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To,  
Maha RERA,  
Housefin Bhavan, Near RBI,  
E Block, Bandra Kurla Complex,  
Bandra East, Mumbai- 400 051.

#### LEGAL TITLE REPORT

Subject: Title clearance certificate with respect to lands bearing (i) CTS Nos. 279, 280 (part), 280/1 (part) and 281/A/1/1 (part) admeasuring 2,511 square meters<sup>1</sup>, (ii) CTS Nos. 281/A/1/1 (part) and 282/A admeasuring 3,156.73 square meters, and (iii) CTS Nos. 280 (part), 280/1 (part), 281/A/1/1 (part) and 282/C admeasuring 2,989.789 square meters (comprising of: (a) portion admeasuring 2,005.039 square meters earmarked for Internal Access Road and (b) portion admeasuring 984.75 square meters earmarked for open plot), all belonging to Luceat Realtors Pvt. Ltd. and admeasuring in aggregate 8,657.51 square meters situate, lying and being at Village Bhandup, Taluka Kurla. (hereinafter referred to as the **“said Property”**)

I have investigated the title of the said Property on the request of Luceat Realtors Pvt. Ltd. and following documents i.e.:-

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1. Description of the property.
2. The documents of allotment of plot.
3. Search report for 30 years from 1989 till 2019.

On perusal of the abovementioned documents and all other relevant documents relating to title of the said property, I am of the opinion that the title of Luceat Realtors Pvt. Ltd. is clear, marketable and without any encumbrances.

Owners of the land:

1. Luceat Realtors Pvt. Ltd.

The report reflecting the flow of the title of the Luceat Realtors Pvt. Ltd. on the said land is enclosed herewith as Annexure.

Encl: Annexure.

Date: 5<sup>th</sup> April, 2021

A handwritten signature in black ink, appearing to read "A. Misra", is written over a light grey rectangular background.

Advocate



## **FLOW OF THE TITLE OF THE SAID LAND**

### **I. Flow of Title:**

1. By and under various registered sale deeds, Mr. Abdulkader Mohamedhusein Pittalwala ("**Abdulkader**") and Mr. Ahmedali Mohamedhusein Pittalwala ("**Ahmedali**") acquired lands bearing Survey Nos. 83 (part) and 84 (part) admeasuring in aggregate 19,876.482 square meters ("**Larger Property**").
2. Abdulkader and Ahmedali applied to the Bombay Municipal Corporation for sub-division of the Larger Property, which was sanctioned on November 17, 1969 and further amended on September 21, 1971 thereby sub-dividing the Larger Property into (i) **Plot A** and **Plot A1** (hereinafter jointly referred to as **Plot A**) and **area under road widening** consisting of Survey No. 83 (part) admeasuring in aggregate 8493.408 square meters (ii) **Plot B, Plot B1** and **Plot B2** (hereinafter jointly referred to as **Plot B**) and **open plot** consisting of Survey Nos. 83 (part), 84/1 and 84/2 admeasuring 9,378.034 square meters (which includes 984.75 square meters which was earmarked for open plot) and (iii) internal access road admeasuring 2,005.039 square meters ("**Internal Access Road**").
3. Thereafter, by and under the Deed of Partition dated March 22, 1969 registered with the office of Sub-Registrar of Assurances under Serial No. 1206 of 1969, Abdulkader and Ahmedali partitioned the Larger



Property amongst themselves in such manner, that Abdulkader became entitled to Plot A consisting of Survey No. 83 (part), admeasuring 8,493.408 square meters and Ahmedali became entitled to Plot B consisting of 83 (part), 84/1 and 84/2 alongwith the Internal Access Road admeasuring in aggregate 11,383.068 square meters **(Ahmedali's share)**.

**Plot B, that is, Ahmedali's share**

4. By and under Conveyance Deed dated October 21, 1971 registered with the office of the Sub-Registrar of Assurance, under Serial No. 4664 of 1971, Ahmedali sold, transferred, conveyed and assigned area admeasuring 2,728.119 square meters (forming part of Plot B) bearing Survey No. 83 (part) and corresponding CTS No. 281A/2 in favour of M.S. Badani and P.G. Badani on the terms and conditions contained therein. This transaction does not form part of the properties, in respect of which this Certificate has been issued.
5. By and under a Conveyance Deed dated October 21, 1971 registered with the office of Sub-Registrar of Assurances under Serial No. 4665 of 1971, Ahmedali sold, transferred, conveyed and assigned area admeasuring 3,156.73 square meters (forming part of Plot B) and bearing Survey No. 83 (part) and corresponding CTS Nos. 281/A/1/1 (part) and 282/A in favour of Shimiz on the terms, and conditions contained therein.
6. (i) By and under a Conveyance Deed dated February 15, 1982



registered with the office of the Sub-Registrar of Assurance under Serial No. 474 of 1982, Ahmedali sold, transferred, conveyed and assigned his right, title and interest in the area admeasuring 2,511 square meters and bearing Survey No. 83 (part) and Survey No. 84 Hissa Nos. 1 and 2 and corresponding CTS Nos. 279, 280 (part), and 281 (part) in favour of M/s. New Fakhri Tin Factory, on the terms and conditions contained therein.

