18A, 18B, 22, 22/1-95, 23, 23/1-32, 24, 24/1-48, 27(part) of Village Goregaon, admeasuring approximately 40 (forty) acres equivalent to 1,65,805.80 square meters, situate and lying at Siddharth Nagar, Goregaon (West), Taluka - Andheri, District Bombay Suburban ("Larger Land"). The area of the larger land stood revised to 1,93,599.90 square meters pursuant to Confirmation and Modification Deed (as defined below) dated 9 November 2011.

3.1.2 On the Larger Land, there existed structures in occupation of 672 tenants ("the said Tenants") of MHADA.

3.1.3 Goregaon Siddharth Nagar Sahakari Griha Nirman Sanstha Limited, a co-operative society, registered under the provisions of the Maharashtra Co-operative Housing Society limited, 1960, bearing registration No. BOM/HSG/8110/1984 ("the said Society") was formed of the said Tenants.

3.1.4 By and under Resolution dated 8 February 1988 bearing Reference No.HSG/3381/41181/1313/K-10 of the Government of Maharashtra ("First Government Resolution"), the Government of Maharashtra decided to allot a portion out of the Larger Land admeasuring approximately 10 (ten) acres (i.e. about 40,467.2 square meters) to the said Society of the 672 tenants, in the manner and on the terms and conditions as more particularly stated therein. The Resolution stated that the balance of the Larger Land admeasuring



approximately 30 (thirty) acres was to be utilized by MHADA for its housing scheme.

- 3.1.5 By and under Letter dated 14th February 1990 of Bombay Housing and Area Development Board (a MHADA Unit) to the said Society ("**MHADA Allotment letter**"), the MHADA issued an offer letter to allot a portion out of the Larger Land admeasuring net 10 (ten) acres (i.e., about 40,462.2 square meters) and gross 13.18 acres (i.e. about 53,339 square meters) (including area for open space for recreation, internal roads), (hereinafter referred to as "**Society Portion**"), on the terms and conditions as stated therein. MHADA also recorded that the balance area out of the Larger Land admeasuring gross 28.36 acres would be developed by the MHADA for housing purposes.
- 3.1.6 By and under Letter dated 9 March 1990 bearing Reference No. 12/90 of the said Society to MHADA, the said Society requested MHADA for certain modifications in the terms and conditions of the development of the said Society Portion as stated in the MHADA Allotment Letter.
- 3.1.7 By and under Letter dated 26 March 1990 of MHADA to the said Society, MHADA informed the said Society about the acceptance of modification of certain terms and conditions as stated in the Letter dated 9 March 1990 bearing Reference No.12/90 of the said Society to MHADA, in the manner as stated therein.
- 3.1.8 By and under Letter dated 3 September 1990 of MHADA to the said Society, MHADA has inter-alia, granted its no-objection for development of the Society Portion, in the manner and subject to the terms and conditions as stated therein.
- 3.1.9 By and under Agreement dated 23 November 1992 ("**Lokhandwala Development Agreement**") executed between the said Society, Siraj Taherali Lokhandwala (therein referred to the said Confirming Party) and Lokhandwala Estates and Development Company Limited ("**Lokhandwala**"), the said Society granted development rights with respect to the Society Portion to Lokhandwala, for the consideration and in the manner and on the terms and conditions as stated therein.
- 3.1.10 Subsequently, disputes arose between the said Society and Lokhandwala, due to which the said Society sought to terminate the Lokhandwala Development Agreement.



