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ADVOCATE

Enrolment No.: Mah/1874/1989

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OPINION ON TITLE

1. My opinion has been sought by **M/S SRE ESTATES DEVELOPMENTS**, a partnership firm having its Place of Business at "SUPREME", Behind New Telephone Exchange, opp. Bombi House, Comba, Margao, Goa (hereinafter referred to as "**SRE**"), on the following two questions, viz.:

a) Whether the following persons viz.

(1) MANIK LAXMIKANT ALVE, (2) MILIND NATEKAR, (3) SAAVI MILIND NATEKAR, (4) PRIYA KRISHNAKANT PANGAM and her husband (5) KRISHNAKANT SAKHARAM PANGAM, (6) SIDDHESH LAXMIKANT ALVE and his wife (7) PURVA SIDDHESH ALVE, (8) LALAN ULHAS FALLARI and her husband (9) ULHAS VAMAN FALLARI, (10) SHEILA DATTARAM POROB and her husband (11) DATTARAM MUKUND POROB, (12) RAJANI NARENDRA SHIRSAT and her husband (13) NARENDRA DATTARAM SHIRSAT, (14) JAIMINI JALDISH GAAD and her husband (15) JALDISH RAMCHANDRA GAAD and (16) MEDINI SEGUN PARODKAR (hereinafter jointly referred to as the "**OWNERS**") are the legal owners and have clear legal title to the property described in Para 2 below (hereinafter referred to as the "**Said Property**").

b) Whether SRE is entitled to develop the Said Property by constructing multi-storeyed building(s) thereon and selling premises therein to members of the public.



2. THE SAID PROPERTY:

- a) The Said Property is the following property, viz. a portion of the larger property described in sub-para (c) below ("**Said Larger Property**"), which was separated from the Said Larger Property vide Deed dated 4.7.1964 (referred to in Para 3(c) below), which portion constitutes a separate and distinct property by itself, admeasures 1,544 sq. meters, is presently surveyed under Chalta Nos. 34 and 35, both of P. T. Sheet No. 199 of Margao City Survey and is bounded as follows, viz. **East:** By water drain; **West:** By Chalta Nos. 12 and 13, both of P. T. Sheet No. 199 of Margao City Survey; **North:** By Chalta Nos. 45 and 24, both of P. T. Sheet No. 199 of Margao City Survey and **South:** By Chalta No. 25 of P. T. Sheet No. 199 and Chalta No. 51 of P. T. Sheet No. 223, both of Margao City Survey.
- b) In the Description of Assets dated 8.11.2012 in the Inventory Proceedings (referred to in Para 3(e) below), the boundaries of the Said Property are stated to be as follows, viz. **East:** By water drain; **West:** By Plot No. 7; **North:** By property of Damodar G. Kanekar and **South:** By properties of Vishwanath Lotlikar and Samba Bhat.
- c) The Said Larger Property referred to in sub-para (a) above is the following property, viz. All that immovable property known as "VARZEA CARFONDOOR CARFOND" situated in Margao, within the limits of the Margao Municipal Council,



Taluka Salcete, District South Goa, State Goa, which is described in the erstwhile Portuguese Regime Land Registration Records under No. 35216 in Book B 90 (New Series), enrolled under Matriz No. 67, and bounded, as per the erstwhile Portuguese Regime Land Registration Records, as follows, viz. **East:** By water drain; **West:** By the property of Jose Carmelo Coelho; **North:** By the property of the Comunidade of Margao and public pathway and **South:** By the property of same name of Ariosto Xavier do Rosario Coelho.

3. **DEVOLUTION OF TITLE:**

The following documents have been produced for my scrutiny. The chronological devolution of title, as disclosed by these documents, is discussed below:

- a) Certificate of Description of the property described under No. 35216 in Book B 90 (New Series) and of Inscription No. 28351 dated 25.1.1936 in Book G 34 at Folio 78, issued by the Sub-Registrar of Salcete Taluka at Margao, Goa on 25.7.2013 along with an English Translation thereof:

This Certificate states: (1) that the immovable property known as "VARZEA CARFONDOOR CARFOND" is described under No. 35216 in Book B 90 (New Series) and has the boundaries corresponding to the boundaries of the Said Larger Property referred to in Paras 2(a) and 2(c) above and (2) that the said property was inscribed in the name of AIRES DE ORNELAS VALENTIM DO ROSARIO COELHO on 25.1.1936, the said



property being allotted to him in the partition of the assets of his deceased father PEDRO JOAQUIM VALENTIM VENANCIO DO ROSARIO COELHO.