- (i) By and under a Conveyance Deed dated October 20, 2011 registered with the office of Sub-Registrar of Assurances under Serial No. 11165 of 2011, M/s. New Fakhri Tin Factory sold, transferred, conveyed and assigned all its right, title and interest in the property bearing Survey Nos. 83 (part) and 84 Hissa Nos. 1 and 2 and bearing corresponding CTS Nos. 279 (part), 280 (part) and 281 (part) admeasuring 2,511 square meters in favour of M/s. Siddhi Construction, on the terms and conditions contained therein. Though M/s. Siddhi Construction had sold the entire Survey No. 84 Hissa No. 2, it appears that they had inadvertently recorded that only part of CTS No. 279 has been sold.
- (ii) Further, members of a certain Watandar family were claiming right in respect of part of the property belonging to M/s. Siddhi Construction, bearing Survey No. 84 Hissa No. 2 admeasuring 378.50 square meters. In order to settle the purported claim of the Watandar family, M/s. Siddhi Construction has vide a



Conveyance Deed dated October 23, 2008 registered with the office of Sub-Registrar of Assurances under Serial No. 5068 of 2008, acquired the rights of the members of the Watandar family in the property bearing Survey No. 84 Hissa No. 2 and bearing corresponding CTS No. 279 admeasuring 378.50 square meters, on the terms and conditions contained therein.

- (iii) By and under a Deed of Rectification dated December 9, 2011 registered with the office of Sub-Registrar of Assurances under Serial No. 12632 of 2011, certain typographical errors mentioned in the above referred Conveyance Deed dated October 20, 2011 were rectified by the parties to the aforesaid conveyance deed.
- (iv) By and under a Conveyance Deed dated December 31, 2013 registered with the office of Sub-Registrar of Assurances under Serial No. 6420 of 2014, M/s. Siddhi Constructions transferred, conveyed and assigned all their right, title and interest in the property bearing Survey Nos. 83 (part) and 84 Hissa Nos. 1(part) and 2 and bearing CTS Nos. 279, 280 (part), 280/1 (part) and 281/A/1/1 (part) admeasuring 2,511 square meters in favour of Shimiz, on the terms and conditions contained therein.
- (v) Pursuant to the aforesaid Conveyance Deed dated December 31, 2013 registered under Serial No. 6420 of 2014, M/s. Siddhi Constructions also executed an Affidavit cum Indemnity Deed



dated July 23, 2014 registered with the office of Sub-Registrar of Assurances under Serial No. 6421 of 2014 thereby affirming the rights created by them in favour of Shimiz.

- (vi) M/s. Siddhi Constructions by a registered Power of Attorney dated July 23, 2014 registered with the office of Sub-Registrar of Assurances under Serial No. 6422 of 2013, granted various powers in favour of Shimiz.
7. (i) Thus, as mentioned hereinabove, by and under various conveyance deeds, Ahmedali sold, transferred, conveyed and assigned various portions of Ahmedali's share to various third parties, leaving only the portion of Plot B [being land bearing Survey Nos. 83 (part) and 84/1 and corresponding CTS Nos. 280 (part), 280/1 (part), 281/A/1/1 (part) and 282/C] admeasuring 2,989.789 square meters comprising of: (a) portion admeasuring 2,005.039 square meters earmarked for Internal Access Road, and (b) area admeasuring 984.75 square meters earmarked for open plot], which remained unsold.
- (ii) We have been informed by the representatives of Shimiz that Ahmedali died intestate on October 12, 2004 leaving behind Mrs. Shamina Engineer, Mr. Imtiaz Pittalwala and Mr. Riyaz Pittalwala (**heirs of Ahmedali**), as his only heirs and legal representatives by the law of succession by which he was governed.



- (iii) Thus, the heirs of Ahmedali became entitled to area admeasuring 2,989.789 square meters comprising of: (i) portion admeasuring 2,005.039 square meters, which was earmarked for Internal Access Road, and (ii) the portion admeasuring 984.75 square meters, which was earmarked as open plot.
  
