

NACHIKET G. BHATT

B. Com., LL.B.

Advocate High Court

TITLE CERTIFICATE

Re: ALL THOSE pieces or parcels of land bearing CTS Nos. 328 and 329 (Part) admeasuring about 3428.22 sq. meters or thereabouts and after deduction of the portion of land admeasuring 512.60 sq. meters acquired by the Municipal Corporation of Greater Mumbai for 9.15 sq. meters wide D. P. Road now admeasuring about 2916.62 Sq. Meter and also known as sub-divided Plot "F" of village Gundavli, Taluka Andheri (East), Mumbai Suburban District situate lying and being at the South of N. S. Phake Road, Andheri (East), Mumbai 400 093 (hereinafter referred to as the said Property).

TO WHOMSOEVER IT MAY CONCERN

M/s. ZIRE RUSHI CONSTRUCTION (Prior to its reconstitution Originally known as M/s. Hilla Zion Construction) a Partnership firm of 1. Jal Pvt. Ltd. 2. Mr. Jayesh P. Choksi, 3. Mr. Anil R. Shah and 4. Mrs. Seema A. Shah , having its Office at CTS No.329,A, N. S. Phadke Marg, Andheri (East), Mumbai 400 093, has been owning and developing said property and intend to sell and dispose of Flats and premises in the building/s and structures under construction on the said property and have therefore, instructed me to investigate and certify their title to the said property and their right to sell Flats and premises of the project under construction thereon.

1. For the aforesaid purpose I have perused various documents and papers submitted to me by said M/s. Zire Rushi Construction and its partners. The particulars of all the said documents and some of the facts ascertained there from by me are as under:

(a) Photo copy of the Probate dated 24th October, 1964 granted by the Hon'ble High Court at Bombay in respect of the Will and Testament of Behram Shavaksha Panthaki in T.& I. J. Petition



No.463 of 1964 in favour of the executors and Trustees 1. Jehangir H. Cama and 2. Kaikeushru Hormasji Cama.

- (b) Photo copy the Indenture dated 16th February, 1967 Between said 1. Jehangir H. Cama and 2. Kaikeushru Hormasji Cama in their capacity as the Executors of the Will of Late Behram S. Panthaki, therein called "The Executors" of the First Part, said 1. Jehangir H. Cama and 2. Kaikeushru Hormasji Cama in their individual capacity, therein called "The Confirming Parties" of the Second Part and Nadirshah Rustamji Mulla and 6 Others being the then Trustees of the Funds and Properties of Parsee Panchayat, Bombay (hereinafter briefly referred to as "The said Trust", therein called "The Trustees" of the Third Part, Registered with the Office of the Sub-Registrar of Bombay at Sr. No.BOM/R/1967 whereby various lands more particularly described in the Schedule there under written were conveyed and transferred to the said Trustees.
- (c) Development Agreement dated 20.11.2000 made between the then Trustees of the said Trust and M/s. Rushi Construction Co., and Power of Attorney dated 20.11.2000 granted by the said Trustees pursuant to the said Development Agreement.
- (d) Copy of the Common Judgment and Order dated 30.9.2004 passed by Justice S. K. Shah in Suit No.40 of 1982 filed by the Trustees of the said Trust against P. D. Zilla & Others and Suit No.58 of 1982 filed by said P. D. Zilla & Others against the said Trustees wherein said P. D. Zilla was claiming some rights over the entire S. No.84 which was subsequently identified as CTS No.329 admeasuring about 13128.50 Sq. Yards equivalent to 10977 Sq. Meters. passed by His Lordship Mr. Justice S. K. Shah, it was held that suit properties which included the entire CTS No.329 belonged to the Trustees of the Trust absolutely and over which said P. D. Zilla and Others had no rights or interest whatsoever. The exclusive possession of the Trustees of the Trust was also confirmed.
- (e) Copy of the Title Certificate dated 17th May, 1999 issued by Mulla & Mulla & Craigie Blunt & Caroe, Advocates & Solicitors, who certified that subject to pending litigation as per the list annexed therewith, the title of the Parsi Panchayat Funds & Properties as clear and marketable in respect of various lands described in the Schedule thereunder, which is same as the Schedule under the

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aforesaid Indenture dated 16th February, 1967. and that all the said lands belong to the said Trustees.