- b) A certified copy dated 4.7.2023 issued by the Sub-Registrar of Salcete Taluka at Margao, Goa of a Deed of Sale drawn up on 3.7.1964 by RAUL GERSON PURIFICAÇÃO DE SANTA RITA VAZ, the then Notary of the then Judicial Division of Salcete, which is found recorded at Folios Nos. 37(reverse) to 40 in Deeds Book No. 1217, along with English Translation thereof by Mr. Ruy Mascarenhas, an empaneled Portuguese Translator.

That above Deed records that AIRES DE ORNELAS VALENTIM DO ROSARIO COELHO, stated to be a bachelor, sold the property registered under No. 35216 jointly to (a) SEGUNA PONDORINATA PARODCAR and (b) SRIPADA RANU ZUVARCAR.

- c) A certified copy dated 23.12.1965 issued by NARAINA SINAI CANDIAPARCAR, the then Assistant to RAUL GERSON PURIFICAÇÃO DE SANTA RITA VAZ, the then Notary of the then Judicial Division of Salcete the Sub-Registrar of Salcete Taluka at Margao, Goa, of a Deed of Partition by Metes and Bounds drawn up on 4.7.1964 by the said RAUL GERSON PURIFICAÇÃO DE SANTA RITA VAZ, which Deed is found recorded at Folio 48(reverse) onwards of Deeds Book No. 1217, along with English Translation thereof by Dr. Giri B. Kamat, Retired Director of Health Services:

The aforesaid Deed records that SEGUNA PONDORINATA PARODCAR and his wife SUGANDIBAI SEGUNA PARODCAR on the one hand and SRIPADA RANU ZUVARCAR (stated to be a



bachelor), on the other hand, partitioned the property registered under No. 35216 by metes and bounds into ten plots ("Lotes"), out of which nine plots designated Nos. 1, 2, 4, 5, 6, 7, 8, 9 and 10 (admeasuring, respectively, 580 M², 730 M², 707 M², 706 M², 650 M², 633 M², 513 M² and 586 M², i.e. 5,546 M² in the aggregate) were allotted to SEGUNA PONDORINATA PARODCAR and his wife SUGANDIBAI SEGUNA PARODCAR and the balance plot designated No. 3 was allotted to SRIPADA RANU ZUVARCAR.

- d) Letter dated 27.6.2023 bearing Ref. No. MAM / SAL / Matriz / 2023 / 2538 issued by the Mamlatdar of Salcete Taluka, Margao, Goa:

This letter states that Matriz Certificate in respect the property enrolled under Matriz No. 67 cannot be issued since the relevant Matriz Records are in a mutilated condition and hence difficult to verify.

- e) Certified copy dated 15.12.2012 issued by the Court of the Civil Judge, Senior Division at Margao, Goa of Regular Inventory Proceedings No. 109/2011/III filed before the Civil Judge, Senior Division (III) at Margao, Goa comprising List of Assets, Final Chart of Partition and Judgment dated 23.11.2012:

The above document records:

- 1) That the aforesaid Inventory Proceedings were instituted to partition the estate of the deceased



SEGUNA PONDORINAT PARODKAR and his wife SUGANDHI SEGUN PARODKAR.

