



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8240 OF 2014

1. Shri. Anil S/o. Ramkisan Sikchi
Age 64 years, Occu. Business
2. Smt. Ujwala w/o. Anil Sikchi
Age 59 years, Occu. Household
Both R/o. Plot No.01, Padampura,
Station Road, Near Dumir Hospital,
Aurangabad .. Petitioners

Versus

1. State of Maharashtra
Through its Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai
2. Deputy Inspector General of Registration
and Deputy Controller of Stamps
Aurangabad Division, Aurangabad
3. Collector of Stamps,
Collector Office Premises,
Aurangabad .. Respondents

**AND
WRIT PETITION NO.7242 OF 2014**

1. Shri. Arun s/o. Ramkisan Sikchi
Age 60 years, Occu. Business
2. Smt. Brijlata w/o. Arun Sikchi
Age 58 years, Occu. Household
Both R/o. Plot No.01, Padampura,
Station Road, Near Dumir Hospital,
Aurangabad .. Petitioners

Versus

1. State of Maharashtra
Through its Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai

2. Deputy Inspector General of Registration
and Deputy Controller of Stamps
Aurangabad Division, Aurangabad
3. Collector of Stamps,
Collector Office Premises,
Aurangabad .. Respondents

Mr. Ameya J. Bhat, Advocate for Petitioners;
Mr. P. P. Dawalkar, A.G.P. for Respondents

CORAM : SACHIN S. DESHMUKH, J.

DATE : 18-08-2026

JUDGMENT :-

1. Rule. Rule made returnable forthwith. By consent, heard finally.
2. The petitioners have raised challenge to the order of respondent No.3 Collector of Stamps, Aurangabad and eventual order of appellate authority i.e. respondent No.2 - Deputy Inspector of Registration and Deputy Controller of Stamps, Aurangabad, endorsing the same.
3. Since a common issue is involved in the petitions, the same are taken together for consideration.
4. The petitioners are husband and wife in the petitions, wherein petitioner No.1/husband executed a power of attorney in favour of petitioner No.2/wife and the same was duly registered upon payment of requisite stamp duty.

5. It is, thereafter, a communication dated 28.08.2013 was issued to the petitioners to pay deficit stamp duty and registration charges. Upon the representation made by the petitioners, the communication-cum-order under challenge was rendered against petitioner by respondent No.3.

6. Aggrieved by the same, the petitioners presented an appeal before respondent No.2. However, same has been rejected by the order under challenge, directing the petitioner to pay the deficit stamp duty under Article 25 (b) of the Schedule - I of the Bombay Stamp Act, 1958 (for short, "Act of 1958").

7. Being dis-satisfied with the respective orders, the petitioners are before the Court under Article 226 and 227 of the Constitution of India.

8. Mr. Bhat, learned counsel for the petitioners submits that the orders under challenge are unsustainable. The petitioners have already paid the stamp duty applicable as per Section 48 of the Act of 1958. The authorities below failed to consider that for applying stamp duty under Article 5(g-a) or Article 48 (g) of the Act of 1958, the powers are to be conferred with the Promoter or Developer, whereas, petitioner No.2 was granted the power to engage a Developer or execute a development agreement. As such, petitioner No.2 cannot be regarded as a Promoter or Developer to invoke additional stamp duty. As such, the

authorities have wrongly interpreted the power of attorney in question. Accordingly, prayed to allow the petitions.

9. The learned A.G.P. for the respondents opposed the petitions supporting the orders under challenge, and prayed to dismiss the petitions, contending that the power of attorney in question are in effect, development agreements based upon the powers conferred upon petitioner No.2. As such, the same attracts the stamp duty under Article 25 (b) of the Schedule - I of the Act of 1958.

10. In support, the learned A.G.P. relies upon the judgment of this Court in the case of ***Suhas Damodar Sathe versus The State of Maharashtra and another, Writ Petition No.8030 of 2017, dated 11.03.2025.***

11. Heard the submissions from the litigating sides and perused the record, particularly, the power of attorney/s. By the said instruments, the petitioner No.1/husband has authorized the petitioner No.2/wife in respect of the undivided share of the property, to engage a developer, issue power of attorney in favour of such developer and undertake other incidental acts for the development and/or sale of the property.

12. The authorities below have treated the said instruments as the development agreements and have demanded the stamp duty under Article 25 (b) of the Schedule - I of the Act of 1958.

