



WADIA GHANDY & Co.

ADVOCATES, SOLICITORS & NOTARY

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NL/RP/10055/ 7380/2016

To,
Provident Housing Limited
130/1, Ulsoor Road
Bangalore 560 042

TITLE REPORT

Re: All that piece and parcel of land bearing Survey No. 198/1 admeasuring 1,28,925 square meters lying being and situate at, Zuarinagar, Sancoale, Goa within the limits of Village Sancoale, Taluka Mormugao, South Goa and bounded as follows:

- North : By the properties bearing Survey No. 205, Sub-Division Nos. 1, 2, 3, 4 and 5 and Survey No. 206, Sub-Division Nos. 2, 3, 4, 8, 9 and 10 of Sancoale Village.
- South : By Village of Dabolim and part by the property bearing Survey Nos. 197 and 215 of Sancoale Village.
- East : By the property bearing Survey No. 211, Sub-Division No. 1-A and Survey No. 214, Sub-Division Nos. 1, 2 and 3 Sancoale Village.
- West : By the property bearing Survey No. 199, Sub-Division Nos. 1, 2, 3, 4, 5 and 6 of Sancoale Village.

(hereinafter referred to as "the said Land").

We have been instructed by our client, Provident Housing Limited ("PHL") a company registered under the Companies Act, 1956 and having its registered office at 130/1, Ulsoor Road, Bangalore 560042, to investigate the title of Trinitas Realtors India LLP ("Trinitas") having its registered office at PMT Building, 3rd Floor, Deccan Gymkhana, Pune-411004, Maharashtra, India, to the said Land.

A. STEPS

For the investigation of title of Trinitas to the said Land, we have undertaken the following steps:

- (i) We have examined copies of the deeds, documents and writings as listed in **Annexure "A"** hereto, apart from which, we have not examined any further deeds, documents or writings in respect of the said Land.
- (ii) We have examined copies of the Survey Form I & XIV and the Nil Encumbrance Certificates provided by Trinitas with respect to the said Land, as detailed below.
- (iii) We have caused to undertake searches at the website of the Ministry of Corporate Affairs of the Government of India to check the records pertaining to the charges created by Trinitas in respect of the said Land up to 29th January, 2016.
- (iv) We have caused to issue public notices on 6th February, 2016 in Times of India, Goa Edition (English), and Gomantak, Goa Edition (Marathi), inviting objections and/or claims from persons with respect to the said Land. We have not received any objections and/or claims with respect to the said Land pursuant to the issuance of the aforesaid public notices.
- (v) We have examined the Title Opinion dated 28th March, 2016 issued by Senior Advocate Sudin M. Usgaonkar, a copy of which Title Opinion is annexed hereto and marked as **Annexure "B"**.
- (vi) We have also examined the Opinion dated 10th June, 2016 issued by Advocate Shivan Desai, a copy of which Opinion is annexed hereto and marked as **Annexure "C"**.
- (vii) With respect to the facts which cannot be ascertained from the examination of the public records, Trinitas has executed a Declaration dated 25th August, 2016.
- (viii) We have not administered any independent requisitions on title.

B. DISCLAIMERS

In connection with this Title Report, it may be noted that:

- (i) This Title Report is intended only for the use by PHL and not by any other person. We disclaim any responsibility on account of reliance on this Title



Report by any person other than PHL.

- (ii) The searches at the website of the Ministry of Corporate Affairs of the Government of India at *www.mca.gov.in/MCA21* are subject to the availability of records on the website on the date of inspection. We therefore disclaim any responsibility for the consequences which may arise on account of such non-availability of records with the Ministry of Company Affairs on the date of inspection.
- (iii) The accuracy of the Title Report necessarily depends on the documents furnished to us and the information provided to us, being true, complete and accurate and which we have assumed to be the case. We therefore disclaim any responsibility for any misinformation or incorrect or incomplete information arising out of the documents, responses and other information furnished to us. Save and except the documents specifically stated to have been examined by us in this Title Report, we have not examined any further deeds, documents or writings pertaining to the said Land.
- (iv) This Report does not opine on any aspect of the approvals obtained by Trinitas and /or the development potentiality of the said Land.