- (f) The Judgment and Order dated 1.10.2003 passed by His Lordship Mr. Justice Rebello whereby the land in CTS No.329 was ordered to be released to the Trust and the Court Receiver, High Court, Bombay, who was got appointed in collusive Suit No.3408 of 1988 filed by one Manohar D. Damle against said P. D. Zilla, was directed to handover possession of the land comprised in CTS No.329 to the Trust. The said order also held that the alleged subdivision made of the CTS No.329 at the instance of P. D. Zilla was false and fraudulent.
- (g) Copies of (i) Order passed in Appeal No.608 of 2005 filed by Late P. D. Zilla against the said Judgment & Order of Hon'ble Justice S. K. Shah dated 30.9.2004 whereby the said Appeal was dismissed on as abated. (ii) Judgment and Order dated 27.4.2010 whereby the Chamber Summons No.546 of 2010 taken out by heirs of Late P. D. Zilla for restoration of the Appeal No.608 of 2005 was rejected. (iii) Orders dated 3.12.2010 passed by the Hon'ble Supreme Court on Special Leave Petitions to Appeal (Civil) No.17711/2010 and 11751 of 2010 (For interim reliefs) filed by the said heirs of late P. D. Zilla challenging the Judgment and Order dated 27.4.2010 passed on their Chamber Summons.
- (h) Copies of the P. R. Cards issued on 7.4.2011 in respect of CTS Nos.329 and 328.
- (i) Copy of the IOD under File/Memorandum No. CE/7625/WS/AK dated 16th January, 2002 issued by the Executive Engineer, Bldg., Proposal, (W.S), K/East Wards in favour of the Trustees of the Parsi Panchayat Funds & Properties through its CA Mr. Anil Shah (Partner of Rushi Construction Co) sanctioning plans of the proposed building on the said property.
- (j) Copy of the Part Commencement Certificate under the same file Number dated 18th January, 2010.
- (k) Copy Certified as True Copy by a Notary Public of the Indenture dated 28th December, 2011 Registered with the Office of the Joint Sub-Registrar, Andheri 1 at Sr. No.BDR-1/14785 / 2011 between Mr. Dinshaw Rusi Mehta and 6 Others being the present Trustees of

the Parsee Punchayet Funds & Properties, Bombay, a public Charitable Trust as the Vendors named therein and M/s. Hilla Zion Constructions as the Purchasers named therein whereby the said Trustees sold conveyed and transferred the said property to said Hilla Zion Constructions for the consideration and upon terms and conditions contained therein.

- (l) Copies of various documents/writings mentioned in the recitals to the Indenture referred to in paragraph (k) above which includes (a) A resolution dated 24th March, 2011 passed by the said Trustees, (b) the MOU dated 2nd April, 2011 between the said Trustees and the said Purchasers (c) Resolution of the Trustees dated 2nd April, 2011, (d) An Agreement for Sale between the said Trustees and the Purchasers dated 26th July, 2011, (e) Application No.86 of 2011 made by the Trustees to the Joint Charity Commissioner, Maharashtra State for grant of sanction to the proposed sale of the said property along with the land comprised in CTS No.345 to the Purchasers under Section 36 (1) (a) of the Bombay Public Trust Act, 1950, (f) Order dated 15th October, 2011 passed by the Jt. Charity Commissioner, Maharashtra State allowing the said application No.86 of 2011 and (g) Misc. Application No.61 of 2011 made to the Jt. Charity Commissioner by the said Purchasers and the Order 17.12.2011 whereby the time for completing sale was extended.
- (m) Power of Attorney dated 29th December, 2011 Registered with the Office of the Joint Sub-Registrar, Andheri 1 at Sr. No.BDR-1/14787 / 2011 granted by said Mr. Dinshaw Rusi Mehta and 6 Others in favour of the partners of M/s. Hilla Zion Constructions.
- (n) Copy of a Declaration cum Indemnity dated 20th January, 2011 made by heirs of Late Pravinchandra Shah whereby they declared and confirmed that neither Gajariben Raman Dodhi nor their father ever had any possession right interest or benefit in the said property or any portion thereof and that the MOUs made between said Gajariben and their father were sham and bogus and unenforceable and that their father, for lack of rights, could not have agreed to assign the same to Mr. L. T. Maheshwari, the Proprietor of Goldmine Properties Corporation.
- (o) Copy of an Agreement to Surrender & Release dated 20th January, 2012 made between Hilla Zion Constructions as the Owners named therein and 1. Dilip Babu Dhodia and Mrs. Geeta Dilip Dhodia as



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the Occupants named therein whereby the said Occupants surrendered and released their claims and rights in respect of an illegal structure admeasuring about 250 Sq. Foot on the land bearing CTS No.328.

- (p) Copy of another Agreement to Surrender & Release dated 20th January, 2012 made between Hilla Zion Constructions as the Owners named therein and 1. Kanti (Kantu) Babu Dhodia and his 3 family members as the Occupants named therein whereby the said Occupants surrendered and released their claims and rights in respect of an illegal structure admeasuring about 150 Sq. Foot on the land bearing CTS No.328.
- (q) Copy certified as True Copy by a Notary Public of a Deed of Assignment & Release dated 30th January, 2012 made between one Hiranath Holdings Pvt. Ltd., as the Assignors named therein, Hilla Builders Pvt. Ltd., as the Confirming Party named therein and M/s. Hilla Zion Construction as the Assignee named therein and Registered with the Office of the Jt. Sub-Registrar, Andheri 1 at Sr. No.BDR-1/3444 of 2012 whereby said Assignors, who claimed to have acquired rights from Occupants of various rooms/structures on the portion of land bearing CTS No.328, have assigned and surrendered all their such rights claims and interests under various agreements annexed with the said Deed, for a consideration and other terms and condition contained therein.
- (r) Copy of Copy Deed of Assignment/Surrender/ Release dated 31st January, 2012 made between one Mr. L. T. Maheshwari Proprietor of Golmine Properties Corporation as the Assignor named therein, Hilla Builders Pvt. Ltd., as the Confirming Party named therein and M/s. Hilla Zion Construction as the Assignee named therein and Registered with the Office of the Jt. Sub-Registrar, Andheri 1 at Sr. No.BDR-1/3445 of 2012 whereby said Assignor, who claimed to have acquired possession and rights from Gajariben Raman Dhodhia in respect of an area of 2422 Sq. Meters of CTS No.328 and an area of 1607.9 Sq. Meters of CTS No.329, have declared and confirmed that said Gajariben falsely claimed such rights and by said Deed said Mr. Maheshwari assigned and surrendered all and whatever were their claimed rights claims and interests on the portions of the said lands, for a consideration and other terms and condition contained therein.



