

REVISED SEARCH REPORT & TITLE CERTIFICATE

[This Revised Report for Search Report and Title Verification is issued relying upon the Search Report and Title Verification Dated 21/01/2015 and Supplementary Search Report & Title Certificate dated 10/03/2016 of the undersigned]

1. **NAME OF THE CLIENT:** **MR. KHEMCHAND UTTAMCHAND BHOJWANI** [IN HIS DUAL CAPACITY AS PARTNER OF M/S. SAI SAMARTHA CONSTRUCTION & PARTNER OF M/S. M.B.M. DEVELOPERS]

2. **DESCRIPTION OF PROPERTY:**

a. **ALL THAT PIECE AND PARCEL** of land bearing **S. No. 163 Hissa No. 01** admeasuring **00H 30.7081R** i.e. **3070.81 Square Meters** being and situated at Revenue Village: **Pimple Saudagar**, Taluka: **Haveli**, Jilahi: **Pune** and within the jurisdiction of **Hon'ble Sub-Registrar, Haveli** and within the limits of **Pimpri Chinchwad Municipal Corporation** and which the land is bounded as under:

On or towards East : By land of Mr. Bhise
On or towards West : By land of Mr. Bhise
On or towards North : By S. No. 163/2
On or towards South : By 30 Mtr. [HCMTR] Road

b. **ALL THAT PIECE AND PARCEL** of land bearing **S. No. 163 Hissa No. 02** admeasuring **01H 04.5R** i.e. **10450 Square Meters** being and situated at Revenue Village: **Pimple Saudagar**, Taluka: **Haveli**, Jilahi: **Pune** and within the jurisdiction of **Hon'ble Sub-Registrar, Haveli** and within the limits of **Pimpri Chinchwad Municipal Corporation** and which the land is bounded as under.

On or towards East : By S. No. 161/9
On or towards West : By land of Murlidhar Sayan Bhise
On or towards North : By Road
On or towards South : By S. No. 162/1

3. **NAME OF THE PRESENT OWNERS AS PER REVENUE RECORDS:**

S. No.	Hissa No.	Name of Owners (for entire survey number)
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163	01	Owner's Column: Baban Mahadu Kate, Nivrutti Mahadu Kate, Sopan Mahadu Kate, Balkrishna Mahadu Kate, Raghunath Babu Kate Dharana Prakar : 2 Other Right's Column: NIL
163	02	Owner's Column: M/a Sai Samarth Construction thorough its Partners 1] Mr. Khemchand Uttamchand Bhojwani; 2] Mr. Kanbayalal Hotchand Matani; 3] Mr. Satrudhna Seetaram Kate Dharana Prakar : 2 Other Right's Column: NIL

4. DOCUMENTS REFERRED :

S. No.	Description of the Document	Registration Number	Date of Execution / Registration
FOR S. NO. 163/01			
01.	Release Deed	3981/1995 [Haveli No. V]	18/05/1995 [19/05/1995]
02.	Partition Deed	1658/2003 [Haveli No. V]	19/03/2003 [19/03/2003]
03.	Development Agreement	6926/2009 [Haveli No. XVII]	06/08/2009 [07/09/2009]
04.	Power of Attorney	6927/2009 [Haveli No. XVII]	06/08/2009 [07/09/2009]
05.	Power of Attorney	6928/2009 [Haveli No. XVII]	06/08/2009 [07/09/2009]
06.	7/12 extract and Mutation Entry for 1983-2017		
FOR S. NO. 163/02			
01.	Agreement to Sale		10/06/1980
02.	Memorandum of understanding	D123/2004 [Notary-Suresh Raina]	21/10/2004 [21/10/2004]
03.	Memorandum of understanding	D330/2004 [Notary-R. S. Joshi]	20/11/2004 [20/11/2004]
04.	Memorandum of understanding	D579/2004 [Notary-R. S. Joshi]	01/12/2004 [03/12/2004]