C. CHAIN OF TITLE

- (i) The said Land originally belonged to the Comunidade of Sancoale, P.O. Cortalim, State of Goa. The said Land together in part with another parcel of land bearing Survey No. 197/1(part) has been described as Lote Reservado No. XXIV(part) of the Comunidade of Sancoale admeasuring an area of 2,27,220 square meters. The same is recorded in the Certificate dated 12th March 2014 bearing No. 9-02(75)-DSLRL-14/3399 issued by the Superintendent of Survey and Land Records, Panaji-Goa certifying that the aforesaid Survey Numbers correspond to the Lote Reservado No. XXIV (part) by superimposing the new survey map on the old cadastral map.
- (ii) One Birla Gwalior Private Limited, a company incorporated under the provisions of the Companies Act, 1956, having its registered office at 15 India Exchange Place, Calcutta-1 ("**Birla**"), applied to the Lieutenant Governor of Goa, Daman and Diu, Panaji, vide its letter dated 10th September 1968, for taking up on '*permanent lease*' basis or on '*purchase*' basis the said Land for the purpose of setting up a fertilizer project under the name and style of "*Zuari Agro –Chemicals*

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Ltd." for setting up a manufacturing plant for ammonia and urea, the permission for which was granted to Birla by the Ministry of Industry, Government of India vide License bearing No. L/18(1)/10/66-Ferts.I. dated 12th December, 1966.

- (iii) Such request of Birla was approved at an extra ordinary meeting of the Comunidade of Sancoale held on 10th November 1968 at which time it was resolved to grant a '*perpetual lease*' or by '*sale*' the said Land for erection of the fertilizer plant within a period of two years. Such approval was also conveyed to the Administrator of Comunidade of Salcete, Mormugao Section, Margao. The file was then submitted to the Governor, Goa for approval and vide letter dated 7th January 1969, bearing No. CAB/58/65/69, the office of the Collector and DCA, Panaji, Goa, informed the Administrator that the request for grant of the said Land owned by Comunidade of Sancoale on lease for installation of a fertilizer project by Birla has been accepted.
- (iv) Accordingly, the possession of the said Land was delivered to Birla vide Record of Demarcation and Delivery dated 31st January 1969, recorded in the Register of Record of Demarcation and Delivery at Folios 29 of the proceeding o.23 series of the year 1968, after the Administrator of Comunidade of South Zone verified as to the following criteria:
- a. The plots granted to Birla have been reflected in the plan;
 - b. The demarcation of the total area admeasuring around 499.9500 square meters with the exclusion of the area admeasuring around 15.7500 square meters occupied by the Naval Department and National Road;
 - c. The quantum of rent to be paid annually to the Comunidade of Sancoale by Birla in view of the grant was fixed at Rs. 51,750/-.
- (v) Subsequently, by and under a Deed of Lease dated 1st February, 1969 registered with the Office of the Sub Registrar of Mormugao under Serial No. 43 at pages 267 to 283 ("**the said Head Lease**") executed by and between the Comunidade of Sancoale therein referred to as "the Lessor" on the One Part and Birla therein referred to as "the Lessee" of the Other Part, the Lessor therein granted the Lessee leasehold rights with respect to many properties belonging to the Comunidade of Sancoale including the said Land, for the rent more particularly set out therein. By the said Head Lease, Birla was entitled to assign its right, title and interest *inter alia* to the said Land under the said Head Lease to

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Zuari Agro Chemicals Limited, a company incorporated on 12th May 1967 under the provisions of the Companies Act, 1956, and having its registered office at Industry house, 159 Churchgate Reclamation, Mumbai- 20 ("ZACL"). By clause 5 of the said Head Lease, the Lessee was also entitled to pay the Lessor an amount equal to 20 years lease rent in addition to one year lease rent for the year in which the Lessee decides to exercise this option and acquire the ownership of the said Land after executing a Deed of Conveyance in that regard.