- (s) Copy of the Deed of Joint Venture/Association of Persons dated 27th May, 2012 between Hilla Zion Construction and Rushi Construction Co., whereby both the said parties agreed to jointly develop the said property in the firm name and style of M/s. Zire Rushi Consturction.
 - (t) Deed of Confirmation dated 4th April, 2013 Registered with the Office of the Jt. Sub-Registrar, Andheri-1 at Sr. No.BDR-1/3721/2013 made by Gajariben R. Dhodia and 4 Others in favour of Hilla Zion Construction.
 - (u) Deed of Retirement dated 3rd April, 2014 between Jal Pvt. Ltd. and Mr. Jayesh P. Choksi on the one hand as Continuing Partners and Hilla Builders Pvt. Ltd. on the other hand as the retiring Partners pursuant whereto the name of the firm was changed from Hilla Zion Construction to Zire Rushi Construction.
 - (v) The Agreement for Takeover of Business dated 5th April, 2014 made between Zire Rushi Construction (The firm whose original name was Hilla Zion Construction) and Rushi Construction Co. whereby the Zire Rushi Construction (Firm) took over from Zire Rushi Construction –the AOP the entire business including all assets, effects, rights, interests as well as all obligations and liabilities of the said ZRC – AOP.
 - (w) Deed of Admission dated 26th April, 2014 whereby said Jal Pvt. Ltd. and Mr. Jayesh Choksi the partners of reconstituted firm of Zire Rushi Construction admitted Mr. Anil C. Shah and Smt. Seema A. Shah as partners in the said firm.
2. Apart from the aforesaid documents, I have been handed over copies of the following other correspondence/papers:
- a. Letter No.Ack/E/58321/AEMI dated 13.3.2012 issued by Asst. Engineer (Maintenance), K/East Ward to Mr. Anil Shah of Rushi Construction Co., whereby he has annexed copies of various notices issued to occupants of structures on the portion of CTS No.328 under Section 314 of BMC Act and has further certified that after dismissal of W. P. No.2819 of 2001 filed by Mrs. Gajri Raman Dhodia and Others against M. C. G. M., the unauthorized structures were demolished and D. P. Road was constructed thereafter by MCGM.



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- b. Letter dated 1st June, 2012 sent by M/s. Adhia & Adhia to me for their clients one M/s. M. K. Associates in response to my Public Notice dated 18th May, 2012 and appeared in Janmabhoomi (Gujarati News Paper) on 21st May, 2012 whereby their clients purported to make a claim of having acquired development rights in respect of the land bearing CTS No.328 admeasuring 3237.38 Sq. Meters from (1) Babu Soma Dhodia and (2) Raman Babu Dhodia vide an agreement dated 18th January, 1984 and their clients also purported to claim possession of the said land.
 - c. Letter dated 8.6.2012 sent to me by Advocate Mr. Ajay R. Karuwath for his clients Mrs. Gajariben Raman Vanjaria (Dhodia) and 4 Others in response to the aforesaid Public Notice whereby his clients claimed to be heirs of Late Raman Dhodia and further purported to claim their predecessors having executed the alleged Agreement dated 18th January, 1984 in favour of said M. K. Associates and having put them in possession of not only CTS No.328 but also CTS No.329(Part) having total area of 3428.22 Sq. Meters.
 - d. Letter dated 17th June, 2012 from myself for Hilla Zion Construction to Advocate Mr. Ajay R. Karuwath denying thereby in detail the false claims made by said Gajariben & Others.
 - e. Letter dated 19th June, 2012 from Hilla Zion Construction sent to said M/s. Adhia & Adhia whereby their claims made by said M. K. Associates were denied.
 - f. Written Opinion dated 12th February, 2013 issued to Mr. Anil Shah of the JV partner M/s. Rushi Construction Co., by M/s. Jhangiani, Narula & Associates, Advocates with regard the claim made by Arjan Sadarangani & Others against Yogesh Ramanbabu Dhodia & Others as contained in the Suit No.2005 of 2011 filed in the High Court at Mumbai.
3. Besides perusal of the aforesaid documents, correspondence etc. at my request, the firm M/s. Hilla Zion Construction as it was originally known had also got searches for last 51 years at the Offices of the Sub-Registrar of Assurances at Mumbai and Bandra through Mr. Shriniwas A. Chipkar, Property Investigator who has after taking such search, submitted his report dated 27.11.2012. I have perused the said Report.

