

CHANDRAKANT M. VITHLANI

M.Com., LL.B.

Advocate, High Court

D/203, 2nd Floor, Maya Apartment C.H.S. Ltd., Swad Hotel Galli (Bhaji Galli),
Virar (West) District Palghar-401 303 9167208623.

Ref: Ref: CV/TC/ MMD/2017

Date: 20th July, 2017

REPORT ON TITLE

TO WHOMSOEVER IT MAY CONCERN

My client Mr. Nayan Arvind Shah, partner of M/s. Mayfair Maru Developers, a partnership firm registered with the office of the Registrar of Firms at Mumbai under no.BA-99003 and (hereinafter referred to as "the said Firm") having principal place of business at 01, Mayfair Meridian, Ceaser Road, Amboli, Andheri (West) Mumbai - 400 058, has handed over to me, certain documents/title deeds with instructions to investigate the entitlement of the said Firm to the immoveable property more particularly described in the **Schedule** hereunder written (hereinafter referred to as "the said Property"). My search clerk Mr. N.R. Kadam has taken searches with the office of the Sub-Registrar of Assurances at Thane and I have perused the various documents/title deeds referred to in this Report. The following emanates there from:

1. One Mr. Pandurang Mahadeo (hereinafter referred to as "Pandurang") was at all relevant times prior to 1997 seized and possessed of and well and sufficiently entitled to as owner of the larger parcel of land bearing Old Survey no. 476, New Survey no. 120, Hissa no. 2, admeasuring 9570 square meters, situate, lying and being at Village Bhayander, Taluka and District Thane, in the Registration District and Sub-District Thane and now within the limits of the Mira Bhayander Municipal Corporation (hereinafter referred to as "the Larger Property"). The said Property (as described in the Schedule hereunder written) admeasuring 8,580 square meters forms a part of the said Larger Property.
2. By and under an Agreement for Sale dated 9th January, 1997 executed by and between the said Pandurang and one Mr. Jayesh Kanji Maru (being one of the partners in the partnership firm of M/s. Mayfair Maru Developers) (hereinafter



referred to as "**Jayesh**"), various rights and entitlements in relation to the Larger Property were granted by the said Pandurang to and in favour of Jayesh, inter alia to develop the Larger Property. The said Pandurang also executed various powers of attorney in favour of Jayesh in relation to the Larger Property. Such documents were also confirmed from time to time by the wife of the said Pandurang viz. Mrs. Jamuna Thakur and the children of Pandurang viz. Mr. Prakash Pandurang Thakur (hereinafter referred to as "**Prakash**"), Mrs. Suman Mhatre (hereinafter referred to as "**Suman**"), Mrs. Surekha Mokal (hereinafter referred to as "**Surekha**"), Mrs. Sumitra alias Madhuri Mhatre (hereinafter referred to as "**Sumitra**"), Ms. Bharti Thakur (hereinafter referred to as "**Bharti**") and Mr. Raju Thakur (hereinafter referred to as "**Raju**"). Prakash, Suman, Surekha, Sumitra, Bharti and Raju are hereinafter collectively referred to as "**the Heirs of Pandurang**".

3. In part performance of the said Agreement for Sale, dated 9th January, 1997, the said Pandurang had handed over the quiet, vacant and peaceful possession of the Larger Property to Jayesh, by signing a Possession Letter, dated 1st August, 2000; and the same was also confirmed on several occasions, from time to time, as set out herein below.
4. On or about 31st December, 2002, the said Pandurang and the Heirs of Pandurang executed a Development Agreement, registered in the office of Sub-Registrar of Assurance at Thane under Sr. no. TNN-7/02044/2003, dated 10th April, 2003, in favour of Jayesh, in respect of the Larger Property (hereinafter referred to as "the 2002 Agreement").
5. On or before the execution of the 2002 Agreement, Jayesh had paid a sum of Rs.11,00,000/- (Rupees Eleven Lacs Only) to the said Pandurang and the Heirs of Pandurang as and by way of part payment out of the total agreed consideration for the Larger Property. I have been informed that thereafter, various further amounts have been paid by Jayesh to the said Pandurang and the Heirs of Pandurang aggregating to a sum of Rs.55,85,000/- (Rupees Fifty-Five Lacs Eighty-Five Thousand Only) as consideration towards the Larger Property.