- (vi) By and under an Indenture of Assignment dated 14th December, 1969 registered with the Office of the Sub Registrar of Mormugao under Serial No. 287 at pages 44 to 53 ("**the said Indenture of Assignment**") executed by and between Birla therein referred to as "the Assignor" of the One Part and ZACL therein referred to as "the Assignee" of the Other Part, Birla assigned its right, title and interests acquired by way of the said Head Lease in the said Land and more particularly assigned its option to purchase under clause 5 of the said Head Lease in favour of ZACL for a consideration more specifically recorded therein.
- (vii) By and under a Deed of Conveyance dated 31st March, 1971 registered in the Office of the Civil Registrar Cum Sub Registrar, Mormugao, at Vasco Da Gama, Goa under Serial No. 167 at pages 355 to 358 ("**the said Deed of Conveyance**") executed by and between the Comunidade of Sancoale therein referred to as "the Vendor" of the One Part and ZACL therein referred to as "the Purchaser" of the Other Part, the Vendor therein sold, transferred and conveyed to ZACL *inter alia* the said Land for a consideration of Rs. 10,32,000/-, which was credited to the treasury of the said Comunidade on that day. The said fact has been entered in the Cash Book under Entry No.11 as the value equivalent to the value of redemption of rent (foro) of 20 annuities of the said Land.
- (viii) By and under Certificate of Incorporation dated 12th February, 1998 of ZACL issued by the Registrar of Companies, the name of ZACL was changed to Zuari Industries Limited. Thereafter, by and under Fresh Certificate of Incorporation dated 26th June, 2012 of Zuari Industries Limited issued by the Registrar of Companies, the name of Zuari Industries Limited was changed to Zuari Global Limited.
- (ix) By and under a Deed of Exchange dated 24th May, 2013 registered in the Office of the Civil Registrar Cum Sub- Registrar, Mormugao, at Vasco Da Gama under Serial No. 884 recorded in Book No. I at pages 143 to 164 of Volume No.1550

dated 28th May 2013 (“the said Deed of Exchange”) executed by and between Zuari Global Limited therein referred to as “First Party” and Trinitas Realtors India Private Limited therein referred to as the “Second Party”, the First Party exchanged the land admeasuring 1,73,225 square meters comprising of Survey No. 197/1 and Survey No. 198/1 *inter alia* comprising the said Land in favour of the Second Party for land admeasuring 2,29,975 square meters bearing Survey No. 194/1 A identified as PATAN or PATTON or PALONA situated at Sancoale village in a manner more particularly recorded therein.

- (x) By Certificate of Registration of Conversion dated 27th March, 2014 and bearing bearing LLP Identification Number: AAC-2158 issued by the Registrar of Companies, Trinitas Realtors India Private Limited was registered as a limited liability partnership under the provisions of Limited Liability Partnership Act, 2008 under the name of ‘Trinitas Realtors India LLP’.

D. SURVEY FORMS AND NIL ENCUMBRANCE CERTIFICATES

- (i) We have perused the Survey Form I & XIV, wherein entries have been made in the register of Mutation of the Sancoale Village, Mormugao, Goa, regarding the acquisition of rights by Zuari Global Limited and Trinitas Realtors Private Limited. In the Survey Form I & XIV dated 21st November 2014, bearing No. 100003938590, pertaining to the said Land, the name of the Trinitas Realtors India Private Limited, is duly entered in the column of ‘Occupant’. Similarly, in the Survey Form I & XIV dated 29th February 2016, bearing No. 100005317472, pertaining to Survey No. 194/1-A, the name of Zuari Global Limited is recorded in the column of ‘Occupant’. We note that there are no tenancy rights or other rights in the nature of mundkar, caretaker, etc., recorded in the Survey Form I & XIV with respect to the said Land.
- (ii) The following Certificates of Nil Encumbrances have been issued by the Sub Registrar, Mormugao with respect to the said Land, certifying that there are no encumbrances affecting the said Land:
- a. Certificate dated 12th June 2013 and bearing no. 533/2013 for the search made in Book I and in the indexes relating thereto for 32 years for the period commencing from 1st January 1982 to 11th May 2013;
 - b. Certificate dated 28th November 2014 and bearing no. 1043/2014 for the search made in Book I and the indexes relating thereto for 2 years for period

commencing from 1st May 2013 to 27th November 2014;

- c. Certificate dated 3rd March 2016 and bearing no. 256/2016 for the searches made in Book I and in the indexes relating thereto for 35 years for the period commencing from 1st January 1982 to 2nd March 2016.
- d. Certificate bearing No. 783 of 2016 dated 16/08/2016 for the search made in Book I and in the indexes relating thereto for 4 months for the period commencing from 3rd March, 2016 to 12th August, 2016.

