



INDIALAW

TITLE SEARCH REPORT

AS ON 14TH JULY, 2017

TO WHOMSOEVER IT MAY CONCERN

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1. INTRODUCTION

- 1.1 This title search investigation has been conducted by INDIALAW LLP pursuant to the instructions received from Kalpataru Limited (the "Client" or "Kalpataru").
- 1.2 We understand that the Client is the developer of all that piece and parcel of land bearing Plot Nos. 225, 226 and 231 to 239, now bearing C.T.S. No. 25A/3 admeasuring approximately 4,795 square yards, that is, approximately 4,009.20 square meters situated in Village Vile Parle West, Mumbai Suburban District situated at North-South Road No.5 Juhu- Vile Parle Development Scheme, Juhu, Mumbai 400 049 ("Land") granted on lease to one Garib Cooperative Housing Society Limited, a co-operative society registered under the Maharashtra Cooperative Societies Act 1960, vide registration no. B/2896/1960 (the "Society") by the Maharashtra Housing Board ("MHB"). Kalpataru has acquired rights and entitlements to re-develop the property of the Society (as described herein below).The Land earlier formed apart of the larger land admeasuring approximately 9548.6 square meters owned by the MHB, which was subsequently allocated C.T.S No. 25A ("Larger Land").

2. DOCUMENTS REVIEWED

- 2.1 We are relying on the below mentioned documents for issuance of this report:
- i. Title report dated 05.11.2013 issued by M.T. Miskita & Co. from 1965-2015.
 - ii. Search Report dated 29.5.2017 issued by Mr. Mangesh S. Naik from 2015-2017.
 - iii. ROC search at the MCA website.
 - iv. 7/12 extract dated 22.5.2017 issued by Talathi, Vile Parle-1 for Gat No. 28
 - v. PR card for CTS No. 25A/3.

3. TITLE HISTORY

- 3.1 By and under the Indenture of Lease dated 29.8.1966 made by and between the MHB and the Society registered in the Office of the Sub-Registrar of Assurances at Bombay vide Serial No. 3305 of 1966 on 26.12.1968, MHB demised the Land unto the Society for a term of ninety-nine years commencing on and from 09.4.1964, upon the covenants and conditions therein recorded. The Society has represented to Kalpataru that the original Indenture of Lease has been destroyed



- /lost and accordingly, the Society has furnished to Kalpataru a certified copy thereof.
- 3.2 The Society constructed, and has been the owner of the five residential buildings, bearing nos. "A" to "E, having a total of 39 residential flats (collectively, the "Old Buildings"), a terrace on Old Building "C" which was adjacent to Flat no. C.23 ("Small Terrace") and six garages bearing nos. "1" to "6", out of which Garage no. 6 was used as the Society's office as referred to in the Agreement and Supplementary Agreement (both defined and referred to herein below) (collectively, the "Garages")(now demolished). The Land, the Old Buildings, the Small Terrace and the Garages are hereinafter, collectively referred to as the "Property".
- 3.3 The thirty-nine flat owner members of the Society (collectively, the "Flat Owner Members") respectively held, possessed and enjoyed the thirty-nine residential flats in the Old Buildings (collectively, the "Old Flats") and the garage owner members of the Society (collectively, the "Garage Owner Members") respectively held, possessed and enjoyed five of the Garages, and the Society occupied and used one of the Garages as its office as aforesaid until the demolition thereof, as stated hereafter. The Flat Owner Members and the Garage Owner Members are hereinafter, wherever the context so permits or requires, collectively referred to as the "Members".
- 3.4 In view of the age and condition of the Old Buildings, the Society decided in or about 2009 to re-develop the Property by demolishing the Old Buildings, the Garages and the other structures standing upon the Land, and constructing new building/s upon the Land. In view of its lack of experience, expertise and funds, the Society decided to appoint a developer to undertake such redevelopment, and it floated tender and invited offers from interested developers. The final bid and offer made by Kalpataru, along with the bid and offer made by another shortlisted developer, were put to vote at the Special General Body Meeting of the Society held on 15.11.2009, at which resolutions were passed unanimously by the Members present thereat (constituting a majority of the Members), appointing Kalpataru to re-develop the Property. Resolutions were also passed at various Annual Special General Body Meetings of the Society held subsequently from time to time, wherein the Members present approved the commercial, legal and other terms and conditions, and revisions thereof, in respect of the re-development.