4. At the instance of firm Hilla Zion Construction as it was originally known, with a view to investigate and certify their title to the said property, I had also issued Public Notices appearing in the editions dated 21st May, 2012 of the news papers 1. Free Press Journal (English), 2. Janmabhoomi (Gujarati) and 3. Navshakti (Marathi), in response to which only two claim letters were received from said M/s. M. K. Associates and Mrs. Gajariben Dhodia & 4 Others through their respective Advocates which have been duly replied and claims made therein have been categorically denied.
5. To ascertain the true position with regard to the actual and physical possession of the property, before issuing this Certificate, I have personally visited the said property and I noticed that construction undertaken originally by Zire Rushi Construction – AOP and now by Zire Rushi Construction – The partnership firm is going on in full swing. Barring supervisors, men, material, Plant and Machinery of Zire Rushi Construction and/or of their contractors deployed for the work, none other was found on the property. The property is fully fenced and protected by tin sheets and at the entrance gate, boards and hoardings of Zire Rushi Constructions are appearing in bold letters.

From the aforesaid documents, correspondence and papers so also from replies, clarifications and explanations given to me mainly by Mr. Anil Shah one of the partner., who, I am told has, as partner of M/s. Rushi Construction Co., as per the mutual understanding undertaken the responsibility to remove all clogs on the title of M/s.ZRC – the Firm to the said property. From the present partners of Zire Rushi Construction, I have also ascertained the correctness of the facts and information contained hereunder.

FACTS ASCERTAINED AND MY OBERVATIONS:

1. By and pursuant to the said Indenture 16th February, 1967 being document at paragraph 1 (b) above, various pieces of agricultural lands in Revenue Villages Gundavli more particularly described in the Schedule under the said Indenture, which included the said property, were transferred by the Executors of the last Will and Testament of Late Behram S. Panthaki in favour of then Trustees of Parsee Punchayet Funds & Properties (The said Trust). From the 7/12 extracts in respect of the Survey Numbers of the said property, I find that the same have been duly mutated and transferred to and stand in the names of the Trustees of the said Trust and there is no entry in other rights column.

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The "Kamijast" patrak reflects that on and after conduct of City Survey, the Original S. No.84 was given new CTS No.329 and the Original S. No.31 was assigned CTS No.328 of Village Gundavli.

2. Some portions of the said property, particularly CTS No.328, in the past, were encroached upon by some illegal hutment dwellers, who had without obtaining any prior permission of either BMC or the Trustees, erected illegal rooms and structures. One of the main encroacher was one Raman Babu Dhodia who had, besides rooms used by his family, let out some rooms to other occupants.
3. Smt. Gajariben Raman Dhodia, Smt. Jyotsana Raman Dhodia, Mr. Yogesh Raman Dhodia, Smt. Ramila Narendra Patel nee Ramila Raman Dhodia, Smt. Pramila Kanu Patel nee Pramila Raman Dhodia and Smt. Savita Dinesh Rawat nee Ms. Savita Raman Dhodia claim to be the only heirs and legal representatives of Late Shri Raman Babu Dhodia who died intestate at Mumbai on 24.6.1993.
4. The said Raman Babu Dhodia (The deceased) was and the above named present heirs i.e. Gajariben and Others all are illiterate people. Prior to his death, since said deceased and his family did not have any shelter, the said deceased, without realizing about illegality of his acts, had encroached upon and constructed on a small portion of the said property comprised in CTS No.328 owned by the Trustees of the said Trust.
5. Despite strong objection and complaints of said Trust, said deceased managed to keep the said structure protected with some difficulty. The father of said deceased i.e. Babu Soma Dhodia had on his own left and abandoned the family and was missing since 1977-78 and was never seen by anybody thereafter.
6. Despite non-existence of said Babu Soma, the deceased managed, with the help of some unscrupulous vested interests, to enter names of himself and his father on the City Survey Record relating to the said property on the basis of some forged / fabricated papers which were got prepared by such vested interests. Barring the said chawl structure, neither the deceased nor his present heirs were ever in possession of any part of portion of the said property or any other adjoining land of the said Trust. It is pertinent to note that the land comprised in the said property being, at the relevant time, an agricultural land, the City Survey record has to show it to the name of the Govt. and ownership

and holding rights are always recorded on 7/12 extract. Thus mutation entry showing names of said Babu Dhodia and Raman Dhodia was since inception an illegal and void entry.