13. At this juncture, it would be apt to reproduce the observation in the case of **Suhas Damodhar Sathe** (supra), which reads as under;

"31. It is well settled that, the character of an instrument for the purpose of levy of stamp duty is determined by the substance of the transaction rather than its form. The legal test is whether, through the agreement, there is a present transfer of a right, title, or interest in immovable property so as to bring it within the sweep of the definition of a "conveyance." The guiding judicial precedents, have laid down that if the agreement vests in the grantee a bundle of rights approximating those of an owner, particularly the right to further transfer, develop, or deal with the property, the same shall be considered a conveyance for the purposes of stamp duty. In the present case, the developer's comprehensive rights—coupled with the owner's receipt of the entire consideration and the handover of actual possession— cannot be characterized merely as a "development arrangement" falling outside the purview of a conveyance."

14. In view of the aforesaid precedent, the principal question that arises for consideration is whether the instrument executed by the petitioner No.1/husband in favour of petitioner No.2/wife, though styled as a Power of Attorney, is liable to stamp duty under Article 25 (b) of the Schedule - I of the Act of 1958, having regard to the nature and extent of the powers conferred thereunder.

15. It is well settled that, for determining the stamp duty payable on an instrument, the Court is required to examine the substance and legal effect of the instrument and not merely the nomenclature assigned to it. The description of an instrument as a “Power of Attorney” cannot, by itself, be determinative where the operative clauses confer substantive rights and powers in relation to immovable property. The nomenclature of an instrument is not determinative of its true legal character. The Court is required to examine the substance and cumulative effect of the powers conferred by the instrument.

16. In the present case, the power of attorney executed by the petitioner No.1/husband in favour of petitioner No.2/wife, confers a comprehensive and exclusive authority in respect of the undivided share in the subject property. Such authorization is not merely to represent the principal before governmental or other authorities, but it also authorizes to identify and negotiate with a developer, execute a development agreement, appoint or authorise a developer, obtain building permissions and sanctioned plans, sell or otherwise transfer the property, execute agreements and conveyancing documents in favour of purchasers, receive consideration and undertake all acts necessary in relation to the property, with the acts performed by her being expressly declared to be binding upon the principal.

17. The cumulative effect of these authorisation demonstrates that the instrument confers upon the attorney comprehensive authority to develop, transfer and also deal with the property. However, merely the wife is not described in the nomenclature as a “developer” cannot, by itself, determine the applicability of the statutory provision. The instrument has to be examined in the context of the authority actually conferred by it and text conferring such authority confers the document with in sweep of conveyance.

18. Article 48(g) specifically deals with a power of attorney given to a promoter or developer, by whatever name called, for construction on, development of, or sale or transfer of immovable property and prescribes stamp duty at the rate applicable to a conveyance under Article 25. Thus, where an instrument falls within Article 48(g), Article 25 operates as the statutory measure of the stamp duty payable on such instrument. The demand of stamp duty with reference to Article 25 therefore cannot be rejected merely on the ground that the instrument is styled as a power of attorney.

19. The fact that the power of attorney also authorizes the wife to sell the property and receive consideration does not take the instrument outside the development-related provision. On the contrary, the power of sale, when read cumulatively with the powers to develop the property, appoint a developer, execute

development documentation and receive consideration, forms part of the comprehensive commercial authority conferred upon the attorney.

20. The further circumstance that the petitioners have already paid stamp duty under Article 48 does not, by itself, establish that the proper stamp duty payable under the applicable clause of Article 48 has been discharged. Article 48 contains distinct statutory categories for different kinds of powers of attorney, including powers of attorney authorizing sale or transfer and powers of attorney given for development purposes. The mere reference to Article 48, without establishing the particular clause under which duty was paid and the basis on which such duty was computed, cannot conclude the matter in favour of the petitioners.

21. In the facts of the present case, having regard to the authority conferred upon the wife to develop, commercially deal with, sell and transfer the petitioner's interest in the property, the instrument cannot be treated as a power of attorney attracting only the limited duty contended for by the petitioners. The demand of duty with reference to Article 25, as contemplated by the applicable development-related provision of Article 48, therefore does not suffer from the jurisdictional error as alleged in the petition.

22. Accordingly, both the writ petitions stand dismissed.

23. Rule stands discharged.

24. The petitioners shall be liable to pay the deficit stamp duty as determined by the competent authority in accordance with law, after giving credit for the stamp duty already validly paid on the instruments.

[SACHIN S. DESHMUKH, J.]

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