- 3.1.11 In or around 23 November 1995, a Suit No. 4476 of 1995 was filed by Lokhandwala and Siraj Taherali Lokhandwala against the said Society ("Lokhandwala Suit"), inter alia, for a declaration that the Lokhandwala Development Agreement is valid, subsisting and binding, and to seek specific performance of the Lokhandwala Development Agreement.
- 3.1.12 Lokhandwala and Siraj Taherafi Lokhandwala had taken out a Notice of Motion No. 5 of 1996 in the Lokhandwala Suit to seek interim and ad-interim reliefs, as stated therein.
- 3.1.13 By and under an order dated 27 September 1996 in the abovementioned Notice of Motion No. 5 of 1996 in the Lokhandwala Suit, the Learned Single Judge of the Hon'ble Bombay High Court refused the grant of any interim reliefs and dismissed the Notice of Motion No. 5 of 1996.
- 3.1.14 Lokhandwala and Siraj Lokhandwala filed an Appeal No. 1145 of 1996 against the order dated 27 September 1996 before the Division Bench of the Hon'ble Bombay High Court. By and under an order dated 8 December, 2005 in Appeal No. 1145 of 1996, the Division Bench of the Hon'ble Bombay High Court upheld the decision of the Single Judge dated 27 September, 1996 in the Notice of Motion No.5 of 1996.
- 3.1.15 Lokhandwala and Siraj Lokhandwala filed Special Leave Petition No. 5426 of 2006 before the Hon'ble Supreme Court against the order dated 8 December, 2005 in Appeal No. 1145 of 1996 of the Division Bench of the Hon'ble Bombay High Court. The Hon'ble Supreme Court, by and under its order dated 10 April, 2006 dismissed the Special Leave Petition.
- 3.1.16 By and under Development Agreement dated 18 August 2006 executed between the said Society and Guruashish Construction Private limited ("GACPL"), duly registered with the office of the Sub-Registrar of Assurances under Serial No. 6161 of 2006 ("Society Development Agreement"), the said Society has granted development rights to GACPL for the Society Portion as mentioned therein, for the consideration and in the manner and on the terms and conditions as stated therein.
- 3.1.17 By and under an order dated 13 September, 2007 in the Lokhandwala Suit, the Hon'ble Bombay High Court placed on record consent terms executed between Lokhandwala, Siraj Lokhandwala, the said Society and GACPL ("Consent Terms"). GACPL was impleaded as Plaintiff No. 3 in the Lokhandwala Suit.





Under the Consent Terms, the parties agreed that the Lokhandwala Development Agreement is valid, subsisting and binding; and all right, title and interest of Lokhandwala and Siraj Lokhandwala under the Lokhandwala Development Agreement was assigned to GACPL, for the consideration and in the manner as stated therein. The Consent Terms further recorded that Society Development Agreement executed between the said Society and GACPL is valid, subsisting and binding and that GACPL is entitled to develop the Society Portion, in the event of MHADA allotting the same to the said Society or GACPL. The Consent Terms further recorded that the said Society shall specifically perform the Lokhandwala Development Agreement and the Society Development Agreement and that the said Society shall execute all necessary documents in favour of GACPL to complete development of the Society Portion. All the original title documents in possession of Lokhandwala were handed over to GACPL and possession of the 3 (three) buildings constructed by Lokhandwala was also handed over to GACPL. GACPL paid a consideration of Rs.14,51,00,000/- (Rupees Fourteen Crores and Fifty-One Lakh only) to Lokhandwala as per the said Consent Terms referred to herein.

- 3.1.18 By and under Resolution dated 1st November 2007 bearing Reference No. 6280 ("**2007 MHADA Resolution**"), MHADA approved the allotment of the Society Portion to the said Society in accordance with Resolution dated 8th February 1988 and implementation of joint venture development on the balance of the Larger Land admeasuring 26.82 acres by the said Society, GACPL (being the developer appointed by the said Society) and MHADA, in the manner and on the terms and conditions as stated therein.
- 3.1.19 By and under the Letter dated 3 March 2008 bearing Reference No.1106/Pra.Kra.594/Grunibu ("**2008 Government Letter**"), the Government of Maharashtra has granted its approval to the 2007 MHADA Resolution, as stated therein.
- 3.1.20 By and under Joint Development Agreement dated 10 April 2008 executed between MHADA, the said Society and GACPL ("**Tripartite Development Agreement**"), MHADA has granted development rights to GACPL for the development of the Larger Land, in the manner and on the terms and conditions as stated therein. The Tripartite Development Agreement contemplates that out of the Society Portion, 2 (two) acres would be allotted as per market value and balance 8 (eight) acres would be allotted free of cost to the said Society. It further provides that the balance area of the said Larger