05.	Agreement	A/3 [Notary-Mr. V. M. Parakh]	18/01/2006 [18/01/2006]
06.	Lis-Pendense	9560/2008 [Haveli No. XI]	18/01/2008 [18/01/2008]
07.	Sale Deed	3174/2007 [Haveli No. VI]	20/04/2007 [20/04/2007]
08.	Development Agreement	3240/2007 [Haveli No. X]	26/04/2007 [26/04/2007]
09.	Power of Attorney	3241/2007 [Haveli No. X]	26/04/2007 [26/04/2007]
10.	Development Agreement	4004/2008 [Haveli No. VI]	07/05/2008 [12/05/2008]
11.	Power of Attorney	4005/2008 [Haveli No. VI]	07/05/2008 [12/05/2008]
12.	Confirmation Deed	5665/2008 [Haveli No. XVII]	02/06/2008 [02/06/2008]
13.	Power of Attorney	5666/2008 [Haveli No. XVII]	02/06/2008 [02/06/2008]
14.	Sale Deed	14944/2010 [Haveli No. XVII]	30/12/2010 [30/12/2010]
15.	Area Division Agreement	Notray [Swari A. Andalkar]	25/06/2014 [15/01/2015]
16.	7/12 extract and Mutation Entry for 1983-2017		
17.	Commencement Certificate dated 27/11/2013 bearing sanction No. B.P./Pimple Saudagar/02/2013 which is revised by vide sanction building plan bearing No. BP/Layout/P'Saudagar/19/2014 dated 11/06/2014.		
18.	ULC order in the ULC Case No. 2736KU		

5. PLACES OF INSPECTION:

Office of the Sub Registrar, Haveli No. I
Office of the Sub Registrar, Haveli No. V
Office of the Sub Registrar, Haveli No. VI
Office of the Sub Registrar, Haveli No. XVII
Office of the Sub Registrar, Haveli No. XIX
Online IGR Site



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6. DATE OF INSPECTION:

31.07.2017 to 31.07.2017

7. NAME OF THE PERSON WHO INSPECTED RECORDS:

Mr. L. K. Jhunjhunwala, Advocate

8. PERIOD FOR WHICH RECORDS WERE INSPECTED:

2015 2017

9. HISTORICAL FLOW OF TITLE OF THE PROPERTY AS WAS MUTED IN REVENUE RECORDS:

FOR SURVEY NO. 163/1

1. It appears from the revenue records that one Mr. Mahadu Narayan Kate was the owner of the present survey number and his name was accordingly muted in the revenue record of the present survey number.
2. Mutation Entry No. 872 is not relevant to the present Survey Number.
3. It appears from the Mutation Entry No. 1173 that Mr. Mahadu Narayan Kate availed a loan of Rs. 500/- on account of Tagai Taran and accordingly charge was recorded in the other's right column of the present Survey Number.
4. It appears from the Mutation Entry No. 1377 that the new law pertaining to weights and measurement was introduced and implemented in the revenue records.
5. It appears from the Mutation Entry No. 1495 that Mr. Mahadev Narayan Kate and Mr. Gyanoba Vishnu Kate preferred joint application to get their names muted as per the partition which took place between them and accordingly the present Survey number fell into the share of MR. Mahadu Narayan Kate and accordingly his name was muted as owner of the present survey number.



6. It appears from the Mutation Entry No. 1734 that Mr. Mahadu Narayan Kate expired on 19/07/1979 and accordingly names of his following legal heirs were recorded in the revenue records as owner of the present Survey Numbers:

- A. Baban Mahadu Kate
- B. Nivrutti Mahadu Kate
- C. Sopan Mahadu Kate
- D. Balkrishna Mahadu Kate
- E. Babu Mahadu Kate

Was recorded in the revenue records in the column pertaining to Occupier and owner, further names of the following were recorded in other's right column:

- a. Changunabai Gyanoba Gihile
- b. Jeejabai Ramchandra Mane
- c. Shantabai Nivrutti Pinjan
- d. Muktababi Ramchandra Bhise

7. It appears from the Mutation Entry No. 1736 that the charge on account of Tagai Taran was removed from the other's right column of the present survey number.

8. It appears from the Mutation Entry No. 1971 that Mr. Babu Mahadu Kate expired and accordingly name of his legal heir namely Mr. Ragunath Babu Kate was recorded in the revenue records as owner

9. It appears from the Mutation Entry No. 2040 that Changunabai Gyanoba Gihile, Jeejabai Ramchandra Mane, Shantabai Nivrutti Pinjan, Muktababi Ramchandra Bhise released their rights in the present property to and in favour of Baban Mahadu Kate, Nivrutti Mahadu Kate, Sopan Mahadu Kate, Balkrishna Mahadu Kate by the way of Release Deed dated 19/05/1995 which is registered at Serial No. 3981/1995 on 19/05/1995.