- (iv) Thereafter, by and under a Conveyance Deed dated September 25, 2013 registered with the office of Sub-Registrar of Assurances under Serial No. 8410 of 2013, the heirs of Ahmedali sold, transferred, conveyed and assigned all their respective right, title and interest in the vacant land admeasuring 2,989.789 square meters bearing Survey No. 83 (part) and Survey No. 84 Hissa No. 1 (part) and corresponding CTS Nos. 280 (part), 280/1 (part), 281/A/1/1 (part) and 282/C and comprising of: (i) portion of Plot B admeasuring 2,005.039 square meters, earmarked for Internal Access Road; and (ii) area admeasuring 984.75 square meters earmarked for open plot in favour of Shimiz, on the terms and conditions contained therein.
  
- (vii) By and under an Affidavit cum Indemnity dated September 25, 2013 registered with the office of Sub-Registrar of Assurances under Serial No. 8411 of 2013, the heirs of Ahmedali confirmed *inter alia* that Mrs. Shamina Engineer, Mr. Imtiaz Pittalwala and





Mr. Riyaz Pittalwala (i.e. the heirs of Ahmedali as defined above) are the only heirs of Ahmedali.

- (viii) The heirs of Ahmedali have by a registered Power of Attorney dated September 25, 2013 registered with the office of Sub-Registrar of Assurances under Serial No. 6412 of 2013, granted various powers in favour of Shimiz.
- (ix) Shimiz has by a Deed of Conveyance dated 31<sup>st</sup> December 2020 registered with the Sub Registrar of Assurances, Kurla under serial No. 14673/105/2020 conveyed and transferred to Luceat the Plot B admeasuring 2508.40 square meter and 2511 square meter bearing Survey No. 83 (part), Survey No. 84/1 (part) and 84/2 corresponding CTS No. 279, 280 and 281/A/1/1 (part) of village Bhandup; and Plot B 1 admeasuring 3156.73 square meters forming part of Survey No. 83 (part) and corresponding CTS No. 281/A/1/1 (part) and CTS No. 282 A of Village Bhandup together admeasuring 5665.13 square meters situate being and lying at Village Bhandup, Taluka Kurla, Mumbai sub district and more particularly described in the First Schedule thereunder written.
- (x) Shimiz has by a registered Deed of Conveyance dated 31<sup>st</sup> December 2020 registered with the Sub Registrar of Assurances, Kurla under serial No. 14674/105/2020, conveyed and transferred to Luceat, access portion admeasuring



2005.039 square meters and bearing Survey No. 83 (part) and survey No. 84 Hissa No.1 corresponding CTS No. 280/1 (part), CTS No. 281/A/1/1 part of Village Bhandup (shown shaded with grey coloured hatched line in the plan annexed to the Deed of Conveyance and Amenity open space admeasuring 984.75 square meters and bearing Survey No. 83 (part) and corresponding CTS No. 281/A/1/1 (part) and 282 C of Village Bhandup together admeasuring 2989.789 square meters situate being and lying at Village Bhandup, Taluka Kurla, Mumbai sub district and more particularly described in the First Schedule thereunder written.

## **II. Search Report:**

We have relied upon the Search Report dated 11<sup>th</sup> December, 2019 issued by Mr. Sameer Sawant.

## **III. Other Relevant Title:**

### **A. MORTGAGE:**

- i. By and under a Deed of Mortgage dated February 12, 2015 and registered with the office of Sub-Registrar of Assurances under Serial No. 2018 of 2015, Shimiz created a first and exclusive charge by way of an English mortgage, in respect of the aforesaid property, in favour of FICS Consultancy Services Limited, to secure the financial facilities to the tune of Rs. 90,00,00,000/- (Rupees Ninety Crore Only) availed by Shimiz.



- ii. By and under a Deed of Mortgage dated 27<sup>th</sup> February 2019 registered with the Office of Sub-Registrar of Assurances under Serial No. 2502 of 2019, Shimiz created a mortgage in favour of JM Financial Credit Solutions Limited in respect of the aforesaid property to secure the financial facilities availed by Shimiz.

**B. URBAN LAND CEILING ACT (ULC):**

- i. By an order dated January 6, 2006 was passed under Section 8(4) of the Urban Land Ceiling and Regulation Act, 1976 ("**Act**") whereby land admeasuring 2,574.80 square meters forming part of CTS No.281/A/1/1 ("**said Land**") was declared as surplus vacant land.
- ii. Thereafter, notification/s was / were issued under Section 10 of the Act. Pursuant to the notification the necessary remarks were recorded on the property register card of the said Land mutating the name of the Government of Maharashtra as the owner of the said Land.
- iii. Further, without giving any prior notice to the owners, the authorities purported to take possession of the said Land on October 25, 2007. It is pertinent to note that on the possession receipt, it is very clearly mentioned that the owners were not present to handover possession of the



said Land. However, the physical possession of the said Land always continued to be with the owners.