Land admeasuring 26.82 acres shall be jointly developed by GACPL and MHADA. GACPL shall provide MHADA its share of constructed area (in the development of the balance area of the Larger Land admeasuring 26.82 acres), which shall not be less than 1,11,476.82 square meters. Annexure "3" of the Tripartite Development Agreement states the exact calculation of built up-area to be provided to the said Society (for the said Tenants), MHADA and GACPL, as per the floor space Index ("FSI") that is sanctioned for development of the Larger Land. As per Annexure "3" of the Tripartite Development Agreement, GACPL is entitled to utilise and develop 2,73,293.37 square meters FSI ("GACPL FSI/Free Sale Component") on its free sale portion as stated therein. Annexure "3" of Tripartite Development Agreement, however, stood modified subsequently, as set out below.

- 3.1.21 By and under letter dated 28 January 2010 addressed by GACPL to the Chief Officer, MHADA ("**Modification Letter**"), GACPL sought approval of MHADA for modification of Tripartite Development Agreement to the extent of offering every tenant member/ occupant of the said Society minimum 650 square feet carpet area, instead of area of 555 square feet carpet area contemplated under the Tripartite Development Agreement. By and under letter bearing No. Dy.C.E.(W)/mb/216/2010 dated 20 February 2010, MHADA expressed its approval to change proposed in Modification letter.
- 3.1.22 Accordingly, by and under Deed of Confirmation and Modification dated 9 November, 2011 executed between MHADA, the said Society and GACPL (therein referred to as the Developer) and registered with the Sub-Registrar of Assurances under Serial No. 10472 of 2011 ("**Confirmation and Modification Deed**"), Tripartite Development Agreement read with Modification letter dated 28 January 2010 stood amended, rectified and clarified inter alias under:
- (i) The Confirmation and Modification Deed shall form part of and be read with the Tripartite Development Agreement and Modification letter and in case of conflict between the provisions of the aforesaid, the terms of the Confirmation and Modification Deed and Modification letter will prevail over the Tripartite Development Agreement.
  - (ii) Pursuant to survey and updation of the property register cards of the Larger Land, the total available area for joint development stood revised to 1,93,599.90 square meters. The description of the Larger Land under the Tripartite Development Agreement was amended to include sub-



divided CTS nos. including CTS No. 260/5A and the area of the Larger land was amended to 1,93,599.90 square meters;

- (iii) As contemplated in the Modification Letter, the area of allotment to tenants/occupants of the said Society stood revised to 60.40 square meters (650 square feet) carpet area along with 117 square feet carpet area comprised in dry balcony, niche, flower bed along with one car parking space in stilt area or in area appurtenant to building to be constructed. It has been expressly recorded that additional area of 95 square feet to be allotted to tenants/ occupants of the said Society shall be out of GACPL FSI/Free Sale Component;
- (iv) On account of revision of total area of the Larger Land and due to amended Regulation 33 (5) of the Development Control Regulations for Greater Mumbai ("DCR") for increase in FSI in respect of land of MHADA, MHADA's share in built up area stood increased to 1,48,151.07 square meters from the earlier 1,11,488.32 square meters. Annexure "3" of the Tripartite Development Agreement was accordingly replaced with Annexure "S/4a, 4b" annexed to Confirmation and Modification Agreement;
- (v) The Agreement records that although the Confirmation and Modification Deed records the actual area of Larger Land and proposed sharing of built up area, however these are subject to change.
- (vi) GACPL shall obtain no-objection certificate from MHADA prior to execution of lease deed of the Larger Land or portion thereto to the organization of apartment holders. It is further recorded that GACPL is entitled to transfer the Free Sale Component in entirety or part including by way of sale of flats/units provided the share of MHADA and rehabilitation component for tenants is not adversely affected. It further permitted GACPL to enter into such deeds and writings for the aforesaid as it deems fit and MHADA shall not be a necessary signatory thereto.
- (vii) It records that NOC for the occupation certificate for Free Sale Component shall not be issued by MHADA unless proportionate share





- (viii) MHADA permitted GACPL to avail loan for purpose of implementation of project against security of part of land earmarked for Free Sale Component.
- (ix) The layout annexed to the Tripartite Development Agreement stood rectified by the layout plan dated 12 August 2011 annexed thereto. The total area of the Larger Land is reflected as 1,93,599.90 square meters and the total built up area on the Larger Land is reflected as 5,47,061.25 square meters and the built up area reflected for the said Land is 65,470 square meters for construction of one building of commercial and residential user. The recreation ground area on the said land is reflected as 2733.48 square meters.