FOR SURVEY NO. 163/2

1. It appears from Mutation Entry No. 298 that name of Mrs. Laxmibai Vasudeo Deshpande was recorded on



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the 7/12 extract of the present Survey Number as the heri of Mrs. Yamunabai Raghunath Rede.

2. It appears from Mutation Entry No. 748 that Mr. Mahadu Narayan Kate was declared to be 'Protected Jul' of the present Survey Number and accordingly his name was entered into Other's right column of the present Survey Number.
3. It appears from Mutation Entry No. 872 that name of the Mr. Mahadu Narayan Kate was muted the revenue records as owner of the present property as he had paid the requisite price as per the order in the case no. 563/1936.
4. It appears from the Mutation Entry No. 1173 that Mr. Mahadu Narayan Kate availed a loan of Rs. 500/- on account of Tagai Taran and accordingly charge was recorded in the other's right column of the present Survey Number.
5. It appears from the Mutation Entry No. 1377 that the new law pertaining to weights and measurement was introduced and implemented in the revenue records.
6. It appears from Mutation Entry No. 1495 that Mr. Mahadu Narayan Kate and Mr. Dnyanoba Vishnu Kate applied for distribution of present survey number as per their possession and accordingly the present Survey No. 163/2 came to the exclusive share of Mr. Dnyanoba Vishnu Kate.
7. It appears from the Mutation Entry No. 1736 that the charge on account of Tagai Taran was removed from the other's right column of the present survey number.
8. It appears from Mutation Entry No. 2487 that as per the order of the Ld. Tahshildar Pune the names of the sisters of Mr. Dnyanoba Vishnu Kate namely 1) Smt. Bhagirathi H. Yadav, 2) Smt. Thakubai Bhaguji Tapkir, 3) Sakhubai Balwant Bahirat; and 4) Smt. Draupadabai Dnyaneshwar Caware were muted in the revenue records as co-owner of the present Survey Number.



9. It appears from Mutation Entry No. 3183 that MR. Dnyanoba Vishnu Kate and Mrs. Savitribai Dnyanoba Kate executed Agreement for Sale in favour of Mr. Chhagan Gopalrao Bhadarke on 10/06/1980 and accordingly name of Mr. Chhagan Gopalrao Bhadarke was muted in the Other's Right column of the present Survey Number.
10. It appears from Mutation Entry No. 3301 that as per the order passed in Revision No. 671/02 and order passed in Darkhast No. 241/97 name of 1] Smt. Bhagirathi H. Yadav, 2] Smt. Thakubai Bhaguji Tapkir, 3] Sakhubai Balwant Bahirat; and 4] Smt. Drupadabai Dnyaneshwar Gaware was removed from the 7/12 extract.
11. It appears from Mutation Entry No. 3307 that Mr. Chhagan Gopalrao Bhadarke, Mrs. Hirabai Chhagan Bhadarke, Mrs. Kamal Chhagan Bhadarke, Shital Chhagan Bhadarke, Mr. Sagar Chhagan Bhadarke, Smt. Vimal Dattatray Bhadarke, Mr. Rajendra Dattatray Bhadarke, Mrs. Danyanti Rajendra Bhadarke, Mr. Avinash Dattatray Bhadarke, Mrs. Shubhangi Avinash Bhadarke, Mr. Nitin Baban Kale purchased the present survey number from Mr. Dnyanoba Vishnu Kate and accordingly their names were muted in the revenue records as owner thereof.
12. It appears from Mutation Entry No. 4417 that M/s Sai Samartha Construction purchased the present Survey number i.e. land admeasuring 01H 04.5R from the current owners namely Mr. Chhagan Gopalrao Bhadarke, Mrs. Hirabai Chhagan Bhadarke, Mrs. Kamal Chhagan Bhadarke, Shital Chhagan Bhadarke, Mr. Sagar Chhagan Bhadarke, Smt. Vimal Dattatray Bhadarke, Mr. Rajendra Dattatray Bhadarke, Mrs. Danyanti Rajendra Bhadarke, Mr. Avinash Dattatray Bhadarke, Mrs. Shubhangi Avinash Bhadarke, Mr. Nitin Baban Kale and accordingly name of M/s Sai Samartha Construction through its partners namely 1] MR. Khemchand Uttamchand Bhojwani, 2] Mr. Kanhayalal Hotchand Matani; and 3] Mr. Satrugan Seetaram Kate was muted in the revenue records as owner thereof.