7. After getting the names of the deceased and his father entered on the City Survey Record in respect of some non-existing imaginary area of the said property, said vested interests, who probably had an eye on grabbing the lands of the said Trust, during the period between 1980 and 1990, approached the deceased with some typed papers and offered to pay him some paltry sums against the said deceased and/or his family members signing the said papers. Being in need of monies, the deceased and/or his family members, at the instance of such party therefore, signed such papers brought to them. Thereafter, when other unscrupulous persons learnt about one such party having got writings signed by the deceased and/or his heirs, adopting similar modus operandi, many such other parties also approached the deceased and/or his family members, paid some paltry sums and made them sign writings and papers.
8. The then Trustees of the said Trust had already filed against the said deceased and others a suit No. 2341 of 1986 for removal of encroachment and the documents exhibited with the said suit clearly show that the Trustees never accepted any of the false claims made by said M. K. Associates.
9. When the said Trust learnt about name of the deceased with the name of his father having been shown illegally on City Survey record as holder of large area of their property, it applied for removal of their names. The present heirs were served with notices. Since the present heirs and/or the vested interests claiming through them, failed to produce legally tenable documents in support of their claims of possession and rights by Order dated 11.01.2002 the City Survey Officer-Vile Parle deleted names of the deceased and his father. None has thereafter challenged the said Order.
10. When the M.C.G.M. acquired portion of land admeasuring about 512.60 Sq. Meters out of said CTS No.328, on finding the heirs and others claiming through them occupying illegal rooms/structures on the said acquired portion, notices were served on all occupants. None was able to produce any document to prove legality of the structures and their possession and therefore, due process for demolition was also adopted by serving demolition notices. Mrs. Gajariben & Others therefore, had

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filed Writ Petition No. 2819 of 2001 challenging the said Notices which was not pursued and therefore, dismissal. After dismissal of the said W. P. the M. C. G. M. after serving fresh demolition Notices, demolished all the said structures on the said portion of CTS No.328 some where in the year 2007-08 and the BMC thereafter constructed a D. P. Road. Said Gajariben and Others thereafter left the property and never claimed any rights over the same.

11. After receiving a detail reply to their advocate's said letter dated 8.6.2012 by my letter dated 17th June, 2012, whereby said Gajariben and Others (Present heirs) were notified that unless they unconditionally withdraw their false claims, M/s. Hilla Zion Construction (Now known as Zire Rushi Construction) would launch serious criminal as well as civil proceedings against them which will include claims for heavy damages, said Gajariben & Others, on their own approached M/s. Hilla Zion Construction as it was then known and voluntarily executed the said Deed of Confirmation dated 4th April, 2013, whereby, besides confirming the above facts, they also confirmed that barring the said Chawl structure demolished in the year 2007-08, neither the said heirs nor the deceased nor his father ever had any legal right title or interest of any nature whatsoever in or upon part or portion of the lands belonging to the said Trust and that none of them were ever in possession use or occupation of any other part or portion of the said property or any other property of the said Trust and that after demolition of the structure, the heirs on their own left the land with debris of their demolished structure and have never entered the said property or any other adjoining land thereafter.
12. The said heirs have also confirmed that to their knowledge, after removal of their structures and construction of D. P. Road, the said Trust held vacant possession of the entire land (barring the land taken over by BMC for D.P. Road and on which now a Road has been constructed) and pursuant to its agreement and arrangement with M/s. Rushi Construction Co., the trust handed over the said lands comprised in CTS No.328 and 329 for its development to said Rushi Construction Co.
13. As regards purchase of the said property by M/s. Hilla Zion Construction (as it was then known and now after retirement of Hilla Builders Pvt. Ltd. known as Zire Rushi Construction) from the Trustees of the said Trust by and under the said Indenture dated 28th December, 2011, I have perused all prior MOU, Agreement for Sale, the Public

Notice issued by the Advocates for the Trustees, the Orders of the Joint Charity Commissioner etc. referred to in paragraph 1 (l) above and I find that the transaction was completed after due compliance of prescribed procedure and law. It is specifically provided in the said Indenture that the Trustees were conveying and transferring the said property on "As is where is basis" and "as it is what it is basis" and subject to various litigation, encumbrances and claims an exhaustive list whereof is at Annexure "C" to the said Indenture.

14. Based on the claims/objections received by the Solicitors for the Trustees in response to their Public Notice, in Annexure "C", they have specified various claims/encumbrances/Litigation and my opinion with regard to all such claims is as under::

a) **Claims made by Rushi Construction Co.**

On the basis of an Agreement for Construction with the Trustees of the Trust, M/s. Rushi Construction Co., were put in actual and physical possession of the said property and some other area of CTS No.329. Prior to purchasing and acquiring the said property from the Trustees vide the said Indenture dated 28th December, 2011, Hilla Zion Construction (Now known as Zire Rushi Construction) had already negotiated settlement with said Rushi Construction Co., who had obliged to issue its No-claim letter in favour of the Trust at the instance of Hilla Zion Construction. After completion of purchase and acquisition, in view of M/s. Hilla Zion Construction having accepted their possession and entered into a joint venture with them to secure vacant possession of land, the claims of Rushi Construction Co., stood fully settled and converted into a share in the Joint Development of the property, subject of course to the subsequent takeover of the business by Zire Rushi Construction – the firm and admission of Mr. Anil Shah & Mrs. Seema Shah into the firm of Zire Rushi Construction.