### 3.1.23 Development Agreement with M/s. Kiyana Ventures LLP (Developer)

- (i) By and under a Development Agreement dated 20 October 2011 executed between GACPL and Developer ("the Development Agreement") and registered with the office of the Sub-Registrar of Assurances under Serial No. 9951 of 2011, GACPL has granted, allowed, permitted and confirmed unto Developer, full, free, unrestricted, uninterrupted, irrevocable and exclusive development rights on the said Land (which is a part of the Free Sale Portion of the Larger Land) by utilization and exploitation of 65,470 square meters of Municipal FSI arising out of the Free Sale Portion for a total consideration of Rs. 448,01,79,280/- (Rupees Four Hundred and Forty Eight Crores One Lakh Seventy Nine Thousand Two Hundred and Eighty only), in the manner as stated therein. Simultaneously with the execution of the Development Agreement, a sum of Rs. 85,00,00,000 (Rupees Eighty Five Crores only), was paid by Developer to GACPL. The balance consideration of Rs.3,63,01,79,280/- (Rupees Three Hundred and Sixty Three Crores One Lakh Seventy Nine Thousand Two Hundred and Eighty only), has later been paid by Developer to GACPL on 20 March 2014 in the manner as stated therein.
- (ii) Simultaneously with/pursuant to execution of the Development Agreement, GACPL executed a Power of Attorney of even date in favour of Developer (acting through any of its partners or directors of any of its partners) and registered with the office of the Sub Registrar of Assurances under Serial No. 9952 of 2011, to exercise such powers as



stated therein. The recital to Power of Attorney in favour of Developer records that possession of the said Land has been handed over to Developer.

- (iii) By and under letter dated 20 October 2011 addressed by Developer to GACPL ("**Letter of Possession**"), it has been recorded that simultaneously upon execution of the Development Agreement, GACPL has handed over to Developer lawful quiet, vacant and peaceful possession of the said Land for the purposes mentioned in the Development Agreement. The same has been accepted and confirmed by GACPL.

### 3.1.24 Mortgage

- (i) By and under an Indenture of Mortgage dated 28 December 2012 executed by and between Developer and ICICI Bank Limited and registered with Sub-Registrar of Assurances, Mumbai under Serial No. 367 of 2013 ("**said indenture of Mortgage**"), Developer has created an registered mortgage of the following: (i) present and future development rights of Developer in respect of the said Land; (ii) buildings, including flats and premises constructed/ to be constructed upon said Land; (iii) right, title, benefits, claims, demands of Developer in respect of bank accounts and monies, including cash flows and receivables in respect of project contemplated under the Development Agreement and present and future insurance proceeds and securities and assets relating to bank accounts; (iv) right, title, benefits, claims, demands for in respect of aforesaid assets, present and future cash in hand and receivables; and (v) right, title, benefits, claims, demands of Developer under Development Agreement and Power of Attorney as more particularly set out therein.
- (ii) By and under an Indenture of Mortgage dated 25 August 2016 executed by and between Developer and ICICI Bank Limited and registered with Sub-Registrar of Assurances, Mumbai under Serial No. 7566 of 2016 ("**said indenture of Mortgage-2**"), Developer has created an registered mortgage of the following: (i) present and future development rights of Developer in respect of the said Land; (ii) buildings, including flats and premises constructed/ to be constructed upon said Land; (iii) right, title, benefits, claims, demands of Developer in respect of bank accounts and



monies, including cash flows and receivables in respect of project contemplated under the Development Agreement and present and future insurance proceeds and securities and assets relating to bank accounts; (iv) right, title, benefits, claims, demands for in respect of aforesaid assets, present and future cash in hand and receivables; and (v) right, title, benefits, claims, demands of Developer under Development Agreement and Power of Attorney as more particularly set out therein.