6. At the time of registration of 2002 Agreement, the said Pandurang and the Heirs of Pandurang had also executed a Power of Attorney dated 31st March 2003 in favour of Jayesh, granting therein certain powers and authorities to Jayesh in respect of the Larger Property and authorizing Jayesh to do various acts, deeds, matters and things in respect of the said Larger Property including but not limited to undertake the development of the said Larger Property and also to sell the said Larger Property by executing a Deed of Conveyance in respect thereof and to register such documents.
7. On 31st March, 2003, Suman and Surekha had executed a Special Power of Attorney in favour of Prakash, authorizing Prakash to complete the sale transaction of transfer of the Larger Property in favour of the ultimate transferee thereof. The said Power of Attorney, dated 31st March, 2003, had also been registered in the office of Sub-Registrar of Assurances along with the said Development Agreement, dated 31st December, 2002 under Registration no. TNN-7/02044/2003, dated 10th April, 2003. Prakash had accordingly acted as a constituted attorney of Suman and Surekha for execution of the said Development Agreement, dated 31st December, 2002. On 31st December, 2002, the said Pandurang and the Heirs of Pandurang also signed and delivered a Possession Letter in favour of Jayesh confirming therein that they have already delivered possession of the Larger Property to Jayesh.
8. One Mr. Manubhai Vadilal Shah and Mr. Atul Ajitkumar Shah (hereinafter referred to as "**Manubhai & Atul**") had initiated various litigations against the said Pandurang in or around May 2002, whereby they had claimed entitlement/ownership rights in the Larger Property by virtue of certain purported documents allegedly executed by the said Pandurang in their favour in relation to the Larger Property. No mention of the said litigation was made in the 2002 Agreement.
9. Jayesh subsequently learnt that the said Manubhai and Atul had filed legal proceedings in civil courts claiming right, title and interest in the said Larger Property, which proceedings ultimately went up to the Hon'ble Supreme Court of India. The said Pandurang, the Heirs of Pandurang had apparently not

disclosed to Jayesh anything about the aforesaid civil proceedings at the time of execution of the 2002 Agreement. However, thereafter, at the request of the said Pandurang and the Heirs of Pandurang, Jayesh began assisting the said Pandurang and the Heirs of Pandurang to defend the said proceedings filed by the said Manubhai & Atul.

10. Jayesh was also holding a power of attorney granted by the said Pandurang, the Heirs of Pandurang as stated above in respect of the said Property; and as such, Jayesh for himself and also in the capacity of the Constituted Attorney of the Heirs of Pandurang and the said Pandurang had executed a Development Agreement, dated 3rd November, 2004, in favour of the said Firm viz. M/s. Mayfair Maru Developers, thereby giving rights, interest in respect of the said Property to and in favour of the said Firm. Jayesh had also acted as a confirming party to the said Development Agreement, dated 3rd November, 2004. By virtue of the said Development Agreement, dated 3rd November, 2004, the said Firm became entitled to develop the Larger Property.
11. On coming to know of the 2002 Agreement having been executed by the said Pandurang and the Heirs of Pandurang in favour of Jayesh, the said Manubhai & Atul filed fresh proceedings, being Special Civil Suit No.556 of 2004 before the Hon'ble Court of Civil Judge (SD) at Thane, making the partners of the said Firm M/s. Mayfair Maru Developers viz. the said Jayesh and one Mr. Nayan Shah (hereinafter referred to as "**Nayan**") also as party defendants therein. The said Suit No.556 of 2004 was inter-alia filed for permanent injunction restraining Jayesh from acting upon 2002 Agreement and restraining the Mira Bhayander Municipal Corporation (hereinafter referred to as "**MBMC**") from granting any sanction, permission etc. in respect of the development of the Larger Property.
12. The said Suit filed by the said Manubhai & Atul was dismissed by the said Hon'ble Court by and under the Order dated 7th October 2006. The said Order was challenged by the said Manubhai & Atul before the Hon'ble High Court by filing First Appeal No.2931 of 2006. The Hon'ble High Court dismissed the said First Appeal on 19th November 2009. The said Order dated 19th November 2009 was further challenged by the said Manubhai & Atul before the Hon'ble Supreme