- iv. Being aggrieved with the aforesaid action, a writ petition (being Writ Petition No.687 of 2008) was filed in the Bombay High Court for setting aside the aforementioned notifications and orders purporting to take possession. By its order dated January 4, 2012, the Bombay High Court allowed the said writ petition *inter alia* holding that in view of the repeal of the Act with effect from November 29, 2007, (i) all further proceedings initiated under the Act in respect of the said Land would lapse on and from November 29, 2007 and (ii) accordingly, the said Land which was declared as surplus vacant land of which purported possession was taken by the state government would no longer vest in the state government.
- v. Being aggrieved with the aforesaid Order dated January 4, 2012 passed, the State of Maharashtra filed a Special Leave Petition (“**SLP**”) in the Hon’ble Supreme Court. The SLP was finally heard with various other SLPs and the Hon’ble Court vide its common order dated October 15, 2014 held that no ground for interference was made out to exercise the jurisdiction under Article 136 of the Constitution of India and further the SLPs (including the SLP) were dismissed.



- vi. The State of Maharashtra then filed a Review Petition No. 2927 of 2016 in the Hon'ble Supreme Court of India, however the Hon'ble Court vide its order dated August 3, 2016, dismissed the aforementioned review petition. Pursuant to the review petition, it is pertinent to note that the State of Maharashtra has exhausted all its remedies under the law and the matter has thus reached finality.
  
- vii. As the property register card in respect of land bearing CTS No. 281A/1/1 had recorded the name of State of Maharashtra as the holder of the said land pursuant to the possession of the said land being purportedly taken on October 25, 2007 as stated hereinabove, by reason of the orders narrated hereinabove and pursuant to an application made in that regard, the Collector and Competent Authority, ULC, Greater Mumbai vide its Order dated February 21, 2018 directed that the name of State of Maharashtra be deleted from the property register card pertaining to land bearing CTS No. 281A/1/1 (part). Accordingly, the name of State of Maharashtra has been deleted from the property register card.
  
- viii. The property register card in respect of land bearing CTS No. 281A/1/1 also had vide mutation entry No. 662 recorded that pursuant to Orders dated April 6, 2011 and August 18, 2011, the transfer of the said CTS No. was permitted, subject to obtaining prior permission from the Competent Authority, ULC in that regard. Pursuant to an



application made in that regard, the Collector and Competent Authority, ULC, Greater Mumbai vide its Order dated July 24, 2018 directed that the reference to the restriction on transfer as incorporated in the property register card pursuant to Mutation Entry No. 662, be deleted. Accordingly, the reference to the 'restriction on transfer of the land subject to prior permission' has been deleted from the property register card.

C. REVENUE RECORDS:

- i. By and under Orders dated (i) July 10, 2012 the name of Shimiz has been recorded as the holder/occupant in respect of Survey No. 83 (part) admeasuring 3,156.73 square meters, and (ii) December 17, 2016 passed by the Sub-Divisional Officer Mumbai Suburban District, the name of Shimiz has been recorded as the holder/occupant in respect of the Survey Nos. 83/1 (part), 83/2 (part) and 84/1 (part) admeasuring 2,989.789 square meters, which form part of the aforesaid property. However, since the user of the land continues to be agricultural and the same not having been converted to non-agricultural user, the property register cards do not reflect the name of Shimiz as the holder thereof. The name of Luceat has not yet been recorded as the holder / occupant and we have been informed by representatives of Luceat that it is taking steps towards the same.
- ii. *Kami Jasti Patrak*



Upon perusal of the kami jasti patrak, we could co-relate the survey numbers to the original CTS numbers. However, for the co-relation between the original CTS numbers and the current CTS numbers, we have relied upon the plans issued by the concerned authorities and have accordingly tabulated a summary of the property details as under:

S. No.	CTS No.	Area as per PR card (sq. mtrs.)
83 (part)	281 A/1/1	6912.4
84/1	280	509.5
	280/1	109.4
84/2	279	378.5
83 (part)	282 A	214.9
83 (part)	282 C	149.4
Total		8274.10

We have been given to understand by the representatives of Shimiz that the owner of one of the neighbouring plots has inadvertently handed area admeasuring 355 square



meters forming part of Shimiz's entitlement i.e. CTS No. 281/A/1/1, to Municipal Corporation of Greater Mumbai ("MCGM"). Hence, there appears to be a difference between the area mentioned on the property register cards and the area as mentioned in the agreements.