b) **Claims of Late P. D. Zilla and after his death by his heirs.**

- i. The Judgment and Decree of His Lordship Mr. Justice S. K. Shah dated 30.9.2004 has completely negated the claims of Late Mr. P. D. Zilla.
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- ii. The heirs of said P. D. Zilla had belatedly preferred Appeal Nos.608 and 609 of 2005 against the Judgment of Justice S. K. Shah and both the said Appeals were dismissed by their Lordships the Hon'ble Mr. Justice D. K. Deshmukh and Mr. Justice R. V. More vide Order dated 27th April, 2010.
- iii. The said heirs of Late P. D. Zilla then preferred two SLPs (Civil) Nos.17711 of 2010 and 17751 of 2010 in the Hon'ble Supreme Court which were also dismissed on 3.12.2010.
- iv. The said heirs thereafter made a fresh application in the Hon'ble Supreme court for Modification/clarification of the said Order dated 3.12.2010 and the said application was also dismissed.
- v. So far as the possession of CTS No.329 the same was handed over to the Trustees vide the said the Judgment and Order dated 1.10.2003 passed by His Lordship Mr. Justice Rebello in Suit No.3408 of 1988.
- vi. Thus Late P. D. Zilla and after his death, his heirs exhausted all their remedies available in law and now they cannot adopt any other proceeding to agitate their alleged claims.

c) Claims of Hiranath Holdings Pvt. Ltd., and M/s. Goldmine Properties Corporation:

In law, even though none of the said claims were tenable or enforceable and none of said claimants were in position to establish and/or enforce any of their alleged claims made through said Gajariben & others, in view of the two Registered Documents mentioned at paragraph 1 (q) & (r) , their claims now stand duly surrendered assigned and released to M/s. Hilla Zion Construction (Now known as Zire Rushi Construction).

d) Disputes with Jumbo Darshan CHS Ltd.

- i. I have perused the copies of the proceedings which were initiated by the Trust and were continued by Rushi Construction Co., under their authority derived by the said Power of Attorney dated 20.11.2000.



- ii. Firstly, the said dispute relate to a small portion of CTS No.329 (Part) admeasuring about 8 Gunthas i.e. 809.6 Sq. Meters lying on the South east of the CTS No.329(P) comprised in the said property. Said disputes therefore do not and cannot affect the rights of Hilla Zion Construction in respect of the said property.
- iii. Secondly, under clause (E) on page 14 of the said Indenture dated 28th December, 2011, it is specifically agreed and provided that since the Purchaser i.e. Hilla Zion Construction having purchased the said premises i.e. the property mentioned herein, on "as is where is" and "as it is what it is" basis with burden of all claims, encumbrances, litigation etc. all benefits including possession and title of any portion of land comprised in CTS No.328 and 329 (Part) received by Purchaser on settlement / clearance of any such claim/encumbrances, shall belong absolutely to and vest in Purchaser and the Trust shall have no claim over the same. The Purchaser i.e. Hilla Zion Construction (Now known as Zire Rushi Construction) are pursuing the said litigation with said Jumbo Darshan CHS Ltd., as the present owners of the said property. Therefore, in future, if they succeed in the said litigation and/or obtains possession of the portion involved in the said litigation on settlement, the same will belong to M/s. Zire Rushi Construction and consequently the area of CTS No.329 (Part) will stand increased and the Zire Rushi Construction will be entitled to utilize development potential of the said portion being the subject matter of dispute with said Jumbo Darshan CHS Ltd.

e) **Claims of M/s. M. K. Associates and Suit No.2341 of 1986**

- i. The above suit was filed by the Trustees against Late Raman Dhodia & M. K. Associates for removal of encroachment as it then existed.
- ii. I am satisfied that the documents on which said M. K. Associates made claims were either forged and/or fabricated and did not vest any rights in them. The Confirmation by said Gajariben & her children vide said Deed of Confirmation dated 4.4.2013 also establish that since they never had right title or possession as falsely

claimed by said M. K. Associates, they could not have granted any rights in respect of such non-existing property to said M. K. Associates.

- iii. I have also noted that the father of Raman i.e. Babu had left said Raman and his family way back in the year 1977-78. Still M. K. Associates purports to claim having acquired development rights through said Babu who did not exist at the time of the said agreement of 1983.
- iv. Besides that, the correspondence annexed with the Plaint in the above suit clearly shows that the Trust had denied the alleged claims/rights of M. K. Associates way back in 1985-86. Still said M. K. Associates did not file any proceedings to establish their alleged claims.
- v. M/s. Hilla Zion Construction as it was then known, has also denied their alleged claims/rights way back in June, 2012. Till date said M. K. Associates have not attempted to agitate their alleged claims rights which clearly shows non-existence of any such right/claim.
- vi. As regards the suit No. 2341 of 1986 which was filed by the Trustees, when Hilla Zion Construction purchased and acquired the said property, they had found only Rushi Construction Co. in vacant possession of the said property. When said M. K. Associates attempted high handed trespass to stake false claim of possession, Rushi Construction Co. thwarted such attempt and Mr. Anil Shah has filed an FIR dated 9.4.2012 against the partners of said M. K. Associates in Vile Parle (East) Police Station. Since then none from M. K. Associates is seen even loitering around the said property.
- vii. As regards the actual possession, I have verified the real position by personal visit and personally know that the alleged claim of possession by said M. K. Associates is false and baseless.
- viii. I am therefore more than satisfied that none of the alleged claims of said M. K. Associates are tenable and/or enforceable.