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10. ACQUISITION OF DEVELOPMENT RIGHT BY M/S M.B.M. DEVELOPERS: [FOR SURVEY NUMBER 163/1]

It appears from the documents present for my inspection that the current land lords together with their respective family members entered into a development agreement with M/s M. B. M. Developers thereby assigning development rights for an area admeasuring 00H 30.7081R out of the present Survey Number to and in favour of M.B.M. Developers on the terms and conditions as mentioned in the said development agreement. The said Development Agreement is duly stamped, executed and registered at Haveli No. XVII at Serial No. 6926/2013. The land lords further executed Power of Attorney under the said development agreement thereby appointing M/s M.B.M. Developers as their power of attorney. The current Land Lords further executed another power of attorney thereby appointing Mr. Sambhaji Balkrishna Kate as their Power of Attorney for any further agreement/correction as may be required by and between the land lords and M/s M.B.M. Developers.

It is by the virtue of the above said Development Agreement that M/s M.B.M. Developers has all the rights to develop the land admeasuring 00H 30.7081 R bearing S. No. 163/1.

11. ACQUISITION OF DEVELOPMENT RIGHT BY M/S SAI SAMARTHA CONSTRUCTION: [FOR SURVEY NUMBER 163/2]

It appears that the current land lord i.e. Mr. Chagan Gopal Hhadarke and others entered into a Development Agreement dated 26/04/2007 which the development Agreement is duly stamped, executed and registered at Haveli No. X at Serial No. 3240/2007 on 22/05/2007 thereby awarding the development rights pertaining to an area admeasuring 01H 04.5R i.e. the total area of the present Survey No. 163/2 to M/s Goyal Mohata Developers. The then current Owners further executed a Power of Attorney under the said Development Agreement which the Power of Attorney is duly stamped, executed and registered at Haveli No. X at Serial No. 3241/2007.

It appears that M/s Goyal Mohata Developer for them selves and for and on behalf of the Owners excuted development agreement for the preschr survey number i.e. an area admeasuring 01H 04.5R dated 07/05/2008 to and in favour of M/s Sai Samartha Construction. The said Development is duly stamped, executed and registered at Haveli No. VI at Serial No. 4004/2008 on



12/05/2008. M/s Coyal Mohata Developers further executed a Power of Attorney to and in favour of M/s Sai Samartha Construction. The said Power of Attorney is duly stamped, executed and registered at Haveli No. VI at Serial No. 4405/2008.

It appears that Subhadra Nandkumar Kute, Usha Mohan Shelar and Archana Uttam Chandangave gave consent to the Development agreement dated 07/05/2008 (Doc. No. 4004/2008) vide Confirmation Deed dated 02/06/2008, the said confirmation deed is duly stamped, executed and registered at Haveli No. XVII at Serial No. 5665/2008. The said Subhadra Nandkumar Kute, Usha Mohan Shelar and Archana Uttam Chandan further executed a Power of Attorney under the said confirmation deed. The said confirmation deed is duly stamped, executed and registered at Haveli No. XVII at Serial No. 5666/2008.

It appears that being the power of attorney holder of the land owners, M/s Sai Samartha Construction for them selves and for and on behalf of the Owners executed Sale Deed dated 30/12/2010 which the sale deed is duly stamped, executed and registered at Haveli No. XVII at Serial No. 14944/2010, thereby selling the said land admeasuring 01H 04.5R out of S. No. 163/2 to and in favour of M/s Sai Samartha Construction.

It is by the virtue of the above said sale deed that M/s Sai Samartha Construction has title/ownership of land admeasuring 01H 04.5R bearing S. No. 163/2.