- 2) That the property bearing Chalta Nos. 34 and 35, both of P. T. Sheet No. 199 of Margao City Survey was enumerated as Item No. III in the List of Assets of the deceased.
- 3) That PANDARINATH *alias* KRISHNANATH SEGUN PARODKAR and his wife are allotted some other properties belonging to the deceased, i.e. other than in Chalta Nos. 34 and 35, both of P. T. Sheet No. 199 of Margao City Survey Said Property.
- 4) That the property bearing Chalta Nos. 34 and 35, both of P. T. Sheet No. 199 of Margao City Survey, were allotted as follows:

<u>To whom among the OWNERS share allotted</u>	<u>Undivided share allotted</u>
MANIK LAXMIKANT ALVE	1/12 ^{ths}
MILIND NATEKAR	1/72 ^{ths}
SAAVI MILIND NATEKAR	1/72 ^{ths}
PRIYA KRISHNAKANT PANGAM and KRISHNAKANT SAKHARAM PANGAM	1/36 ^{ths}
SIDDHESH LAXMIKANT ALVE and PURVA SIDDHESH ALVE	1/36 ^{ths}



<u>To whom among the OWNERS share allotted</u>	<u>Undivided share allotted</u>
LALAN ULHAS FALLARI and ULHAS VAMAN FALLARI	1/6 ^{ths}
SHEILA DATTARAM POROB and DATTARAM POROB	1/6 ^{ths}
RAJANI NARENDRA SHIRSAT and NARENDRA DATTARAM SHIRSAT	1/6 ^{ths}
JAIMINI JALDISH GAAD and JALDISH RAMCHANDRA GAAD	1/6 ^{ths}
MEDINI SEGUN PARODKAR	1/6 ^{ths}

- f) Certified copies, both dated 25.2.2016, issued by the Inspector of Survey and Land Records, City Survey, Margao of the Property Cards in Form "D" in respect of Chalta Nos. 34 and 35, both of P. T. Sheet No. 199 of Margao City Survey:

The above documents record that:

- 1) That the area of Chalta No. 34 of P. T. Sheet No. 199 is 1,400 sq. mts. and that the area of Chalta No. 35 of P. T. Sheet No. 199 is 144 sq. mts., i.e. that they have an aggregate area of 1,544 sq. mts..
- 2) That the following persons are, presently, the "Holder"s of Chalta Nos. 34 and 35, both of P. T. Sheet No. 199 of Margao City Survey, viz. (1) JAIMINI JALDISH GAAD and JALDISH RAMCHANDRA GAAD, of 1/6^{ths} share;



(2) RAJANI NARENDRA SHIRSAT and NARENDRA DATTARAM SHIRSAT, of 1/6th share; (3) SHEILA DATTARAM POROB and DATTARAM MUKUND POROB, of 1/6th share; (4) LALAN ULHAS FALLARI and ULHAS VAMAN FALLARI, of 1/6th share; (5) MANIK LAXMIKANT ALVE, of 1/12th share; (6) SIDDHESH LAXMIKANT ALVE and PURVA SIDDHESH ALVE, of 1/36th share; (7) PRIYA KRISHNAKANT PANGAM and KRISHNAKANT SAKHARAM PANGAM, of 1/36th share; (8) MILIND LAXMAN NATEKAR, of 1/72th share; (9) SAAVI MILIND NATEKAR, of 1/72th share and (10) MEDHINI SAGUN PARODKAR, of 1/6th share.

- g) Certified copy issued on 15.6.2012 by the Court of the Civil Judge (Senior Division), Margao, Goa of an Order dated 15.10.2011 passed by the Civil Judge (Senior Division), Margao, Goa in the proceedings titled as Portuguese Civil Misc. Application No. 50/2011/A filed by MILIND LAXMAN NATEKAR:

Vide the above Order, the Court allowed an application filed under Article 1488 of the Portuguese Civil Code and directed as follows:

- 1) that sale of the share of SAAVI MILIND NATEKAR (then a minor of 11 years of age), in the property known as "Carfondo" alias "Verzea Carfondo" situated at Margao, Goa, i.e. the Said Property, is permitted for a sum of Rs. 1,65,000/- (Rupees one lakhs sixty-five thousand);



- 2) that the sale proceeds of Rs. 1,65,000/- (Rupees one lakhs sixty-five thousand) be deposited in a Nationalized Bank in the name of SAAVI MILIND NATEKAR until she attains majority;
 - 3) that a copy of the aforesaid Fixed Deposit Receipt ("**FDR**") be submitted/filed in the Court.
- h) Photo-copy of Vikas Cash Certificate No. SBJ 891474 dated 21.2.2015 in the sum of Rs. 4,12,500/- issued to SAAVI MILIND NATEKAR, which photo-copy is notarized to be a true photocopy by Mr. Vilas A Naik, Notary for State of Goa on 23.2.2015 and registered in his Notarial Register on under No. 3921/2015.