**D. PUBLIC NOTICE:**

- i. I have not been instructed to issue a public notice with respect to the Property and hence any third party claims that might be existing with respect to the Property have not been dealt with in this Preliminary Report of Findings. However DSK Legal, Advocates & Solicitors had issued a public notices in the name of Shimiz for inviting any objections / claims in respect of the properties in (i) Times of India dated December 3, 2019 having circulation in Mumbai (in English language) and (ii) Maharashtra Times dated December 3, 2019 having circulation in Mumbai (in Marathi language) and had received objection dated December 18, 2019 from Advocate Kaustubh Thipsay, on behalf of his client, Sanjay Shantaram Dalvi who claims to have executed a Memorandum of Understanding with George Panikulam (being the constituted attorney for Nooruddin Khan) in respect of property admeasuring 6,912 square meters forming part of CTS No. 281A-1/1. Vide letter dated December 20, 2019, DSK Legal on behalf of Shimiz had requested Advocate Thipsay to provide with all documents substantiating the rights of his clients and





Mr. Khan in respect of the aforementioned property. However, no reply was received from Advocate Kaustubh Thipsay.

- ii. An objection dated December 16, 2019 from Advocate Aditya Sawant, on behalf of his client Gautam Patel claiming rights in respect of property bearing Survey No. 83 Hissa No. 281-A/1/1 was also received in response to the public notices issued by DSK Legal. The claim of Gautam Patel has been discussed above.

E. We have relied upon the Search Report dated January 29, 2015 issued by Ashish Jhaveri, Title Investigator and Search Report dated February 12, 2020 issued by Sameer Sawant, Property Title Investigator.

F. ORIGINAL DOCUMENTS:

I have not been provided with all the necessary original of the title deeds/ documents for perusal and therefore this report is subject to the same.

G. This report of findings does not include searches in any Court with respect to any suits, claims or any other proceedings that may be pending adjudication in any Court of law or before any other judicial or quassi-judicial or revenue Authority with respect to the Property other than the papers mentioned in the



Annexure hereto and in the absence of the same, I am unable to comment on this aspect of the title.

H. From the perused list of documents, in one of them, being Memo dated 15<sup>th</sup> October 2018 issued by DSK Legal, Advocates & Solicitors which has found the title to be clear and marketable, subject to limitations stated therein.

#### **IV. Litigations:**

There are some purported litigation / claims in respect of the properties, which are dealt with hereunder:

##### *A. Claims of Nooruddin Mehmood Khan*

- (i) One Mr. Nooruddin Mehmood Khan (**Nooruddin**) purportedly claims that by an under an Agreement dated July 18, 1980, Ahmedali and Abdulkader agreed to sell, transfer convey and assign area admeasuring 14,798.5 square meters equivalent to 17,699 square yards situate, lying being at CTS No. 281A, Survey No. 83 (part) and Survey No. 83 Hissa No. 1, Tikka Nos. 29 and 30 of Village Bhandup, Taluka Kurla, Registration Sub-District and District of Bombay City and Bombay Suburban in his favour, on the terms and conditions contained therein.
- (ii) Nooruddin further claims that pursuant to the aforesaid Agreement, Abdulkader and Ahmedali have executed unregistered General Power of Attorney dated July 12, 1993,



May 19, 1994 and August 19, 1994 in his favour.

- (iii) Pursuant to the aforesaid Agreement, Nooruddin entered into a Memorandum of Understanding dated April 9, 1995 with Messrs Harmony Constructions, wherein Nooruddin agreed to sell the property admeasuring 11,666 square meters out of his entitlement, in favour of Messrs Harmony Constructions.
- (iv) Messrs Harmony Constructions filed a Suit bearing No. 4204 of 1995 against Nooruddin, Abdulkader and Ahmedali. In the suit, Abdulkader and Ahmedali have filed a Written Statement dated April 11, 2001, wherein Abdulkader and Ahmedali have categorically denied execution of any agreement or any power of attorney in favour of Nooruddin. The suit was then withdrawn by Harmony Constructions for want of prosecution.
- (v) Messrs Harmony Constructions then filed a Suit bearing No. 2783 of 1996 against Nooruddin and his Advocate, Mr. M.V. Shetty, *inter alia*, claiming that Nooruddin and his Advocate, Mr. M. V. Shetty have played a fraud upon Messrs Harmony Constructions. The suit was eventually settled in terms of consent terms filed between the parties. Messrs Harmony Constructions had also initiated criminal action against Nooruddin and his Advocate, Mr. M.V. Shetty in this regard.
- (vi) It appears that Nooruddin has pursuant to the Agreement dated July 18, 1980, fraudulently executed a Deed of Conveyance dated January 21, 1996 between Abdulkader and Ahmedali as



the Vendor and Nooruddin as the Purchaser in respect of admeasuring 14,798.5 square meters equivalent to 17,692.40 square yards, situate lying being at CTS No. 281A, Survey No. 83 (part) and Survey No. 83 Hissa No. 1, of Village Bhandup, Taluka Kurla, Registration Sub-District and District of Bombay City and Bombay Suburban and had lodged for registration the Deed of Conveyance dated January 21, 1996. Though, the Deed of Conveyance dated January 21, 1996 was lodged for registration in the year 1996, the process of registration of the said Deed of Conveyance was only completed on June 25, 2012.