E. PROVISIONS OF CODE OF COMUNIDADES, LEGISLATIVE ENACTMENT NO. 2070 DATED 15TH APRIL, 1961 ("CODE OF COMUNIDADES")

- (i) On perusal of the aforesaid documents, it appears that the said Head Lease executed in favour of Birla is in the nature of "Aforamento/ Emphyteusis" (which means as "grant") in terms of Article 324 of the Code of Comunidades and is not a 'lease' as contemplated under Article 327 of the Code of Comunidades.
- (ii) Some of the relevant provisions of the Code of Comunidades are set out as under:

Article 5 The Comunidades shall be under the administrative tutelage of the State, in terms established in this Code, and its immovable properties may be granted on emphyteusis and alienated in the manner provided in this Code.

Article 6 The canons (foros) payable on emphyteusis, by the comunidades and any other installments or periodical pensions that they may receive from the emphyteutas, owners, servants or individuals are redeemable, in terms of the general law that regulates the redemption of pension (foro), in all the respects not provided in this Code.

Article 7 The Comunidade do not enjoy, in regards to the immovable properties, granted on emphyteusis, the right conferred to the grantors, under article 1662 of the Civil



Code and its paragraphs, and the said immovable properties may be alienated and divided, however the comunidades shall have the right to increase the pension (foro) at the time of its division, in terms prescribed in this Code.

Article 238 The redemption of the foro of the emphyteusis of the comunidades or of any periodical payments that he comunidades receive from the proprietors, servants or other individuals under the Article 6, shall be applied to the clerk of the comunidade, requesting that the amount may be calculated and received, mentioning in the petition the nature and the burden thereof of which redemption is asked for.

§ 1 The clerk, within the period of eight days and under his responsibility, shall calculate the amount of redemption. This shall be recorded on the reverse of the application, adding to the sum, the outstanding annuities due to the comunidade.

§ 2 The amount payable for the redemption is the sum of twenty annuities of the foro or burden whose redemption is intended, plus the annuity relating to the year of redemption, when it is not done, with effective payment, by 31st March.

§ 3 The application shall then be returned to the party, who has to effect the payment into the safe of the amount calculated.

§ 4 At the time of payment, the clerk of the 'comunidade' shall mention below the calculation set out in the application the following note: "The above amount was paid on this date, by item no., mentioned at pg. of the Cash Book No. and noted the transference in

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the corresponding entry in the Register 2, No.”

§ 5 The application containing the calculation and note referred to above, shall remain in possession of the interested party, who shall return it to the clerk no sooner he obtains the certified copy of the redemption effected, with the designation contained in the respective lists, wherein reference is made to the payment effected.

Article 239 The redemption of foro below 12\$, is mandatory and this should be done within 12 months, from the publication of this Code relating to emphyteusis granted earlier, and from the date of the final possession given in respect of the future grants.

Sale: The redemption referred to in the body of this article may be applied for by any person, without thereby acquiring any title by this fact.

Article 241 After the redemption, when this is of the entire foro or of the other charges regarding the property, the clerk of the comunidade shall cancel the mutation of the same property made in the Register – 2 (Tombo 2), and when only of a part of the foro or charge, have been redeemed, necessary note of the same is made in the registration of the property, reducing its foro or charge to the part that has not been redeemed.

Article 324 The Comunidades may grant aforamento – emphyteusis in respect its uncultivated and undeveloped lands and even the ones cultivates of vegetables, when required for the cultivation of rice, fruit bearing trees or for the construction of houses.

Article 335 After the auction, the secretary of the administration shall forward the file to the administrator, who, with his remarks, shall send it to the Directorate of Civil Administration Services.

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§ 1. The Governor-General, on going through the file, shall consider the request.

§ 2. Soon after the file is returned to the Administration office, the same shall be forwarded to the clerk of the respective comunidade, who shall register, within the period of three days of receipt, the order of the Governor – General in the competent book.

§ 3. If the order is for grant of the emphyteusis, the clerk of the comunidades, soon after the registration, shall issue a challan to be paid, within eight days, by the emphyteuta the siza which may be due by the law in force and, after attaching to the file the receipt of the payment, with the assistance of the attorney of the comunidade, shall make provisional delivery of the land to the emphyteuta, verifying the correctness of the measurement and that there has not been any change in the provisional boundary marks, drawing thereafter the competent record, which shall also recorded in the book.