- ix. At the request of Hilla Zion Construction as it was then known, the Trustees therefore, have withdrawn the said Suit No. 2341 of 1986 because no encumbrance whatsoever was found and there was no sense in further prosecuting the said suit.
- f) In response to my public notice, except said Gajariben and her children and said M. K. Associates, none other has staked or lodged any claim. Even said Gajariben & Others and said M. K. Associates have not produced any documentary evidence in support of their alleged claims. In view of what is stated above, so far as Gajariben & Others are concerned, by their own Deed of Confirmation, they have disclaimed their alleged claims and rights. So far as the alleged claims of M. K. Associates, in view of what is stated in paragraph (e) above, none of the alleged claims are tenable or enforceable.
- g) **Suit No.2005 (Lodg. No.1401) of 2011 filed by Arjan Sadarangani & Others against heirs of Late Raman Dhodia i.e. Yogesh Ramanbabu Dhodia & Others, the Trust being one of the parties and claims of the Plaintiff on land comprised in CTS No.328:**
- i. From the declaration and confirmation dated 4.4.2013 made by Gajariben Dhodia & Others, it is clear that said Arjan Sadarangani & Anr have with a view to stake false claim obtained signatures/thumb impression of one or the other of the Dhodia family on some fabricated documents.
- ii. The document relied upon in the suit is for an area of 2093.80 Sq. Meters. At the relevant time, the area of CTS No.328 as reflected by revenue records was 2493.80 Sq. Meters and not 2093.80 Sq. Meters as claimed. The alleged document also refers to some CTS No.328/1. However, there does not exist any land with CTS No.328/1.
- iii. The area of CTS No.328 came to be amended from 2493.80 Sq. Meters to 2093.83 Sq. Meters on application of Rushi Construction Co., only in the year 2001. Therefore, the document which shows such
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amended area on 18.12.87 clearly shows that the same is fabricated on some old stamp papers only after amendment of the area.

- iv. For the various reasons given in the opinion of M/s. Jhangiani, Narula & Associates dated 12th February, 2013, with which I fully agree, the suit itself is not tenable in law and is liable to be dismissed.
- v. It is noted that said Arjan Sadarangani & Anr., after filing the said suit, have not taken out any application for any interim or ad-interim relief. This conduct shows that the suit is filed merely to create a nuisance value and there is no bona fide claim which the Plaintiffs wish to pursue.
- vi. Similarly, registering a lis pendense after filing such a false suit is nothing but an attempt to create a nuisance value and extortion. I firmly believe that such entries of lis pendense cannot create any clog on clear title.
- vii. Said Sadarangani & Anr., are well aware about the Trustees having sold the said property to Hilla Zion Construction (Now known as Zire Rushi Construction) and about the on going construction by them. Still they have not made any of the said parties as parties Defendant to the said suit.
- viii. For the aforesaid reasons, I am of the view that no relief can be granted to the Plaintiffs in the said suit.

15. I have seen certified copies of the latest property cards in respect of both CTS Numbers comprised in the said property. They however, do not show names of either Trustees of the said Trust or Hilla Zion Construction (now known as Zire Rushi Construction) as holders. On my query, I have been told that since the property originally was for agricultural user, on P. R. Cards only name of Govt. will be shown as holder. The 7/12 extracts however, shows names of the Trustees as the holders. I am also told and assured that for the on going construction, N. A. permission was applied for and obtained and thus, now the user of the land has been converted into non-agricultural. Mr. Anil Shah has



also told me that an application for entering name of Hilla Zion Construction as holders on the P. R. Cards was made to City Survey Officer. However, in view of the pending litigation with said Jumbo Darshan CHS Ltd., the original files containing records have been sent to higher authorities before whom such litigation is pending and therefore, till all the said record comes back to the City Survey Office, no changes, as applied can be made. I have been assured that necessary changes will be got made in City Survey Records as well as 7/12 extracts as soon as the litigation with Jumbo Dardhan CHS Ltd., is concluded and decided one way or the other. It is also represented to me by Mr. Anil Shah that despite there being no mutation on P. R. Cards, the Plans of the on going construction were originally got approved in the name of the Trustees on the basis of the 7/12 extracts and are now being amended on the strength of the Registered Ownership documents of Hilla Zion Construction (now known as Zire Rushi Construction) and that there is no irregularity in the same.