- (vii) Nooruddin Khan had also applied for mutation of his name in the revenue records of property bearing Survey No. 83/D. The revenue authorities have passed a pencil entry being Mutation Entry No. 1629 and the authorities were in the process of mutating the name of Nooruddin Khan in respect of property bearing Survey No. 83/D. However, pursuant to a complaint filed by Shimiz before the Tehesildar Kurla (Mulund), the Tehesildar vide its order dated January 31, 2020 (i) admitted the complaint of Shimiz and (ii) cancelled Mutation Entry No. 1629.
- (viii) Nooruddin Khan had filed an Appeal being RT Appeal No. 05 of 2020 before the Sub Divisional Officer, MSD, challenging the cancellation of the Mutation Entry No. 1629. The SDO, MSD, by order dated 01/01/2021 has rejected the said Appeal of Nooruddin Khan.



- (viii) In our view and based on the documents provided to us, it is evident that Ahmedali during his life time and much before the execution of the purported Deed of Conveyance in favour of Nooruddin Khan, had divested himself of a majority of the portion forming part of Ahmedali's share, and hence did have any authority to deal with the same. Furthermore, Ahmedali and Abdulkader had in their written statement in one of the aforesaid suits, categorically denied the execution of any agreement or power of attorney in favour of Nooruddin.
- (ix) We have been informed by the representatives of Shimiz that they are evaluating the options of filing proceedings (both civil and criminal) against Nooruddin in respect of the fraudulent acts committed by Nooruddin and for other consequential reliefs.

*B. Nirmal Singh Dewasingh Bhogi*

- (i) Sometime in the year 1995, Shimiz had filed a Suit in the Hon'ble City Civil Court at Mumbai being suit No. 5066 of 1995 ("**said suit**") against one Nirmal Singh Dewasingh Bhogi and others ("**defendants**") for a declaration that the defendants are trespassers on a portion of land admeasuring 600 sq. meters forming part of the property admeasuring 3,156.73 square meters bearing Survey No. 83 Hissa No. 2 (part) situate, lying and being at village Bhandup, Taluka Kurla ("**suit property**"), which belongs to Shimiz.



- (ii) By an order dated November 13, 1995, the Hon'ble City Civil Court restrained the defendants from in any manner dealing with the suit property. Further, vide an order and judgment dated August 21/23, 2004, the Hon'ble City Civil Court held that Shimiz had proved their title to the suit property and that the defendants have no right, title and interest in the suit property. Being aggrieved by the aforesaid judgment, the defendants preferred an Appeal being Appeal No. 173 of 2012 ("**Appeal**") and the Appeal was withdrawn by the defendants on March 27, 2012. Accordingly, Shimiz filed an execution application in the Hon'ble High Court being execution application No. 395 of 2012 seeking to execute the aforesaid decree, which was allowed. Accordingly, the aforesaid decree was executed on February 7, 2013.
- (iii) One Prayer Finance & Investment Private Limited is purporting to claim development rights in respect of area admeasuring 3,416 square meters bearing CTS Nos.281A/1/1 under a registered development agreement dated March 18, 2006. The registered agreement has been purportedly signed by Abdulkadar as the owner, Mr. Jaspal Singh Chugh as the confirming party and Prayer Finance & Inevstment Private Limited as the Developers. On perusal of the agreement, it appears that Mr. Jaspal Singh Chugh has been in possession of the said area since 1998. It is pertinent to note that the area amesasuring 3,416 square meters admittedly includes the suit property, which suit property was in the possession of the



defendants. The defendants were restrained by an injunction to creating third party rights (including parting with possession). A plain reading of the development agreement clearly demonstrates that the same is in blatant violation of the injunction order dated November 13, 1995. Furthermore, it is pertinent to note that based on the devolution of title, which has been set out above, it is very clear that the portion of Plot B, in respect of which Prayer Finance & Investment Private Limited is purporting to claim development rights, belongs to Ahmedali and not to Abdulkadar, from whom Prayer Finance & Investment Private Limited has purportedly got the development rights. The claim of Prayer Finance & Investment Private Limited under the aforesaid development agreement appears to be bogus. Pursuant to the execution of the aforesaid decree, one Mr. Gautam Patel (being director of Prayer Finance & Investment Private Limited) and Mr. Jaspal Singh Chugh (being the confirming party under the aforesaid development agreement and who handed over possession of the property concerned to Prayer Finance & Investment Private Limited) filed the following proceedings challenging the execution of the aforesaid decree:

- (iv) Mr. Gautam Patel and Mr. Jaspal Singh Chugh filed a Civil Writ Petition bearing No. 434 of 2013 *inter alia* seeking to quash and set aside the execution order passed in the Execution Application 395 of 2012 in Suit No. 5066 of 1995 in favor of Shimiz. The said Writ Petition was withdrawn by the Advocates



for Mr. Gautam Patel and Mr. Jaspal Singh Chugh on March 26, 2013 before the Prothonotary, with liberty to file appropriate proceeding/s.

- (v) Mr. Gautam Patel and Mr. Jaspal Singh Chugh filed a Criminal Writ Petition bearing No. 1213 of 2013 *inter alia* seeking to pass appropriate orders directing the State of Maharashtra (the respondents therein), to register a FIR and take cognizance of offences committed by Senior Inspector, Additional Commissioner, Bailiff, Shimiz and Sheriff. The aforementioned Writ Petition appeared before the Division Bench of Justice Hardas and Justice Bhatkar on April 24, 2013 and the same was dismissed by the Division Bench on April 24, 2013 holding that Mr. Gautam Patel and Mr. Jaspal Singh Chugh have an alternative remedy and the Writ is not maintainable.
  
- (vi) Mr. Gautam Patel and Mr. Jaspal Singh Chugh had filed a Criminal Complaint being No. 37/SW/2013 before the Learned Metropolitan Magistrate, 53<sup>rd</sup> Court, Mulund, seeking issuance of direction under Section 156(3) of the Criminal Procedure Code for investigation of cognizable offences. However, the Learned Magistrate, issued an order under Section 202 (postponement of issuance of process) of the Criminal Procedure Code. Being aggrieved by the same, Mr. Gautam Patel and Mr. Jaspal Singh Chugh filed a Criminal Writ Petition being No. 3557 of 2013 in the Hon'ble Bombay High Court, under Section 482 of the Criminal Procedure Code, seeking quashing of the





aforesaid order. The Hon'ble Bombay High Court vide its order dated August 27, 2014, set aside the aforesaid order and remanded the matter back to the Metropolitan Magistrate for re-considering the matter. The Learned Magistrate vide its fresh order dated November 17, 2014, directed investigation to be carried out under Section 156(3) of the Criminal Procedure Code. Mr. Hashim Kathawala and Mr. Zuzar Kathawala, have filed a Criminal Application bearing No. 1259 of 2014 under Section 482 of the Criminal Procedure Code for quashing of the aforesaid order dated November 17, 2014. The matter is still pending.

- (vii) Mr. Gautam Patel and Mr. Jaspal Singh Chugh took out a Chamber Summons bearing No. 934 of 2013 in Execution Application No. 395 of 2012 in Suit No. 5066 of 1995 *inter alia* to quash and set aside the execution order passed in the Execution Application No.395 of 2012 in Suit No. 5066 of 1995 in favor of Shimiz. Shimiz has filed its reply to which a rejoinder has been filed by Mr. Gautam Patel and Mr. Jaspal Singh Chugh. The captioned matter is pending.
- (viii) Thus, Mr. Gautam Patel and Mr. Jaspal Singh Chugh have taken out multiple proceedings for setting aside the execution order, but they have till date haven't succeeded in getting any interim orders in that regard.



C. *S.G. Badani*

- (i) One Mr. S.G. Badani filed S.C. Suit No. 2251 of 2017 in the Hon'ble Bombay City Civil Court against Shimiz ("**Defendant No. 1**"), Zuzar Ahmedali Kathawala ("**Defendant No. 2**"), Ahmedali Gulamhusein Kathawala ("**Defendant No. 3**"), Hatimbhai Gulamhussein Kathawala ("**Defendant No. 4**") and Hashim Hatim Kathawala ("**Defendant No. 5**") (hereinafter collectively referred to as "**Defendants**") *inter alia* seeking a permanent order and injunction restraining the Defendants by themselves, their servants, agents, representatives and any person/s claiming through or under them, from or in any manner obstructing or interfering with the Plaintiff, his servants, agents, representatives by foot or by vehicle to gain access to the Plaintiff's property through the suit premises viz. being all that piece and parcel of land bearing plot no. B/2, C.T.S. No. 281/ A/2 of village Bhandup (West), L.B.S. Marg, Mumbai 400078.
- (ii) Said Mr. Badani also took out an interim application being Notice of Motion No. 3540 of 2017 *inter alia* seeking a temporary order and injunction restraining the Defendants by themselves, their servants, agents, representatives and any person/s claiming through or under them from or in any manner obstructing or interfering with the Plaintiff, his servants, agents, representatives by foot or by vehicle to gain access to the Plaintiff's property through the suit premises viz. being all that piece and parcel of land bearing plot no. B/2, C.T.S. No. 281/



A/2 of village Bhandup (west), L.B.S. Marg Mumbai 400078 in the aforesaid S.C. Suit No. 2251 of 2017. The said Notice of Motion was dismissed on April 4, 2018.