§ 4. Soon after, the clerk shall make provisional registration of land granted which shall be converted in definitive after being granted the final possession to the emphyteuta.

§ 5. If the provisional delivery is not taken, without justified reasons, within the period of four months from the order of the grant, the administrator shall inform this fact to the Governor – General, proposing the cancellation of the order of the grant of emphyteusis and reverting the land to the Comunidade.

Article 336 In case of the applicants or successful bidders show no interest in taking necessary further steps, within the time

fixed by the administrator, the Governor – General may order the application to be filed.

Article 337 The emphyteuta, within three days after the end of the period set in article 341 or extended as per Article 42, is bound to apply to the administrator for the definitive possession of the land granted on emphyteusis.

Sole § After applying for the possession, the administrator shall grant the same on the day and hour that shall be fixed, and in the presence of the emphyteuta, the attorney, the clerk of the comunidade and the secretary of the administration, the latter shall write the respective minutes, which later on shall be recorded by the clerk in the competent register.

Article 338 The provisional delivery of the land granted, is emphyteusis, cannot be considered in legal relations between the comunidade and the lease holder, as this is an optional act of mere tolerance, and only the definitive possession confers to the emphyteuta the rights that the civil law recognize and assure him. He, meanwhile, can make use of the possessory actions and of the other conservatory means against the third parties.

Article 317 The Comunidades may give on long term lease its uncultivated lands or paddy fields and land with fruit bearing trees which are in remarkably deteriorated condition and the Comunidades is not in a position to carry out the expenses necessary for its improvement.

Para 1- The period of lease shall be on nine to eighteen years, and the area of each concession shall not exceed 20 ha.

- (iii) We note that Article 324 read with Article 326 clearly indicate that at the relevant time, the 'Aforamento' was permissible for cultivation of rice, fruit bearing trees or for construction of houses and there is no specific mention of the grant of an 'Aforamento' for an industrial purpose. We also note that Article 326 of the Code of Comunidades provides that the area specification for a grant in the nature of emphyteusis for cultivation (not more than three hectares) and for construction of a house (not more than 1,000 square meters). The provisions under Articles 329 to 340 of the Code of Comunidades provides for the procedure to be followed for grant of an Aforamento of the nature referred to in Article 324. Article 330 of the Code of Comunidades contemplates publication of application for emphyteusis in the Official Gazette and inviting of objections in respect of the same and holding of Extra Ordinary General Body and Managing Committee meeting for considering the application and recommendations of the same. Article 334 of the Code of Comunidades specifically contemplates that all applications for emphyteusis shall be put up for public auction except those provided in Article 327. Article 327, which is an exception to auction, refers to grant of lands, which are abutting the roads, public ways or village ways, etc.
- (iv) We note that Article 317 of the Code of Comunidades provides for long term leases in respect of uncultivated or paddy fields and land with fruit bearing trees, which are in deteriorated condition and wherein the Comunidade is not in a position to carry out expenses necessary for its improvement. The period of the lease specified in Article 317(1) between 9 to 18 years and the area of the same shall not exceed 20 Hectares.
- (v) On perusal of the said Head Lease, the said Deed of Conveyance and the other documents as set out above, it appears that the said Head Lease is in the nature of 'Aforamento' as contemplated under Article 324 of the Code of Comunidades and not a 'long term lease' as contemplated under Article 317 and 327 of the Code of Comunidades. We note that grant of "Aforamento/ Emphyteusis" in terms of Article 324 of the Code of Comunidades has to be in accordance with the provisions of Articles 324 to 340 of the Code of Comunidades, which contemplates holding of an auction and approval of the Government prior to grant of "Aforamento/ Emphyteusis". In case of the said Land, we have not perused any expert report as contemplated in terms of Article 332 and it also appears that there was no auction conducted for the grant of the said Land as "Aforamento/ Emphyteusis" as contemplated under Art. 334 prior to

the execution of the said Head Lease. Moreover, at the relevant time, the user contemplated for grant of such "Aforamento/ Emphyteusis" under the Code of Comunidades was cultivation and construction of houses only and industrial user was not specifically contemplated. However, the general body resolution of Comunidade of Sancoale permitted the grant in favour of Birla and the same was confirmed by the concerned Administrator, as set out above. Also, the possession of the said Land was delivered to ZACL, as recorded above.