Court of India by filing Special Leave Petition No. 35952-35956 of 2009 which was dismissed on 6th January 2010 by the Hon'ble Supreme Court of India.

13. Meanwhile, the said Raju executed a Development Agreement dated 13th February, 2007 in favour of Jayesh where under a sum of Rs.22,35,000/- has been received by Raju against the undivided right, title and interest of Raju in respect of the Larger Property. The said Development Agreement dated 13th February 2007 is duly registered with the Sub-Registrar of Assurances at Thane under Serial No. TNN4/1414/2007.
14. Along with the said Development Agreement dated 13th February 2007, Raju has also executed a Power of Attorney on 14th February 2007 in favour of Jayesh, thereby authorizing him to do various acts, deeds, matters and things in respect of the said Larger Property including but not limited to develop the said Larger Property and to sell the said Larger Property by executing a Deed of Conveyance in respect thereof and to register such documents. The said Power of Attorney is duly registered with the Sub-Registrar of Assurances, Thane under Serial no. TNN4-01415/2007 on 14th February 2007.
15. Surekha, along with her family members executed a Development Agreement dated 4th July 2007, in favour of Jayesh where under a sum of Rs.22,50,000/- has been received by Surekha against the undivided right, title and interest of the Surekha in the Larger Property. The said Development Agreement dated 4th July 2007, is duly registered with the Sub-Registrar of Assurances at Thane under Serial no. TNN4/06240/2007.
16. Along with the said Development Agreement dated 4th July 2007, Surekha, along with her family members has also executed a Power of Attorney on 4th July 2007 in favour of Jayesh thereby authorizing him to do various acts, deeds, matters and things in respect of the said Larger Property, including but not limited to develop the said Larger Property and to sell the said Larger Property by executing a Deed of Conveyance in respect thereof and to register such documents. The said Power of Attorney is duly registered with the Sub-Registrar of Assurances, Thane under Serial no. TNN4-06241/2007 on 4th July 2007.

CHANDRAKANT M. VITHLANI
ADVOCATE

17. The said Pandurang expired intestate on 9th May, 2007, leaving behind him the Heirs of Pandurang, as his heirs and legal representatives.
18. On or about 10th December, 2010, the Fire Department of MBMC had issued provisional No Objection Certificate for construction of commercial cum residential building in the layout of the Larger Property, based on applications made by the said Firm.
19. On or about 30th December, 2010, the MBMC has issued Commencement Certificate to the said Firm for commencing construction of Building No. B in the layout of the Larger Property. For obtaining the Commencement Certificate, Provisional No Objection Certificate from the Fire Department of the MBMC and for obtaining the sanctioned layout plan of the said Property, the said Firm had paid a sum of Rs. 20,38,420/- (Rupees Twenty Lacs Thirty-Eight Thousand Four Hundred Twenty Only) to the MBMC as and by way of betterment charges/development charges.
20. In the 'Other Rights Column' of the 7/12 Extract of the Larger Property, the name of one "The Estate Investment Company Private Limited" (hereinafter referred to as "EICPL"), was appearing. Accordingly, by and under a Deed of Release, dated 7th January, 2011 made and executed between the said EICPL of the One Part and the said Firm of the Other Part, the said EICPL has released in favour of the said Firm all its rights, title and interest in to and upon the Larger Property and accordingly the said Firm has acquired the ownership rights and entitlement of the said EICPL into and upon the Larger Property. The said Release Deed is duly registered in the office of Sub-Registrar of Assurance at Thane no. 7 under no. TNN-7-09235-2011.
21. After the entire legal proceedings as aforesaid filed by the said Manubhai & Atul were finally disposed off by the Hon'ble Supreme Court of India and after the said Firm had commenced the development activities on the Larger Property and after the rights of the said EICPL were acquired by the said Firm, the Heirs of Pandurang, published a Public Notice, dated 2nd July, 2011, in the Marathi issue of Nav-Shakti and in the English newspaper "The Free Press Journal", dated 2nd July, 2011, through their Advocate Shri N.N. Jadhav, stating therein