- 3.5 The Municipal Corporation of Greater Mumbai ("MCGM") has issued Development Plan Remarks bearing no. CHE11805/DPWS/K/W, dated 18.02.2010 under which, inter alia, it is stated that the Land is in a residential zone, and that there are no reservations affecting the same. The said Development Plan Remarks do not mention any set-backs affecting the Land.
- 3.6 Pursuant to sub-division of the Land from the remaining portion of the Larger Land, a separate Property Register Card has been opened for the Land, and the same has been allocated C.T.S. No. 25A/3 of Village Vile Parle West. In the said Property Register Card:
- (i) The name of MHB has been mutated as the Holder,
 - (ii) Since the Land has been leased to the Society by the MHB, "H-2" has been mutated in class of holding
 - (iii) The name of the Society has been mutated as lessee of the Land.
- 3.7 By and under the Agreement dated 19.5.2010 made by and between the Society and Developer, registered in the Office of the Sub-Registrar of Assurances at Andheri No.3 under Serial No. BDR-9/9404 of 2010 ("Agreement"), the Society has granted to Kalpataru exclusive rights and entitlements in respect of the redevelopment of the Property, for the consideration and on the terms and conditions recorded and contained therein.
- 3.8 Pursuant to the Agreement, Kalpataru submitted initial building plans to MCGM on behalf of the Society, and obtained from MCGM, Intimation of Disapproval bearing no. CHE/WS/0254/K/337(NEW), dated 09.11.2010, in respect of the re-development of the Property ("IOD").
- 3.9 By and under the offer letter bearing reference no. C()/MB/ARCH/NOC/F-1788/2010 dated 23.3.2010, issued to the Society by Mumbai Housing and Area Development Board ("MHADB"), it sanctioned and allotted the FSI as stated therein in respect of the redevelopment. Further, by and under the letter bearing Ref. No. CO/MB/ARCH/NOC/F/1513/2011 dated 14.03.2011 as amended by the letter bearing reference no. CO/MB/Arch/NOC/F-591/6245/2011 dated 12.10.2011 (collectively, "MHADBNOCs"), both addressed by MHADB to the Executive Engineer Building Proposal Department (WS), MCGM, MHADB has granted its no objection to the redevelopment of the Property through utilization of the FSI stated therein and upon the terms and conditions contained therein. The initial building plans sanctioned by the MCGM vide its IOD were amended (the



"Amended Plans"), and such Amended Plans were sanctioned by the MCGM vide its letter bearing no. CHE/WS/0254/K/337(NEW), dated 29.11.2012 (the "Amended Plans Approval").

- 3.10 The office of the Executive Engineer, Building Proposals (WS), MCGM has issued its no objection bearing reference no. CHE/WS/0650/MISC/AK dated 28.02.2013 in respect of construction of an electric sub-station for power supply ("Sub-station") upon a portion of the Land, on the terms and conditions recorded therein, which was issued pursuant to the no objection certificate issued by Tata Power Company Limited ("TataPower") bearing reference no. CDD/1578/16465, dated 28.01.2013. In connection with the Sub-station, MHADB issued its no objection vide its letter bearing outward no. Ka.A./Va.Vi./Up.Vi.-2/Mu.M./1730/2014, dated 03.05.2014 addressed to the Society. In pursuance thereof, the Sub-station will be erected upon a portion admeasuring approximately 66.85 square meters of the Land, and the conditions mentioned in the aforesaid no objection certificates will have to be complied with. A sub-lease or other appropriate document may have to be executed by the Society in favour of Tata Power, in respect of the portion of the Land upon which such Sub-station shall be housed. At present, a step down transformer has been installed by Tata Power on a portion of the Land.
- 3.11 In view of the IOD the Amended Plans, the Amended Plans Approval and the other approvals obtained as aforesaid, the Society and Developer entered into and executed a Supplementary Agreement dated 20.05.2013, registered in the Office of the Sub-Registrar of Assurances at Andheri-3 vide Serial no. BDR-9/276 of 2014 ("Supplementary Agreement"), whereby certain terms and conditions of the Agreement were varied, modified and supplemented, simultaneously therewith. The Society also executed in favour of the Developer, a Power of Attorney dated 20.05.2013, registered in the Office of the Sub-Registrar of Assurances at Andheri-3 vide Serial No. BDR-9/277 of 2014, containing several powers and authorities to, inter alia, facilitate the re-development of the Property.
- 3.12 MCGM issued its Commencement Certificate bearing no. CHE/WS/0254/K/337(NEW) dated 29.7.2013, in respect of the re-development of the Property, which has been re-validated from time to time as provided therein.
- 3.13 The Land has been converted to non-agricultural use, and non-agricultural assessment levied in respect thereof has been paid.