The above Certificate evidences that a Deposit for Rs. 4,12,500/- was created in a Nationalized bank in favour of SAAVI MILIND NATEKAR.

- i) Agreement To Sell dated 10.2.2015 entered into by and between the OWNERS (SAAVI MILIND NATEKAR, through her father MILIND LAXMAN NATEKAR) and SRE, and executed before Mr. Sachin S. Kolwalkar, Notary Public and registered in his Notarial Register under No. 165/2015:

This Agreement, inter-alia:

- 1) Recites the facts enumerated in Paras 3(a), 3(b), 3(c), 3(e), 3(f) (except that it is stated that in Form "D", PANDARINATH *alias* KRISHNANTH SAGUN PARODKAR is shown as the sole "*Holder*" in respect of the Said Property, who was allotted some other property in



the Inventory Proceedings referred to in Para 3(e) above).

- 2) Records that the OWNERS have agreed to sell the Said Property to SRE to enable SRE to develop the Said Property by constructing multi-storeyed building(s) thereon for sale to members of the public.
 - 3) Records that SAAVI MILIND NATEKAR's share of consideration, viz. Rs. 4,16,667/- less TDS sum of Rs. 4,167/-, i.e. net sum of Rs. 4,12,500/-: (a) has been paid to her father and natural guardian (MILIND NATEKAR) on the assurance that MILIND NATEKAR shall make a deposit of the said sum of Rs. 4,12,500/- in a nationalized bank in the name of SAAVI MILIND NATEKAR and hand over a copy of the FDR to SRE along with Order of an appropriate Court permitting sale of SAAVI's share in the Said Property and (b) that SRE shall deposit the TDS sum of Rs. 4,167/- with the Income Tax Authorities towards Tax Deductible at Source.
- j) Notarized photo-copy dated 4.2.2015 issued by Mr. A. V. Ptrabhudesai (registered in his Notarial Register under No. 1405/2015) of a Power of Attorney executed on 8.2.2014 before Shri S. J. Sardesai, Notary Public having his Office at Mapuça, Goa (registered in his Notarial Register under No. 3597/2014), by PRIYA KRISHNAKANT PANGAM and her husband KRISHNAKANT SAKHARAM PANGAM in favour of SIDDHESH LAXMIKANT ALVE.



- k) Notarized photo-copy dated 25.4.2016 issued by Mr. Sachin Kolwalkar (registered in his Notarial Register under No. 444/2016) of a Power of Attorney executed on 31.1.2014 before Shri P. J. Yelwande, Notary Public having his Office at Pune (registered in his Notarial Register under No. 410 dated 31.1.2014), by RAJANI NARENDRA SHIRSAT and her husband NARENDRA DATTARAM SHIRSAT in favour of JAIMINI JALDISH GAAD.
- l) Notarized photo-copy dated 25.4.2016 issued by Mr. Sachin Kolwalkar (registered in his Notarial Register under No. 443/2016), of a Power of Attorney executed on 30.1.2014 before Shri A. V. Prabhudesai, Notary Public having his Office at Margao, Goa (registered in his Notarial Register under No. 1563/2014), by MEDINI SEGUN PARODKAR in favour of JAIMINI JALDISH GAAD

By the above Powers of Attorney, the respective executants have duly authorized the respective Attorneys appointed by the respective instruments to sell the Said Property.

4. **OBSERVATIONS & OPINION:**

- a) Though Matriz Certificate is often perused to provide corroborative material to support title, such Matriz Certificate in respect of the Said Property is not available since (as stated in the Certificate referred to at Para 3(d) above) the relevant records are in a mutilated condition. However, the non-availability of the Matriz Certificate is not of much consequence since, as held by the Bombay High Court (Panaji Bench) (as it then was) in Fabrica da Igreja de N.S. de Milagres v/s



Union of India [1995 (1) Bom.C.R. 588],

a Matriz document is neither an instrument of title nor a source of possession but a mere administrative exercise aimed at collecting tax revenues from the land.