CHANDRAKANT M. VITHLANI
ADVOCATE

that by a Notice, dated 27th June, 2011 issued by their Advocates, the Heirs of Pandurang had terminated the 2002 Agreement and the Power of Attorney dated 31st March 2003 on the ground of non-payment of entire consideration of the Larger Property. I am informed by my client that in fact, no such Notice, dated 27th June, 2011, was ever received by the said Firm from the Advocate of the Heirs of Pandurang.

22. The Heirs of Pandurang also filed an RTS Appeal No.134 of 2011 on 11th July 2011 before the Sub-Divisional Officer, Thane (hereinafter referred to as "**the SDO**") against Jayesh praying for quashing the Mutation Entry no.5943 dated 22nd July 2003 of Village Bhayander, Taluka and District Thane, whereby the name of Jayesh was entered in the other Rights Column on 7/12 extract of the Larger Property.
23. The aforesaid disputes that had arisen between the said Firm and the Heirs of Pandurang were settled after negotiations and accordingly, the said RTS Appeal No.134 of 2011 was withdrawn by the Advocate for the Heirs of Pandurang; and it is recorded in the Order dated 21st October, 2011 passed by the SDO that the said RTS Appeal No. 134 of 2011 is withdrawn as the Advocate for the Heirs of Pandurang has informed that the matter is settled.
24. Suman, Sumitra and Bharti executed an Irrevocable General Power of Attorney dated 10th September 2011 in favour of Prakash conferring upon Prakash, power and authority *inter alia* to execute the conveyance in respect of the Larger Property and to register the same in accordance with law.
25. Immediately thereafter, on or about 12th September 2011, Prakash acting for himself and as Constituted Attorney of Suman, Sumitra and Bharti and Jayesh acting the Constituted Attorney of Surekha and Raju (under the aforesaid registered irrevocable Powers of Attorney dated 14th February 2007 and 4th July 2007) executed in favour of the said Firm, a Deed of Conveyance in respect of the said Property, being an area admeasuring 8580 square metres (gross plot area) out of the Larger Property. The said Deed of Conveyance is duly registered with Sub-Registrar of Assurances, Thane under Serial no. TNN4/07224/2011 on 12th September 2011 (hereinafter referred to as **said Conveyance**). In the

CHANDRAKANT M. VITHLANI
ADVOCATE

circumstances aforesaid, the said Firm has acquired the said Property vide the said Conveyance.

26. Thereafter, the Heirs of Pandurang had filed a fresh Special Civil Suit bearing no 66/2012 in the Hon'ble Court of Civil Judge (SD) Thane on 19th Jan, 2012 against the said Firm and its partners, to restrain the development of the said Property.
27. Thereafter, the disputes that had arisen between the Heirs of Pandurang and the said Firm were settled amicably and the said Firm and the Heirs of Pandurang filed Consent Terms dated 29th October 2013, in the Court of Hon'ble Civil Judge (SD) Thane, reconfirming the terms of Deed of Conveyance dated 12th Sep, 2011 and the Special Civil Suit 66/2012 was finally disposed off.
28. The list of all permissions obtained by the said Firm from the MBMC for development of the said Property is enlisted in the table below:

Sr. No.	Date	Particulars
1.	30-12-2010	Commencement Certificate bearing no. J.K.M.B./M.B.M.C/N.R./ 3561/ 2010-11.
2.	13-12-2013	Revised Commencement Certificate bearing no. J.K.M.B. /M.B.M.C/ N.R./ 3529/ 2013-14.
3.	06-01-2015	Plinth Certificate bearing no J.K./ M.B.M.C/ N.R./ 2860/ 2014-15.
4.	26-06-2015	Second Revised Commencement Certificate bearing no. J.K.M.B./ M.B.M.C/ N.R./1217/ 2015-16

29. A D.P. Road of area admeasuring 1,372.24 square meters, which was passing through the said Property, was conveyed to MBMC vide Registered Agreement dated 30th Sep, 2014, bearing Sr. No 7559-2014. The said Firm is thus, left with a net area of 7,207.76 square meters out of the area of the said Property. In the

CHANDRAKANT M. VITHLANI
ADVOCATE

circumstances, the area of the "said Property" is reduced to 7,207.76 square meters. The details of handing over the D.P. Road to MBMC is listed in the table below:

S No.	Date	Particulars
1.	30-09-2014	Agreement was registered for D.P. road handover to MBMC
2.	19-11-2014	A Mutation Entry bearing number 7113, was created to reflect the handover of D.P. Road in the revenue record. The same was later certified on 04-12-2014.
3.	15-12-2014	The effect of Mutation Entry 7113 was given in the Revenue Record & 7/12 extract of the said Property on 15-12-2015.

30. By and under an Order dated 3rd July, 2003 (hereinafter referred to as "**the said ULC Exemption Order**") issued by the office of the Additional Collector, Competent Authority (ULC), Thane Urban Agglomeration under section 20 of Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "**ULC Act**"), the said Property was exempted from the application of the provisions of Chapter III of the ULC Act. Various conditions have been laid down in the said Order, which are required to be complied with by the owners of the said Property.

31. As regards the applicability of the ULC Act and the ULC Order:

- (a) On or about 28th November, 2007 the State Legislature (Maharashtra) has passed the necessary resolution under Article 252 (2) of the Constitution of India for adoption of the Urban Land (Ceiling and Regulation) repeal Act, 1999 (hereinafter referred to as "**the Repeal**")

Act”); and accordingly, the ULC Act stood repealed in the State of Maharashtra.

- (b) It would be pertinent to mention herein that by and under an order pronounced by the Hon’ble Full Bench of the Hon’ble High Court of Judicature at Bombay in Writ Petition No. 9872 of 2010 and other companion petitions, it is held by the Hon’ble Court inter alia that it would be open for the State to enforce the terms and conditions mentioned in exemption orders that were issued pursuant to Section 20 of the ULC Act even after the repeal of the ULC Act as aforesaid (hereinafter referred to as “**the Full Bench Order**”).
- (c) The said Full Bench Order was challenged by the Maharashtra Chamber of Housing Industry (being the Petitioners in the aforesaid Writ Petition No. 9872 of 2010) before the Hon’ble Supreme Court of India by filing a Special Leave Petition No. 29006 of 2014 (hereinafter referred to as “**the SLP**”). By and under an interim order dated 10th November, 2014 passed by the Hon’ble Supreme Court of India in the said SLP, the Hon’ble Supreme Court of India has directed that “***no coercive steps are to be taken***” by the Respondents therein viz. the State Government and the Competent Authorities under the ULC Act. The said SLP was admitted and leave was granted to the Petitioners therein and accordingly the same stood numbered as Civil Appeal No. 29006 of 2014. The said Civil Appeal is still pending and the said interim order is till date not vacated. Accordingly, in our opinion the issue of whether the terms and conditions of an exemption order issued under Section 20 of the ULC Act can be enforced by the State Government or the authorities under the ULC Act after the repeal of the ULC Act is presently sub-judice. However, there is no specific stay on the operation or applicability of the Full Bench Order.
- (d) I have been informed that a Writ Petition has been filed by the Heirs of Pandurang and the said Firm viz. Writ Petition (Appellate Side) no.9703 of 2010 before the Hon’ble High Court of Judicature at