- 3.14 MHADB has, by its Certificate bearing reference no. Co/MB/REE/NOC/F-591/1560/2013 dated 16.08.2013 granted its no objection to the Society and Kalpataru availing of loan/s in respect of the re-development and construction of the new building/s on the Land, and also to the allottees and purchasers of flats in such new building/s availing of loan/s to finance the purchase thereof, subject to the terms and conditions stated therein ("Mortgage NOC").
- 3.15 In exercise of the rights and powers granted to Kalpataru under the Agreement, and pursuant to the Mortgage NOC, Kalpataru had, by and under the Deed of Mortgage cum Charge dated 3.9.2013, registered in the Office of the Sub-Registrar of Assurances at Andheri vide Serial No. BDR-4/6515 of 2013 on 4.9.2013, made by and between Kalpataru as the Mortgagor / Borrower and Standard Chartered Bank as the Lender, *inter alia* mortgaged Kalpataru's share of the FSI / built-up area arising out of and in respect of the Land, in favour of Standard Chartered Bank sanctioning a construction loan in favour of Kalpataru, which Kalpataru had to repay in accordance with the said Deed, as more particularly contained therein. Vide two separate Deeds of Reconveyance of mortgage both dated 15.05.2017 registered under Sr. No. BDR 4 - 3922/2017 on 16.05.2017 and Sr. No. BDR 4 - 3923/2017 on 16.05.2017 executed between Kalpataru Ltd. and Standard Chartered Bank, in view of the repayment of the facilities and all the dues thereunder by Kalpataru, Standard Chartered Bank released all its right, title and interest over the said charge created.
- 3.16 Vide another Deed of Mortgage cum Charge dated 01.06.2017, registered in the Office of the Sub-Registrar of Assurances at Andheri vide Serial No. BDR-4/4516 of 2017 on 01.06.2017 ("Mortgage Deed"), made by and between Kalpataru as the Mortgagor / Borrower and IndusInd Bank Limited as the Lender, Kalpataru *inter alia* mortgaged its share of the FSI / built-up area arising out the development rights, in favour of IndusInd Bank Limited and availed of a loan of Rs.175,00,000,00/- (Rupees One hundred and seventy five crores only) subject to the terms and conditions recorded in the Mortgage Deed, as more particularly contained therein. Except the mortgage cum charge under the aforesaid Mortgage Deed, there are no other mortgages, charges or liens created by Developer in respect of the re-development of the Property.
- 3.17 The Amended Plans were further amended, and the same have been sanctioned by the MCGM vide its letter bearing no. CHE/WS/0254/K/337(NEW), dated 02.06.2017. The FSI as presently sanctioned, and as may be sanctioned from time



to time hereafter, in respect of the re-development of the Property, is hereinafter collectively referred to as the "Aggregate FSI".

3.18 Broadly, the scheme of re-development of the Property is as follows:-

- (a) Out of the Aggregate FSI available in respect of the Land, the Society has retained certain FSI/built-up area as specified in the Agreement read with the Supplementary Agreement and the balance FSI/built-up area is, as referred to therein, in consideration of the grant of rights and entitlements to Developer the absolute property of Kalpataru alone.
- (b) The new buildings to be constructed upon the Land to be known as "Kalpataru Solitaire", will comprise two wings, with three basements, and such upper floors and various common amenities, facilities and infrastructure as sanctioned, and as may be sanctioned hereafter from time to time, by MCGM and other concerned authorities (the, "New Buildings");
- (c) Other than the residential flats and car-parking spaces to be constructed by Developer for the Members / Society, under and in pursuance of the agreements and writings applicable thereto, including the Agreement read with the Supplementary Agreement all the remaining flats and car-parking spaces in the New Building/s shall belong exclusively to Kalpataru (respectively, "Kalpataru's Flats" and "Kalpataru's Car-parking Spaces"), and Kalpataru is entitled to: (i) allot and sell Kalpataru's Flats on an ownership basis under the provisions or the applicable law and allot the use of Kalpataru's Car-parking Spaces, and, (ii) grant leases, licenses and/or tenancies in respect of or otherwise transfer, alienate, deal with or dispose of, Kalpataru's Flats and Kalpataru's Car-parking Spaces;
- (d) The purchasers of Kalpataru's Flats will be admitted as members of the Society, in an agreed time period from Kalpataru recommending (in writing) their names to the Society for membership on the terms and conditions specified in the Agreement, and in accordance with applicable laws and regulations.