(vi) Clause 11 of the said Head Lease contemplated as under:

"The Lessee shall take steps to utilize the said premises for the purpose of the said Fertilizer project within a period of two years from the date of the execution of this deed and taking over possession of the said premises by the Lessee from the lessor and until such time as the said steps to utilize the said premises have not been taken the lessee shall not be entitled to exercise the option for the purchase of the said premises and becoming the owner thereof as provided in clauses herein above."

(vii) On perusal of the above said clause it could be said that the said Head Lease read with the record of delivery is the document pertaining to provisional possession of the said Land and that after the condition was fulfilled, the said Deed of Conveyance was executed, which said Deed of Conveyance can be said to be the document of definitive possession. There is a certificate dated 29th February 2016 issued by Zuari Global Limited at the request of Trinitas certifying that no factory structures or any construction existed on the said Land. From the above, it would have to be presumed that the setting up of the fertilizer project was done on other properties which were also granted to Birla vide the said Head Lease.

(viii) Article 338 of the Code of Comunidades stipulates that the provisional delivery of the land granted as Emphyteusis cannot be considered in legal relations. However, the handing over of definitive possession confers on the grantee the rights recognized under the Civil Law (Portuguese Civil Code). In view of the above, after definitive possession is granted in favour of the grantee, the rights under the Civil Law crystallized in favour of the grantee and the legal relations between the Comunidade and the grantee are governed under the Portuguese Civil Code.

- (ix) Articles 1653 and 1654 of the Portuguese Civil Code, provide that by way of Emphyteusis, owner of the property transfers its useful domain to another person in perpetuity and the holder of the grant is obligated to pay foro. Article 1671 of Portuguese Civil Code, contemplates that even if there is default in payment of foro, the absolute owner has no right except to recover the foro. Article 1673 of Portuguese Civil Code further stipulates that holder of Emphyteusis shall have the rights to enjoy the property and dispose off the same as his own, subject to the restrictions imposed by law. Article 1677 of the Portuguese Civil Code provides the grantee of Emphyteutic property the right to gift or exchange such property on informing the absolute owner (Comunidade) within 60 (sixty) days of such transfer. Article 1678 of the Portuguese Civil Code, gives right of preference in alienation of property to the Comunidade and stipulates that in the event the holders desire to sell or give on payment the property given to him under the Emphyteusis, he shall notify to owner informing him the price for which he proposes to alienate the property and if within 30 days pre-emption right is not exercised, the holder is at liberty to sell the said property. It could be argued that the provisions of Article 1678 would not apply in the case of the exchange of the said Land, moreover, in the scenario when the said Deed of Conveyance has already been executed by the Comunidade in favour of ZACL.

F. LITIGATION

(i) **Special Suit No. 18/03/A**

- (a) The validity of the said Head Lease and the said Deed of Conveyance, were challenged by the Comunidade of Sancoale in a Special Civil Suit bearing No. 18/03/A before the Ld. Civil Judge, Senior Division, at Vasco da Gama, Goa on the ground that the transfer affected by the Comunidade/ Original grantor was contrary to the conditions agreed in the resolution at its extra ordinary meeting dated 10th November 1968 and that there was an express prohibition levied upon the said Comunidade not to alienate or dispose of its properties and hence the said Head Lease and the said Deed of Conveyance were non-existent and were void ab-initio.
- (b) The Learned Trial Judge dismissed the suit vide its judgment, order and decree dated 12th October 2011 ("**said Decree**") holding that it is open to the grantor or the Comunidade under Article 6 read with Article 238 and

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241 of the Code of Comunidades to dispose of such land after redemption of 20 years foro and that there is no need for the execution of any Deed of Conveyance and after such redemption, the grantee becomes the absolute owner of such land and that by virtue of Article 30 the Code of Comunidades, the Comunidade can transfer its land by sale, emphyteusis or exchange with previous sanction from the Government.