The execution of the aforementioned mortgage deeds and their respective registrations were further confirmed during our investigation and search conducted at the Sub-Registrar Offices at Borivali (1 to 11) vide Search Receipt No. 6317 dated 19 May 2017 for the period 2012-2017 (6 Years) in respect of the said Land.

#### **4. LITIGATIONS IN RESPECT OF THE LARGER PROPERTY**

##### **4.1 Status of Pending Litigations till date**

##### **A. S. C. Suit No. 2055 of 2010 at Bombay City Civil Court, Dindoshi**

###### **Summary:**

- (i) Keshwan Kamal Amma filed the captioned Suit against Bombay Housing & Area Development Board, (a MHADA Unit), GACPL and the Senior Inspector of Police, praying for inter alia an injunction restraining the Defendants therein from entering into and disturbing possession of room No. 1 situated at Old Siddharth Nagar, Road No.7, M.H.B. Colony, Goregaon West with a gala in the front side, in her occupation. She has alleged in the Complaint that certain portions of her premises were demolished by GACPL, without any prior notice or intimation, in the presence of representatives of the other Defendants, and threatened to demolish her premises on 20 September 2010, allegedly without due process of law. A Notice of Motion was filed by Keshwan Kamal Amma for interim reliefs. MHADA filed a reply resisting the grant of interim reliefs inter alia on the ground that Keshwan Kamal Amma is a rank trespasser, she is not an allottee of



MHADA. MHADA has also challenged the maintainability of the suit, on the ground that prior statutory notice was not given to MHADA.

- (ii) On 15 December 2014, the Notice of Motion was tagged along with the suit, and directed Keshwan Kamal Amma to register the same.
- (iii) The suit was initially directed to proceed without the written statement of the Defendants, however, subsequently, on 28 June 2016 the Written Statement of GACPL was taken on record. GACPL in its Written Statement has alleged that (i) Keshwan Kamal Amma has filed forged documents, (ii) she is not a member of the Society and is not a tenant of MHADA, and denied her allegations pertaining to demolition of Suit premises. GACPL has stated that structures of 662 (six hundred and sixty-two) tenants of MHADA were demolished and construction work is in progress.
- (iv) In the meanwhile, on 10 April 2015 Keshwan Kamal Amma filed her affidavit of evidence, reiterating that she is in possession of the suit premises and that she has allegedly received threats from GACPL for demolition of suit premises.

**Status:**

The Roznama in the captioned suit records that on 1 July 2017, the suit was further adjourned for framing of issues. No adverse orders have been passed against GACPL till date as informed by GACPL.

**B. Suit No. 2537 of 2010 at Bombay City Civil Court, Dindoshi**

**Summary:**

- (i) Vishnu Krishnaji Pethe filed a Suit against (i) MHADA, (ii) Tahsildar (Encroachment/ Removal- MHADA) and (iii) GACPL, seeking reliefs of inter alia restoration and reconstruction of commercial cum residential premises between Building Nos. 95 and 96 situated on Road No. 16, Siddharth Nagar, Goregaon (West), Mumbai - 400 062, being land bearing old CTS No. 268A/3 and new CTS No. 260/1 of Village Goregaon, along with open space admeasuring about 300 square feet. He alleged that on 15 April 2008 and 15 July 2010, GACPL, in collusion



with MHADA, illegally and arbitrarily demolished the suit premises in his occupation. The Plaintiff has contended that the suit premises had been declared as a slum under Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 and as per the census carried out by MHADA.