12. DEVELOPMENT BY M/S M.B.M. DEVELOPERS & M/S SAI SAMARTHA CONSTRUCTION:

It appears from the document produced for my records that M/S M.B.M. DEVELOPERS and M/s SAI SAMARTHA CONSTRUCTION applied jointly for the grant of sanction for the development of the said land as defined in the Clause-02 mentioned above i.e. an area admeasuring 13520.81 Square Meters out of land bearing S. No. 163/1+2 and accordingly finding the layout and building plans as per the development control rules of the Pimpri Chinchwad Municipal Corporation, PCMC sanctioned the building plans presented vide sanctioned building plans bearing No. B.P./Purple Saudagar/62/2013 dated 17/11/2013 which is revised by vide sanction building plan bearing No. BP/Layout/P'Saudagar/19/2014 dated 11/06/2014. PCMC further granted work commencement certificate vide commencement certificate bearing No. B.P./Purple



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Saudagar/62/2013 dated 17/11/2013 which is revised by commencement certificate bearing No. BP/Layout/P'Saudagar/19/2014 dated 11/06/2014.

M/S M.B.M. DEVELOPERS and M/s SAI SAMARTHA CONSTRUCTION have applied to **Ld. Collector**, for grant of **NA Order for the said land and Ld. Collector** granted permission to use the said land for non-agricultural purposes vide his order bearing No. **PMH/NA/SR/1101/013, PUNE, Dated 10/09/2014.**

13. DIVISION OF SANCTIONED AREA BETWEEN M/S M.B.M. DEVELOPERS & M/S SAI SAMARTHA CONSTRUCTION:

It appears from the documents produced that M/S M.B.M. DEVELOPERS and M/s SAI SAMARTHA CONSTRUCTION divided amongst themselves the sanctioned area in the ratio of land holdings vide Memorandum of Understanding dated 25/06/2014 which the MoU is duly stamped, executed and registered before Ld. Notary Swati Arun Andalkar on 15/01/2015

As per the said area division agreement M/s M. B. M. Developers shall be entitled to sell the following units:

BUILDING-D		BUILDING-E		BUILDING-F	
01	102	01	102	01	204
02	103	02	202	02	302
03	302	03	301	03	402
04	502	04	302	04	504
05	603	05	501	05	603
06	703	06	503	06	702
07	802	07	703	07	904
08	901	08	904	08	1002
09	903	09	1002	09	1104
10	1102	10	1104	10	NIL

It is further agreed that M/s Sai Samartha Construction shall be entitled to sell the following units:

BUILDING-D		BUILDING-E		BUILDING-F	
01	101	01	103	01	101
02	201	02	201	02	102
03	202	03	203	03	103
04	203	04	204	04	104
05	204	05	303	05	201



06	301		06	304		06	202
07	303		07	401		07	203
08	304		08	402		08	301
09	401		09	403		09	303
10	402		10	404		10	304
11	403		11	502		11	401
12	404		12	504		12	403
13	501		13	601		13	404
14	503		14	602		14	501
15	504		15	603		15	502
16	601		16	604		16	503
17	602		17	701		17	601
18	604		18	702		18	602
19	701		19	704		19	604
20	702		20	801		20	701
21	704		21	803		21	703
22	801		22	804		22	704
23	804		23	901		23	802
24	902		24	902		24	803
25	904		25	903		25	804
26	1001		26	1001		26	901
27	1002		27	1003		27	902
28	1003		28	1004		28	903
29	1004		29	1101		29	1001
30	1101		30	1102		30	1003
31	1103		31	1103		31	1004
32	1104		32	NIL		32	1101
33	NIL		33	NIL		33	1102
34	NIL		34	NIL		34	1103

14. IMPEDIMENTS AND CLARIFICATIONS:

SPECIAL CIVIL SUIT NO. 1160/2006:

It appears that one M/s Naren Builders have filed the above referred Special Civil Suit against Mr. Dnyanoba Vishnu Kate & Others in the year 2006 and have accordingly filed the notice of lis-pendence on 29/09/2008, which the lis-pendence is registered at Serial No. 9560/2008 at Haveli No. XI.

It appears from the plaint of the said suit that M/s Naren Builders had executed a Memorandum of Understanding dated 21/10/2004 with Mr. Dyanoba Vishnu Kate thereby agreeing to purchase the present survey number from him for a total consideration of Rs. 2,41,39,500/- [Rupees Two Carore Forty-One Lakhs Thirty-Nine



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Thousand Five Hundred Only] and had accordingly paid an amount of Rs. 13,00,000/- vide various cheques to Mr. Dyanoba Vishnu Kate. The present suit is for the specific performance of the said contract. It is pertinent to mention here that there is no stay in the present suit.