- (iii) Being aggrieved by the order dated April 4, 2018 passed by the City Civil Court, the said Mr. S.G. Badani filed an Appeal from Order No. 13034 of 2018 alongwith Civil Application No. 13035 of 2018 (in Appeal from Order No. 13034 of 2018) in the Hon'ble Bombay High Court against Defendants *inter alia* seeking that Order dated April 4, 2018 passed by Hon'ble Bombay City Civil Court in S.C. Suit No.2251 of 2017 be quashed and set aside. The Advocate for Mr. S.G. Badani filed for withdrawal of the aforementioned Appeal from Order. Vide order dated March 13, 2019 the Appeal from Order stood disposed as withdrawn.
- (iv) Thereafter, the said Mr. S.G. Badani has also filed another Suit (L) No. 1099 of 2018 alongwith Notice of Motion No. 1944 of 2018 therein in the Hon'ble Bombay High Court against Shimiz ("**Defendant No. 1**"), Zuzar Ahmedali Kathawala ("**Defendant No. 2**"), Ahmedali Gulamhusein Kathawala ("**Defendant No. 3**"), Hatimbhai Gulamhussein Kathawala ("**Defendant No. 4**"), Hashim Hatim Kathawala ("**Defendant No. 5**"), Riyaz A. Pittalwala ("**Defendant No. 6**"), Imtiaz A. Pittalwala ("**Defendant No. 7**"), Samina Engineer ("**Defendant No. 8**") and MCGM ("**Defendant No. 9**") *inter alia* seeking: (a) that Conveyance Deed dated September 25, 2013 executed between Defendant Nos. 6, 7 and 8 in favour of the Defendant No.1 in respect of the Suit



property being all that piece and parcel of land bearing plot no. B/2, C.T.S. No. 281/A/2 of village Bhandup (west), L.B.S. Marg, Mumbai 400078 be declared as illegal, ab initio void, vexatious, bad in law and not binding upon the Plaintiff; (b) declaration that the Suit property is a reserved property and Defendant Nos. 1 to 5 or persons claiming through them, have no right, title and interest; (c) declaration that the Plaintiff is in exclusive use, occupation and in adverse possession in respect of Suit property; and (d) injunction order restraining Defendant Nos. 1 to 5, their agents, servants and/or person or persons claiming through them from disturbing the Plaintiff's lawful use, occupation and possession of the Suit property. The said Notice of Motion is filed *inter alia* seeking that, pending the hearing and final disposal of the Suit, the Hon'ble Bombay High Court pass a mandatory injunction order restraining Defendant Nos. 1 to 5, their agents, servants and/ or person(s) claiming through them from disturbing the Plaintiff's lawful use, occupation and possession of the Suit property. Defendant Nos. 1 to 5 filed their reply to the aforesaid Notice of Motion *inter alia* contending that (i) the Plaintiff had no locus to file the said Suit, (ii) the said Suit was filed without seeking leave under Order II Rule 2 of The Civil Procedure Code, 1908, (iii) the Plaintiff had suppressed the Order dated April 4, 2018 passed by the City Civil Court in S.C. Suit No. 2251 of 2017 filed by the Plaintiff *inter alia* seeking similar reliefs and (iv) the Suit was not correctly valued. Defendant Nos. 1 to 5 submitted that the Plaintiff had filed the present Suit *inter alia* in respect of the same cause of action which was sub-judice before the Hon'ble City Civil Court at



Bombay, and in view of the same, the present proceedings ought to be disallowed. In view thereof, the Hon'ble Court directed Defendant Nos. 1 to 5 to move an application for the rejection of the Plaint filed in the captioned matter. Thereafter, the Defendants Nos. 1 to 5 filed a Notice of Motion (L) No. 2457 of 2018 *inter alia* praying that Hon'ble Court reject the Plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908.

- (v) It appears that Suit No. 2251 of 2017 has been withdrawn. Although a copy of the such withdrawal has not been seen by us, the online case status of the matter reflects that the suit has been withdrawn.

Although we have provided our views in respect of the claims / litigation set out above, the courts / adjudication authorities may have a different view.

Date: 5<sup>th</sup> April, 2021

Advocate