- (ii) The Plaintiff filed Notice of Motion bearing No. 185 of 2011 for ad-interim/interim reliefs that pending the final disposal of the suit the Defendants be ordered and directed to (i) restore and/or reconstruct suit premises in original condition area; (ii) remove iron sheets put up in front of the suit premises; (iii) reimburse the loss occurred by the Plaintiff since July 2010 in lieu of alleged illegal demolition of the suit premises.
- (iii) By and under order dated 5 November 2011, the Hon'ble City Civil Court refused ad-interim reliefs. This order was challenged by the Plaintiff in Hon'ble High Court vide an Appeal from Order (L) No.33984 of 2012. A Civil Application No. 302 of 2012 was filed therein. By and under an order dated 1 November 2012, in view of the fact that the suit premises were already demolished and prayer for reconstruction thereof sought, the Hon'ble City Civil Court was directed to hear parties and pass orders within 4 weeks from 18 December 2012. The Appeal from Order and Civil Application were accordingly disposed of.
- (iv) The Plaintiff once again filed Notice of Motion No. 30 of 2013 praying for an order restraining GACPL from obstructing his peaceful possession of his suit premises and from closing passage leading thereto with an intention to obstruct. By and under an Order dated 14 January 2013, the Hon'ble Court dismissed the Notice of Motion, in view of fact that the Plaintiff could not establish that the suit premises and hutment under pitch card issued in his name are the same premises.
- (v) GACPL filed its Written Statement stating inter alia that Vishnu Krishnaji Pethe is not a lawful tenant of MHADA, not a member of the Society, is not a slum dweller, and has illegally encroached upon the suit premises. Further, there is no structure bearing No. 95/96. The Plaintiff has filed documents issued in the name of his constituted attorney, namely, Ramakant Govind Phatji, who is a tenant of premises bearing No. 95/759 and who has executed a Shifting Agreement with GACPL.



The Plaintiff has built premises next to the premises of the said Ramakant Govind Phatji. GACPL further stated that it has obtained consent of 638 (six hundred and thirty-eight) tenants/members of the Society. GACPL has executed Shifting Agreements with 611 (six hundred and eleven) tenants and has demolished structures previously in the occupation of 650 (six hundred and fifty) tenants. Further, the construction work is in progress. GACPL has denied the statements of the Plaintiff. No adverse order is passed against GACPL till date as informed by GACPL.

**Status:**

The Roznama in the captioned suit records that on 14 June 2017, the suit was further adjourned for framing of issues.

**C. S. C. Suit No. 525 of 2010 at Bombay City Civil Court, Dindoshi**

**Summary:**

- (i) Farooq Ismail Patel and Kasam Hasan Wadhia filed a Suit against GACPL, as occupants of premises admeasuring 11'x31' admeasuring 400 square feet, situate at Near Patra Chawl No. 9, Old Siddharth Nagar, Goregaon West, Mumbai 400062. The Plaintiffs sought that, inter alia, GACPL be permanently restrained by an order and injunction of the Hon'ble Court from entering upon, encroaching upon suit premises, interfering with Plaintiffs use and possession of the suit premises and blocking access to suit premises without due process of law. The Plaintiffs also sought for relief of construction and restoration of the suit premises.
- (ii) The Plaintiffs had earlier filed Notice of Motion bearing No. 788 of 2010 seeking ad-interim / interim reliefs inter alia restraining GACPL from interfering with their possession of the suit premises.
- (iii) By and under an ex-parte ad-interim order dated 26 March 2010, the Hon'ble City Civil Court (i) directed GACPL not to disturb the possession of Farooq Ismail Patel, not to further demolish suit premises of Farooq Ismail Patel and not to cause obstruction to or block access of Farooq Ismail Patel from internal road (as reflected in sketch annexed as



Exh. 2) without following due process of law; (ii) Farooq Ismail Patel and GACPL to maintain status quo in respect of demolished portion of suit premises. Ad-interim relief was refused to Kasam Hasan Wadhia (Plaintiff No.2). The Order dated 26 March 2010 was continued from time to time; vide orders dated 9 April 2010 and 29 April 2010.