Observation:

It appears from the documents produced for my perusal that Mr. Dyanoba Bishnu Kate together with his wife, when his kids were minor, for himself and as karta of his family had entered into a registered 'AGREEMENT TO SALE' on 10/06/1980 with respect to the present property with Mr. Chhagan Gopalrao Bhadarke and accordingly name of Mr. Chagan Gopal Bhadarke was recorded in the other's right column of the revenue records of the present Survey Number vide Mutation Entry No. 3183.

It appears that the said Mr. Chagan Gopal Bhadarke filed a Civil Suit bearing No. 810/1986 for the specific performance of the said Agreement to Sale dated 10/06/1980 which was decreed in favour of Mr. Chagan Gopal Bhadarke vide order dated 09/11/1987. An appeal was preferred against the said order bearing Civil Appeal No. 766/1988 which was dismissed vide order dated 07/09/1996. Thereafter the said Mr. Chagan Gopal Bhadarke filed Special Darkast No. 241/1997 and subsequently Sale Deed came to be registered on the name of Mr. Chagan Gopal Bhadarke and his family members and their name was mutated in the revenue records vide Mutation Entry No. 3307.

Reasoning:

- a. The said Order in the Special Civil Suit No. 810/1986 is legal valid and in force and no appeal is pending against the said order and hence the said order is binding upon all and hence title acquired by Mr. Chagan Gopal Bhadarke by virtue of the decree in the said civil suit is free from any charge much less the charge on account of Memorandum of Understanding dated 21/10/2004 in favor of M/s Naren Builders. The subsequent transferee i.e. the present owner's title is therefore clean and clear.
- b. The name of Mr. Chagan Gopal Bhadarke was recorded in the revenue records of the present Survey Number in the other's right column and the mutation entry clearly indicated existence of an agreement in favour of Mr. Chagan Gopal Bhadarke. It is the fundamental principle under law that a purchaser who



wants to purchase any property should take serach of the revenue records of the property which he desires to acquire and shall satisfy themselves about the clear and marketable title of the property and it is only when the intending pruchser has performed this obligation cast upon him under law that he is accorded protection under law which is also communing known as "Buyer without notice". However in this case M/s Naren Builder have not performed this statutory obligation cast upon them and therefore they are not entitled to protection under law and hence their right can not superceed the right of Mr. Chagan Gopal Bhadarke.

- c. Further, even if it is considered that there exists a concluded contract in favour of M/s Naren Builders, then also there exists a prior written contract in favour of Mr. Chagan Gopal Bhadarke and Mr. Chagan Gopal Bhadarke will have first right to buy the said property at the agreed temrs and therefore M/s Naren Builders will have no right over the property.
- d. Further, M/s Sai Samartha Constreuction has not been had a party to the pending suit and hence, there is no impediment on the title of M/s Sai Samartha Construction for the present Survey number.

Conclusion:

In the lght of the guidelines of the Hon'ble High Court of Judicature at Bombay in the Ramniklal Tulsidas Kotak and others, v. M/s. Varsha Builders and others case, I for the reason enumerated above in my wisdom belive that the above said case will not conclude in a manner which will cast any aspiration on the title of the present owners and hence I have ignored the the above case while certifying the title of the present owner.

SPECIAL CIVIL SUIT NO. 1900/1997: CIVIL APPEAL NO. 273/2012 (FIRST APPEAL NO. 925/2011):

It appears that Smt. Bhagirathi Haribhau Yadav, Smt. Thakubai Bhaguji Tapkir, Shri Baban Bhaguji Tapkir, Sou. Pushpa Dattatraya Kanawade, Sou. Rukmini Ashok Chavan, Sou. Dwarka Subhash Varpe, Sou. Vandana Rajaram Kakade, Sou. Sukhubai Balwant Bhairat, Smt. Dropda Dnyaneshwar Gaware preferred Special Civil Suit No. 1900/1997 for partition, possession, declaration and for the exercise of right of pre-emption.