3.19 Kalpataru has notified us that: (i) the Members and the Society completely vacated the Property, and the Society granted a license to Developer to enter upon the entire Property for the re-development thereof as is evidenced by its letter dated 26.12.2013 addressed to Developer, which has been counter signed by Developer in acceptance and confirmation, and (ii) Developer has demolished all the Old Buildings, the Garages and other structures earlier standing upon the Land and started the redevelopment of the Property



3.20 On the basis of our aforesaid investigation, and subject to what is stated above we are of the opinion that:-

- (a) The title of the Society to the Property is good and marketable, and free from encumbrances, subject to: (i) the covenants and conditions of the Indenture of Lease (ii) the rights and entitlements in respect of the re-development of the Property granted to Kalpataru, (iii) a sub-lease or other appropriate document may have to be executed by the Society in favour of Tata Power in respect of the portion of the Land, upon which the sub-station shall be housed and (iv) the approvals, permissions, sanctions and NOCs obtained, and to be obtained, and the undertakings and indemnities executed/registered in favour of concerned authorities, in respect of the redevelopment, and the terms thereof.
- (b) Kalpataru is entitled, and has the right and authority, to re-develop the Land, and to allot and sell on ownership basis, and/or grant leases, tenancies and licenses in respect of and/or otherwise alienate and dispose of Kalpataru's Flats and Kalpataru's Car-parking Spaces, and to appropriate for itself the entire consideration and benefits received by it in respect thereof, in accordance with the agreements and writings entered into, executed and/or issued in relation to the re-development, applicable laws and regulations, and the approvals and sanctions obtained and to be obtained in respect of the redevelopment. Further, as stated above: (i) Kalpataru has executed the Mortgage Deed dated 01.06.2017 in favour of IndusInd Bank Limited and has inter alia created the mortgage of its share of the FSI /Built Up Area and receivables arising out of the sale of units to secure re-payment of the loan availed of by it, which Kalpataru has to repay in accordance with the provisions of the Mortgage Deed.
- (c) No further, other or new co-operative housing society, or other organization or entity, is envisaged to be, or will be formed and registered in respect of the redeveloped Property, and the Society will continue as lessee of the Land under the Indenture of Lease and subject to Developer's rights, entitlements and authorities as referred hereinabove, the Society will be the owner of the New Building/s. Consequently, all purchasers of Kalpataru's Flats will be required to take up membership and shareholding of the Society in respect of their flats as aforesaid and on the terms and conditions stipulated in the Agreement read with the Supplementary Agreement and will be bound by applicable laws, rules and regulations, and the bye-laws, rules and regulations of the Society.



4. STATUS OF PENDING LITIGATION

- 4.1 Gowardhandas Kapur filed Suit No. 217/2017 at City Civil Court, Dindoshi against Veena Kapur & Ors. The Plaintiff and Defendant No. 1 are ex-husband and wife. Defendant No. 3, Kalpataru Limited is the developer for redevelopment of Defendant No. 2 society property. Plaintiff is seeking injunctive reliefs against Defendant Nos.2 and 3 from handing over of all amounts/compensation and entire possession of the proposed newly constructed flat, solely to Defendant No. 1, on the basis of certain orders passed by Family Court, Bombay High Court and Supreme Court of India in his favour. No ad-interim reliefs have been granted till date. The matter is pending adjudication.
- 4.2 Garib Co-operative Housing Society Ltd. & Kalpataru have filed Writ Petition No. 2774 of 2016 at Bombay High Court against State of Maharashtra & Ors. seeking refund/set off against the levy of development charges and infrastructure charges levied by MCGM and MHADA in respect of the development of property at Juhu Vile Parle Development Scheme at Juhu, Mumbai- 400049. The matter is kept for final hearing and is tagged along with other similar batch matters.
- 4.3 In the quasi-judicial complaint filed by Kalpataru Ltd. (Complainant) against MCGM and Ors. (Respondents) on 22.12.2014 before the Assistant Assessment Collector of MCGM, Kalpataru Ltd. challenged the capital valuation and property tax amount based on Capital Value system of assessment, which came into effect from 01.04.2010 and for 2015 onwards before MMC. The matter is pending adjudication.
- 4.4 Pending hearing of quasi-judicial complaint, MCGM issued a demand for balance 50% of disputed property tax along with a warrant of attachment dated 30.01.2015 on the plot under construction. Being aggrieved by the aforesaid demand and warrant of attachment, Kalpataru filed a Writ Petition bearing No. 1253 of 2015 before the Hon'ble Bombay High Court challenging the warrant of attachment and the levy of property tax on capital value system. An ad-interim order in favour of the Kalpataru had been passed by the Hon'ble High Court of Bombay in the said Writ Petition on 25.2.2015 in respect of the aforesaid warrant. The Writ Petition is pending adjudication before the Hon'ble High Court of Bombay. However, Kalpataru has under protest and without prejudice to its rights and contentions in the pending matter, after deletion of the wrong levy of huge amount of sewerage tax (being one of the components of the property tax)



amount in the aforesaid property tax demand, made full payment of the balance property tax amount up to 31.03.2017. Further, vide letter dated 11th July 2017, MCGM has also acknowledged the aforesaid receipt of the full payment and has withdrawn the warrant of attachment and further recorded that the property is free from any attachment/encumbrances in relation to the property tax demand.