- (iv) The Plaintiffs filed a Notice of Motion No. 1888 of 2010, against one Mr. Nipun Thakkar, a former director of GACPL alleging contempt of above order dated 26 March 2010. The order passed therein was quashed on 29 February 2012, with a liberty to the Plaintiffs to take appropriate action against the person, who may be allegedly guilty of contempt.
- (v) The Roznama records that pursuant to an order dated 25 July 2013, the written statement of GACPL was taken on record.
- (vi) Pursuant to the liberty granted to the Plaintiffs, on 25 June 2014, the Plaintiffs filed Contempt Notice of Motion No.1430 of 2014 in Notice of Motion bearing No. 788 of 2010 by the Plaintiffs against (i) GACPL and (ii) Rakesh kumar Wadhwan, (iii) Sarang Wadhwan, (iv) Waryam Singh, (v) Ashok Kumar Gupta, the representatives of GACPL. The Plaintiffs alleged that on 1 July 2010, the representatives of GACPL others completely demolished suit premises and blocked access to the same from main road, in contravention of orders of Hon'ble Court dated 26 March 2010 and 29 April 2010. The Plaintiffs accordingly also sought reliefs of injunction against GACPL and the restoration of suit premises. This Contempt Notice of Motion has been contested by (i) GACPL (through an affidavit filed by its authorized signatory) and (ii) Rakeshkumar Wadhwan, (iii) Sarang Wadhwan, (iv) Waryam Singh, (v) Ashok Kumar Gupta, inter alia on the grounds that the same was barred by the law of limitation, and denying the veracity of the allegations of demolition of the suit premises. An Affidavit in Rejoinder dated 11 February 2015 was filed on 17 August 2015.

**Status:**

The Roznama in the captioned suit records that on 13 June 2017, the suit was further adjourned for recording of evidence.



**D. Writ Petition No. 1262 of 2017 at Bombay High Court**

**Summary:**

- (i) The Developer i.e. Kiyana Ventures LLP has lodged its objection and complaint to MCGM towards fixation of the capital valuation and property tax amount by the MCGM for plot R-8 whereby project known as “Kalpataru Radiance” has been proposed. The said complaint is pending decision before the Ld. Investigating Officer of the MCGM.
- (ii) Pending the aforesaid complaint and as NOC /TAX clearance for further Commencement Certificate for Tower B had since not been granted by MCGM, the Developer has filed a Writ Petition in the Hon'ble Bombay High Court bearing Writ Petition (L) No. 1262 of 2017 challenging the levy of property tax demand for the period w.e.f 1 December 2010 under capital value system (1) for assessment of land under construction, and (2) for refusing to grant further CC unless 100% of disputed property tax amount is paid and declaring that the Rules 2010 and 2015 for fixation of Capital Value of lands and buildings are void and un-constitutional.
- (iii) The Hon'ble Bombay High Court has by its interim Order dated 5 May 2017 directed the MCGM to take an appropriate decision on the Developers representation dated 17<sup>th</sup> April, 2017 (in respect of adjustment of sewerage taxes and computation of area of the property) within a period of six weeks from the date of the Order. The Hon'ble High Court has also by way of ad-interim relief, directed the Developers to pay within two weeks from the date of the order, the municipal property taxes at the pre-amended rates and also the additional taxes at the rate of 50% of the differential tax between the tax payable under the old regime and now payable on the basis of capital value of the property. The said Writ Petition is pending before the Hon'ble High Court. No adverse orders are passed till date.

**Status:**

The Roznama records that the matter is adjourned to 13 July 2017.





#### 4.2 ROC Search

We conducted an ROC search at the MCA website vide receipt No. U13871777 dated 22 May 2017 for charges registered in the name of the Developer and found a charge bearing Charge ID 10397217 with respect to credit facilities amounting to Rs. 570,00,00,000/- (Rupees Five Hundred and Seventy Crores only) secured from ICICI Bank Limited by mortgaging the said Land.

#### 5. OPINION

5.1 Based on the title search investigation conducted by us and also on perusal of the documents, we are of the opinion that M/s. Kiyana Ventures LLP has a valid clear, right, title and interest as a developer over the said Land subject to the details of dues, litigations, mortgage/charge created in respect of the said Land as mentioned hereinabove.

Yours truly,

For Shiju P.V.  
Partner  
**INDIALAW LLP**