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It appears that plaintiffs above named preferred an appeal against the said order bearing Civil Appeal No. 273/2012. Further, in the light of the Judgement and Order dated 06/02/2014 in the Civil Appeal No. 273/2012 of the Hon'ble District Judge-5 and Additional Sessions Judge, Pune, that Smt. Bhagirathi Haribhau Yadav, Smt. Thakubai Bhaguji Bahirat (dead) through legal heir, Baban Bhaguji Tapkir, Sou. Pushpa Dattatreya Ranawade, Sou. Rukmini Ashok Chavan, Sou. Dwarka Subhash Varpe, Sou. Vandana Rajaram Kakade, Sou. Sukhubai Balwant Bhairat and Smt. Dropda Dnyaneshwar Gaware were granted jointly granted equal share in the said land. On basis, of the said order, M/s M.B.M. Developers and M/s. Sai Smartha Constructions will have no development right over the said property, until the same is confirmed / assigned to them by the Appellant in the above appeal.

The Respondent in the appeal has not preferred any second appeal against the order of the Hon'ble District Court in the Civil Appeal bearing No. 273/2012.

It further appears that the Appellant herein in the above appeal has preferred Second Appeal bearing No. 450/2014 which was admitted by the Hon'ble High Court of Judicature at Bombay on 06.08.2014. However, the point of law to be decided by the Hon'ble High Court while admitting the said appeal, does not concern the survey numbers for which the present title and search report is being issued.

SPECIAL CIVIL SUIT NO. 635/2000:

It appears from the papers produced for my inspection that the present case was filed by Mr. Ashok Dyanoba Kate and Others against Mr. Dyanoba Vishnu Kate and Others for the relief of partition and injunction.

Observation:

It appears from the papers produced for my inspection that the said suit was disposed on 29/12/2009 without framing of issues and without any hearing.

Conclusion:

In the light of the guidelines of the Hon'ble High Court of Judicature at Bombay in the Ramniklal Tulsidas Kotak and others, v. M/s. Varsha Builders and others case, and since the said case is disposed and no any adverse order has been passed affecting the present property, hence I have ignored the the above case while certifying the title of the present owner.



REGULAR CIVIL SUIT NO. 862/2004:

It appears that one Mr. Ritesh Vijaykumar Mehta filed the present suit on 16/06/2004 for the relief of injunction.

It appears from the plaint of the said suit that M/s NAKODA CONSTRUCTIONS had executed a Memorandum of Understanding dated 30/10/2000 with Mr. Dyanoba Vishnu Kate through his alleged Power of Attorney Mr. Sharad Laxman Kokane thereby agreeing to purchase the present survey number from him for a consideration of Rs.50/- per square feet and has paid a sum of Rs. 51,000/- [Rupees Fifty-One Thousand Only] as earnest money at the time of execution of the said Articles of Agreement. The said agreement is neither registered nor notarized.

Observation:

The said suit is pending before the Ld. Judge as on date. No issues are framed in the said suit since its inception. The Ld. Judge by his order dated 06/10/2004 has restrained Mr. Dyanoba Vishnu Kate and others from creating any third-party interest in the said property.

Reasoning:

- a. The said Order in the Special Civil Suit No. 810/1986 is legal valid and in force and no appeal is pending against the said order and hence the said order is binding upon all and hence title acquired by Mr. Chagan Gopal Bhadarke by virtue of the decree in the said civil suit is free from any charge much less the charge on account of Memorandum of Understanding dated 30/10/2000 in favor of M/s NAKODA CONSTRUCTIONS. The subsequent transferee i.e. the present owner's title is therefore clean and clear.
- b. The name of Mr. Chagan Gopal Bhadarke was recorded in the revenue records of the present Survey Number in the other's right column and the mutation entry clearly indicated existence of an agreement in favour of Mr. Chagan Gopal Bhadarke. It is the fundamental principle under law that a purchaser who wants to purchase any property should take search of the revenue records of the property which he desires to acquire and shall satisfy themselves about the clear and marketable title of the property and it is only when the intending purchaser has performed this obligation cast upon him under law that he is accorded protection under law which is also communing known as "Buyer without notice". However in this case M/s Naren



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Builder have not performed this statutory obligation cast upon them and therefore they are not entitled to protection under law and hence their right can not supercede the right of Mr. Chagan Gopal Bhadarke.