16. As regards the status of Hilla Builders Pvt. Ltd., being one of the partners of M/s. Hilla Zion Construction and in whose favour separate Conveyance was executed by the Trustees of the said Trust at the instance and request of all the partners of the firm in respect of the land locked Plot bearing CTS No.345, by the Deed of Retirement dated 3rd April, 2014, said Hilla Builder Pvt. Ltd., have retired from the firm of M/s. Hilla Zion Construction, which on such retirement renamed as Zire Rushi Construction. Thus said Hilla Builders Pvt. Ltd., are no more partners of renamed firm of Zire Rushi Construction (Originally known as M/s. Hilla Zion Construction).
17. Pending retirement of Hilla Builders Pvt. Ltd., from the said firm Hill Zion Construction (After retirement now renamed as Zire Rushi Construction), the other partners of the firm namely Jal Pvt. Ltd., and Shri Jayesh P. Choksi, with a view to develop the said property in joint venture, entered into a Joint Venture with Rushi Construction Co. under a Deed of AOP in the name of Zire Rushi Construction – AOP and the said AOP had carried out part of the Development and allotted Flats to prospective purchasers against receiving advances and had paid and discharged the service tax liabilities on such advances so received.
18. After retirement of said Hilla Builders Pvt. Ltd., and renaming of the firm, the Zire Rushi Construction being the reconstituted partnership firm, the Zire Rushi Construction (Firm) by and under an Agreement for Takeover of Business dated 5th April, 2014 entered with said Rushi

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B. Com., LL.B.

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Construction Co. took over the business of the said Zire Rushi Construction – AOP with all its assets, effects, rights benefits and interests including its rights in the incomplete project on the said property as well as all its liabilities and obligations on as is where is basis and thus, pursuant to the said Agreement, all the rights of the said Zire Rushi Construction – AOP stood taken over by and vested in Zire Rushi Construction – Firm.

19. The partners of Zire Rushi Construction – Firm thereafter, by and under a Deed of Admission of Partners dated 26th April, 2014, admitted Mr. Anil C. Shah and Smt. Seema A. Shah to the partnership of the firm.
20. The partnership firm M/s. Zire Rushi Construction as constituted by its present partners is thus the sole and absolute Owner of the property entitled to develop the same for its own exclusive benefit and having taken over the business of the said Zire Rushi Construction – AOP, the said AOP now has absolutely no share right or interest of any nature in the said property or the ongoing project thereon.
21. I have further inquired with all the partners of M/s. Zire Rushi Construction and I have been assured that none of them have till date created any charge or third party rights (except commitments made for sale of Flats and premises) nor have they in any manner mortgaged or given as security the said property or the said buildings under construction thereon to anybody whosoever. I am however told that to secure project finance, M/s. Zire Rushi Construction do intend to obtain loans from Banks/institutes for which their rights in the land and the cash flow from sale of Flats/premises may be placed as security without affecting rights of the purchasers of Flats.
22. I have also been told and assured by the present partners of M/s. Zire Rushi Construction that they have submitted amendment to the originally approved plans and the process of issuance of fresh IOD with plans approving proposed construction by use of land FSI, TDR FSI and Fungible FSI as well as other benefit is completed and the same is expected very soon.

Based on perusal of above referred documents and further based on information furnished and assurances given to me by the partners of M/s. Zire Rushi Construction, which I believe to be true, I am of an opinion and I certify that the title of said M/s. Zire Rushi Construction, the partnership firm, to the said property is clear and marketable and

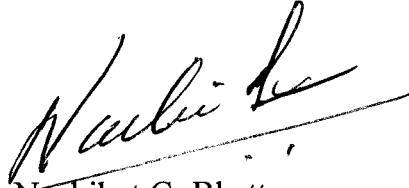
free from reasonable doubt and are entitled to construct on and commercially exploit the said property and every part thereof and to sell premises contained in the proposed building/s under construction by them on the said property.

IT MAY BE NOTED that before giving my opinion, so far as reliance on Search Report dated 27.11.2012 submitted by Search Clerk Mr. Shriniwas A. Chipkar to M/s. Hilla Zion Construction as was then known, is concerned, the searches at the offices of the Sub-Registrar of Assurances are subject to the availability of records and also to records being torn and mutilated. I am not responsible for such non-availability of records for any of the reasons stated in the Search Report and consequences arising there from.

After my original title Certificate dated 17th April, 2013, this title Certificate is issued a fresh to reflect changes in (a) the name of Hill Zion Construction after retirement of Hilla Builders Pvt. Ltd., and (b) the constitution of Zire Rushi Construction from AOP to a partnership firm. Therefore, I have neither carried out any fresh searches nor issued fresh public notices, but relied upon the representations of the present partners, who have assured that since issuance of the said original title certificate, no material changes affecting their rights in the property, have taken place. I believe the said representations to be true.

The accuracy of this Title Certificate necessarily also depends on the genuineness of documents / copies furnished to me, the replies to the queries raised by me and the information provided to me by the concerned partners of Zire Rushi Construction and particularly Mr. Anil Shah during the course of our discussions, being true, complete and accurate and which I have assumed to be the case. I don't take responsibility for any misleading, incorrect or incomplete information or of any documents/copies being not as assured.

Mumbai: Dated this 23rd June, 2014.


Nachiket G. Bhatt,
Advocate High Court