- (c) The Ld. Judge further recorded that in the said Deed of Conveyance, an amount of Rs. 10,32,000/- had been credited to the treasury of the Comunidade and was entered in its Cash Book under Item No. 11 as an amount equivalent to 20 years lease rent of the said Land. The Ld. Judge further recorded in the said Decree that ZACL (being Defendant No.1) had received a certificate of payment of remission of annual rent endorsed by the Administrator of Comunidade in pursuance of which the said Deed of Conveyance was executed and on those grounds the prayers of the said Comunidade could not be granted.

(ii) **First Appeal No. 73 of 2013**

- (a) On 30th January, 2012 the said Comunidade filed an appeal being First Appeal No. 73 of 2013 ("**the said First Appeal**") in the High Court of Bombay at Goa against the said Decree wherein it *inter alia* prayed that the Hon'ble High Court quash and set aside the said Decree.
- (b) The said First Appeal came to be disposed off by the Hon'ble High Court of Bombay at Goa vide its judgment and order dated 29th June 2015 by placing reliance upon the judgment and order dated 5th August 2014 delivered in the case of **Smt. Basilia M. Gomes & Ors. vs. M/s. Zuari Agro Chemicals Ltd., (Second Appeal No. 118/2003)** wherein it was held that:

"The grant of an aforamento is in terms of Article 324 of the Code of Comunidade. The contract of emphyteuta is of a permanent nature. In fact, Article 1673 of the Portuguese Civil Code, inter alia, provides that the emphyteuta has a right to enjoy the property and to dispose of as his own thing save the restrictions expressed in law. In the present case, the records reveal that an aforamento was granted in favour of Respondent.

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no. 1. The Respondent no. 2 has also confirmed the said grant of the Aforamento by also executing a Sale Deed in favour of the Respondent no. 1 herein. In such circumstances, the question of the Respondent No. 2 having any subsisting right in respect of the disputed property would not arise considering that their right in the disputed property was conveyed and transferred in favour of the Respondent no. 1. In such circumstances, the Respondent no. 1 who were parties to the suit filed by the Appellants before the Learned Trial Court which came to be decreed, were definitely affected with the Decree passed by the Learned Trial Court and, as such, aggrieved parties."

G. APPROVALS AND OTHER DOCUMENTS

- (i) Trinitas has been granted Conversion Sanad dated 27th December 2013 bearing No. AC-I/SG/ConvMor/8/2013/12574, under section 32 of the Goa, Daman and Diu Land Revenue Code, 1968 by the Additional Collector-I, South Goa District, Margao-Goa for an area of 1,14,312 square meters of the said Land for the purpose of residential use and for an area admeasuring 6000 square meters of the said Land to be used for commercial purpose.
- (ii) A letter dated 24th December 2013 bearing No. DH/5186/3/MTP/2013/889 addressed by the Town and Country Planning Department, Mormugao-Goa to the Additional Collector-I, South Goa District, Margao-Goa states that an area admeasuring 1,14,312 square meters of the said Land falls in the Settlement Zone(S-1) and the area admeasuring 6000 square meters of the said Land falls in the Commercial Zone (C-1).
- (iii) Also there is a letter dated 21st November 2013 bearing No. 5/SGF/CONV/465/2013-14/2277 addressed by the Office of the Deputy Conservator of Forests, South Goa Division, Margao-Goa to the Additional Collector I, South Goa District, Margao-Goa stating that the above areas mentioned of the said Land do not constitute Government Forest and do not figure in the list of the Survey Numbers identified as private forest by the State Level Expert Committee and Newly Appointed Committee under the Forest (Conservation) Act, 1980.
- (iv) We have not been provided with inspection of the original title deeds pertaining to the said Land, however, we have been provided with a certificate dated 3rd March

2016 issued by Zuari Global Limited at the request of Trinitas stating that as mentioned in Covenant 4 of the said Deed of Exchange, the original of the said Deed of Exchange has been retained by Zuari Global Limited and a certified copy of it has been handed over to M/s. Trinitas Realtors India Private Limited.

- (v) We have been further informed by PHL that on physical inspection of the said Land being undertaken by PHL, it has been observed that an area admeasuring 3193.83 square meters from and out of the said Land, is not in actual physical possession of Trinitas.

H. CONCLUSION

Based on the aforesaid steps we have undertaken and subject to all that is stated hereinabove, we are of the view that the title of Trinitas to the said Land is clear and marketable.

Dated the 8th day of September, 2016

For Wadia Ghandy & Co.


Partner