- c. Further, even if it is considered that there exists a concluded contract in favour of M/s NAKODA CONSTRUCTION, then also there exists a prior written contract in favour of Mr. Chagan Gopal Bhadarke and Mr. Chagan Gopal Bhadarke will have first right to buy the said property at the agreed terms and therefore M/s NAKODA CONSTRUCTION will have no right over the property.
- d. Further, it is apperant from the records of the said case that despite of name of Mr Chagan Gopal Bhadarke being recorded on the 7/12 extract of the revenue records of the present Survey number, he was not made party to the present suit, nor has the present plaintiff challenged the order of the Ld. Court in Special Civil Suit No. 810/1986. There is no iota of doubt in my mind that until the said order is challenged, there is no chances of the present Plaintiff succeeding in obtaining any order which can adversely affect the title of the present land owners.
- e. It is worth noting that Plaintiff i.e. M/s NAKODA CONSTRUCTIONS have not even made M/s Sai Samartha Constuction as a party to the said suit despite of the fact that there name is muted in the revenue records. Since, the present land owners are not a party to the suit nor their predecessor in title was a party to the suit the said order is not bining upon them. Further, it is crystal clear that the plaintiff in the present suit has played fraud upon the court and has obtained the order dated 06/10/2004 by plaing fraud upon the court, there by conceling material facts which ought to have been disclosed to the court from the court.
- f. Lastly, as far as the said order of injunction dated 06/10/2004 passed by the Ld. Judge in the present suit is concerned, on the said date of order the present property no more vested in the Defendants named in the said suit by the operationof Order of a competent Court of law passed in the Special Civil Suit No. 810/1986 which the order was dated 09/11/1987 and hence since the property did not vest in the said defendants the said order is a nullity as far as the present survey number is concerned.



Conclusion:

In the light of the guidelines of the Hon'ble High Court of Judicature at Bombay in the Ramniklal Tulsidas Kotak and others, v. M/s. Varsha Builders and others case, and for the reasons as enumerated herein above, in my wisdom I believe that the above said case will not conclude in a manner which will cast any aspiration on the title of the present owners and hence I have ignored the the above case while certifying the title of the present owner.

15. NA ORDER:

Mr. Balkrushna Mahadu Kate & Others through their Power of Attorney Holder and also for himself M/s Sai Samarth Construction through its Partners 1] Mr. Khemchand Uttamchand Bhojwani and 2] Mr. Kanhayalal Hotchand Matani applied for the grant of NOC & Permission for use of the said land for nonagricultural purposes and accordingly as per the application of the M/s Sai Samarth Construction, The Hon'ble Collector, Pune had by his order, Dated 10/09/2014 Bearing No. PMH/NA/SR/1101/013, Pune granted Permission/NOC for use of said land for Non-Agricultural purposes.

16. ENVIRONMENT CLEARNACE: -

M/s Sai Samarth Construction through its Partners Mr. Khemchand Uttamchand Bhojwani applied for the grant of Environment Clearance Certificate to the Project namely "The Westford" to be constructed on the said land and accordingly as per the application of the M/s Sai Samarth Construction, The Hon'ble Member Secretary, SEIAA, had by his order, dated 25/01/2016 Bearing No. SEAC-2013/CR378/TC-II, granted Environment Clearance Certificate.

17. ENCLOSURES:

- (i) Copy of Search Receipt No. 1111224414, for Search Period of 2015 to 2017, Generated on IGR Website, Dated 31.07.2017 for Rs.300/- Only.
- (ii) Copy of Online Search Fee Chitani, GRN: MH004061303201718E, having Defacement No. 0002256074201718, Defacement Date: 31/07/2017-17:40:31, Generated on IGR Website, Office of PNDI, JT DISTT REGISTRAR PUNE URBAN, Dated 31/07/2017 for Rs.300/- Only.

Place : Pune

Date : 31/07/2017



Mr. L. K. Jhunjhunwala
Advocate

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CERTIFICATE

Thus, considering the above stated facts, the title of the present owner is not clear and marketable. Further, M/S. M.B.M. DEVELOPERS and M/S. SAI SAMARTHA CONSTRUCTION have no any authority to develop the tenement on the Clause-2 land and further sell the same on ownership basis to prospective purchasers.

Place : Pune

Dated : 31/07/2017



Mr. L. K. Jhunjhunwala
Advocate