- b) Though it is stated in the 10.2.2015 Agreement (referred to in Para 3(i) above) that the nine plots allotted to SEGUNA PONDORINATA PARODCAR and his wife SUGANDIBAI SEGUNA PARODCAR vide the Deed of Partition by Metes and Bounds drawn up on 4.7.1964 (referred to in Para 3(c) above) constitute the Said Property, that statement does not appear to be accurate since the aggregate area of the nine plots is 5,546 M², while the area of the Said Property is only 1,544 M². It would have been more accurate to state that Said Property constituted a part of the nine plots allotted vide the Deed of 4.7.1964. However, to my mind, such inaccurate statement would not be of much consequence since the area of the Said Property is less than the aggregate area of the nine plots. If the area of the Said Property was more than the aggregate area of the nine plots, then different considerations would have arisen.
- c) Though the Order dated 15.10.2011 (referred to in Para 3(g) above) has already permitted sale of share of SAAVI MILIND NATEKAR in the Said Property, there is no reference to the Order dated 15.10.2011 in the 10.2.2015 Agreement (referred to in Para 3(i) above). However, as directed in the Order dated 15.10.2011, FDR in name of SAAVI MILIND NATEKAR in



respect of her share of consideration had been duly created (document referred to at Para 3(h) above). Moreover, though the Order dated 15.10.2011 had permitted sale of SAAVI MILIND NATEKAR's share in the Said Property for Rs. 1,65,000/-, her share was ultimately sold for a much higher value, viz. Rs. 4,16,667/-, which is more than 2.5 times what the Court had permitted, though, of course, the sale occurred more than 3.5 years after the Order dated 15.10.2011.

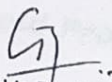
- d) The 10.2.2015 Agreement (referred to in Para 3(i) above) states that in Form "D" in respect of the Said Property, PANDARINATH *alias* KRISHNANTH SAGUN PARODKAR is shown as the sole "Holder" in respect of the Said Property. However, it appears that, later, mutation application was duly filed and Form "D" in respect of the Said Property (referred to in Para 3(f)) shows all OWNERS are Holders. The name of PANDARINATH *alias* KRISHNANATH SEGUN PARODKAR which was earlier appearing as the sole "Holder" appears to have been deleted in view of the fact that in the Inventory Proceedings (referred to in Para 3(e) above), he was not allotted any share in the Said Property.
- e) The 10.2.2015 Agreement (referred to in Para 3(i) above) has been executed by some of the OWNERS (PRIYA KRISHNAKANT PANGAM, KRISHNAKANT SAKHARAM PANGAM, RAJANI NARENDRA SHIRSAT, NARENDRA DATTARAM SHIRSAT and MEDINI SEGUN PARODKAR) through their duly constituted attorneys (SIDHESH LAXMIKANT ALVE and JAIMINI JALDISH



GAAD). The respective Powers of Attorney (referred to in Paras 3(j), 3(k) and 3(l) contain the necessary powers and authorities.

- f) Upon a perusal of the documents produced before me and enumerated in Para 3 above and after considering the above referred points, it is seen that the title of the OWNERS can be traced back to 25.1.1936 (see the Inscription referred to in Para 3(a) above), i.e. for past more than 87 years in an unbroken line. I am therefore of the considered opinion that the OWNERS are the legal owners of and have a clear legal title to the Said Property.
- g) A Nil Encumbrance Certificate in respect of the Said Property must be obtained from the Office of the Sub-Registrar of Salcete Taluka to certify that the Said Property is not encumbered.
- h) Since the OWNERS are the legal owners of and have clear legal title to the Said Property as stated in Para 4(f) above and in the light of the 10.2.2015 Agreement (referred to in Para 3(i) above), SRE is entitled to develop the Said Property by constructing multi-storeyed building(s) thereon and selling premises therein to members of the public.

Date: 4th August, 2023.


(Gurudatt R. Mallya)
Advocate

(Enrolment No: MAH / 1874-1989)