- 4.5 Balraj Kathuria (Plaintiff) filed suit S. C. Suit No. 1729 of 2013 at City Civil Court, Dindoshi against 1. Manoj s/o Balraj Kathuria 2. Poonam w/o Manoj 3. Garib Cooperative Housing Society Ltd. 4. Kalpataru Ltd. (Defendants). The Plaintiff, one of the members of the Society and flat owner, Mr. Balraj Kathuria, filed a Suit against his son and daughter-in-law seeking declaration that the Order passed by the Family Court (wherein certain rights were claimed by the daughter-in-law against the son of Plaintiff i.e., Defendant No.1) be set aside. After the death of the Plaintiff, the legal heir of the Plaintiff is to be brought on record. Kalpataru Ltd. and the Society (Defendant No.3 and Defendant No.4 respectively) have been made just proforma parties and no injunctions or reliefs have been granted against them in this matter.
- 4.6 Balraj Kathuria (Petitioner) filed Appeal from Order No. 235 of 2014 in Notice of Motion No. 1473 of 2013 in S.C. Suit No. 1729 of 2013 against 1. Manoj s/o. Balraj Kathuria 2. Poonam w/o. Manoj Kathuria 3. Garib Co- operative Housing Society Ltd. 4. Parag Munot (Respondents). Plaintiff had taken out notice of motion in the said suit seeking some ad-interim and interim reliefs, which was rejected. Hence, present appeal was filed before the Hon'ble Bombay High Court. Presently, the said appeal is pending for hearing and the court has directed family members to go for mediation exploring the possibility of settlement of dispute. No relief has been granted against Kalpataru or the Society in this Appeal. The matter is pending.

5. SRO SEARCH

1. Mr. Mangesh Naik conducted search at Sub-Registrar Offices at Andheri-1,2,3,4,5 and 6, vide Search Receipt No. 0415936 dated 25.05.2017 for the period 2015-2017 in respect of the said Land and found the following entries:
- i. Mortgage Deed dated 17.3.2016 registered under Sr. No. BDR 4-2708/2016 on 22.3.2016 executed between Kalpataru Ltd. through authorized signatory, Imtiaz Kanga (Executors) and Standard Chartered Bank through authorized signatory Mandar Chonkar (Executants) for a value of Rs. 1,50,00,00,000/-.



- ii. Reconveyance of mortgage dated 15.5.2017 registered under Sr. No. BDR 4 - 3922/2017 on 16.5.2017 executed between Kalpataru Ltd. through authorized signatory, Imtiaz Kanga (Executors) and Standard Chartered Bank through authorized signatory Prerana Chavan (Executants).
- iii. Reconveyance of mortgage dated 15.5.2017 registered under Sr. No. BDR 4 - 3923/2017 on 16.5.2017 executed between Kalpataru Ltd. through authorized signatory, Imtiaz Kanga (Executors) and Standard Chartered Bank through authorized signatory Prerana Chavan (Executants).

6. REVENUE SEARCH

We have procured 7/12 extract dated 22.5.2017 issued by Talathi, Vile Parle-1 for Gat No. 287 and PR card for CTS No. 25A/3, and observe that the name of Mumbai Housing Board is recorded as the actual owner. The name of Garib Cooperative Housing Society Ltd., is recorded on the PR Card as lessee.

7. ROC SEARCH

We conducted an ROC search at the MCA website for charges registered in the name of the Developer and found the following:

A charge created vide Mortgage Deed 01.06.2017 with respect to credit facility amounting to Rs. 175 Crores secured from IndusInd Bank Limited by mortgaging the Kalpataru Limited's share of FSI/built up area and receivables.

8. OPINION

- 8.1 Based on the documents perused by us, we are of the opinion that Kalpataru Ltd. has a valid right, title and interest as a developer over the Land and the details of dues, litigations, details relating to mortgage/charge created in respect of the said Land is as mentioned hereinabove in Clauses 4, 5, 6, and 7.

Yours truly,

For Shiju P.V.

Partner

INDIALAW LLP