Bombay, whereby the Petitioners have challenged certain circulars and notifications issued by the Competent Authority (ULC) and the Government of Maharashtra pursuant to the repeal of the ULC Act whereby the provisions in exemption orders are sought to be enforced by the authorities.

(e) In the meantime, various applications have been made by the partners of the said Firm from time to time for extension of the time limit for construction under the ULC Exemption Order and such extensions have been granted by the Competent Authority (ULC), from time to time; and the last of such extension was granted on 28th June, 2016.

32. The said Firm viz. Mayfair Maru Developers have also availed of a loan of Rs. 3,72,00,000/- (Rupees Three Crores Seventy-Two Lacs) from the Greater Bombay Co-operative Bank Limited. The said loans have been secured against certain personal properties of the partners of the said Firm. The proceeds under the said loan are to be specifically used for the purpose of development and construction on the said Land.

33. I am informed that one Mrs. Concy D'souza and others have filed a Special Civil Suit No. 203 of 2007 before the Court of the Hon'ble Senior Civil Judge at Thane, whereby the Plaintiffs therein are claiming entitlement *inter alia* to the said Property. By and under an order dated 16th August, 2014 passed by the Hon'ble Court, the Hon'ble Court dismissed an application for interim reliefs (Exh. 5) as preferred by the original Plaintiff. No interim or restraining orders are passed in the said Suit; and the said Suit is presently pending. The hearing of the said Suit is expedited by the Hon'ble High Court of Judicature at Bombay by virtue of an order dated 9th December, 2014 in an Appeal from Order (St.) No. 26655 of 2014 that was filed by the original Plaintiff against the order dated 16th August, 2014.

34. As per the last partnership deed dated 15th March, 2014 in respect of the said Firm, the only partners of the said Firm are Mr. Nayan Arvind Shah and Mr. Jayesh Kanji Maru.

CHANDRAKANT M. VITHLANI
ADVOCATE

35. I am also informed that in addition to the above certain disputes and differences have arisen between the only partners of M/s. Mayfair Maru Developers; and the said disputes have been referred to arbitration and Mr. Nitin Thakkar, Ld. Senior Advocate has been appointed as the sole arbitrator for adjudicating such disputes. The said arbitration proceedings are presently pending.
36. As per the 7/12 extracts in respect of the said Property, the name of M/s. Mayfair Maru Developers and its partners viz. Mr. Nayan Arvind Shah and Mr. Jayesh Kanji Maru appears thereon as the holders of the said Property.
37. In the circumstances, I am of the opinion that subject to what is stated herein above, the said Firm viz. M/s. Mayfair Maru Developers are the owners of the said Property; and are entitled to put up construction on the said Property in accordance with the approvals already obtained and to be hereafter obtained with regard to the same.

SCHEDULE

The larger parcel of land admeasuring 8580 square meters (net area after handover of D.P. Road reservation is 7,207.67 square meters) out of the larger land bearing Old Survey no. 476, New Survey no. 120, Hissa no. 2, admeasuring 9570 square meters, situate, lying and being at Village Bhayander, Taluka and District Thane, in the Registration District and Sub-District Thane and now within the limits of the Mira Bhayander Municipal Corporation and bounded as follows;

On or towards the East by : The Land bearing New Survey No. 120/3
On or towards the West by : The Land bearing New Survey No. 120/4
On or towards the North by : The Land bearing New Survey No. 120/1
On or towards the South by : 60' Road

Dated this 20th day of July, 2017



(Chandrakant Vithlani)
Advocate, High Court, Bombay.