

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 2439 OF 2018

Crisil Limited

.. Petitioner

Versus

Inspector General of Registration and
Controller of Stamps, Chief Controlling
Revenue Authority & Ors.

.. Respondents

.....

- Mr. Virag Tulzapurkar, Senior Advocate a/w Ms. Bindi Dave, Mr. Sameer Pandit and Mr. Pranay Kamdar i/by Wadia Ghandy & Company for the Petitioner
- Ms. Jyoti Chavan, AGP for the Respondents - State

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**CORAM : AKIL KURESHI &
S.J. KATHAWALLA, JJ.**

Reserved on : AUGUST 1, 2019.
Pronounced on : AUGUST 8, 2019

JUDGMENT (Per Akil Kureshi, J.)

1. Heard learned counsel for the parties for the final disposal of the petition. The petitioner has challenged the action of the respondents of issuing demand of stamp duty and the notices issued for recovery of such stamp duty.

2. The petition has arisen in following background:-

The petitioner is a Limited Company registered under the Companies Act. The petitioner has been in use and occupation of office premises admeasuring 57,664 sq ft (hereinafter referred to as the "**said premises**") situated at 'A' Wing, Kensington Building, Hiranandani Business Park, Powai, Mumbai 400 076 since 14.9.2007 on lease.

3. The said premises has been leased to the petitioner by one HGP Community Pvt Ltd ("**HGP**" for short). Upon expiry of the previous lease agreement, the petitioner and HGP wanted to execute a fresh lease agreement in relation to the said premises extending the lease for five years. According to the petitioner, a draft of such fresh lease agreement was prepared jointly by both sides. However, before executing such document, the parties wanted to ascertain the stamp duty liability on such agreement. An application was, therefore, filed before Respondent No. 2 - Collector of Stamps, Mumbai on 29.5.2017 for adjudication of the stamp duty payable on such agreement in terms of Section 31 of the Maharashtra Stamp Act, 1958 ("**the Act**")

for short). Along with such application, a copy of the lease agreement was annexed.

4. Respondent No. 2 passed an adjudication order on 19.9.2017 holding that stamp duty of Rs. 6,90,51,450/- would be payable on such document. The petitioner was of the opinion that such assessment of stamp duty was excessive, worked out to nearly one year's lease payment for a lease period of five years. The parties, therefore, did not desire to act on such document since such enormous amount of stamp duty would make the transaction commercially unviable. According to the petitioner, the higher stamp duty assessment was on account of respondent No. 2 incorrectly interpreting the lease agreement as one of perpetual lease whereas the parties desired to execute lease for the period of five years with a renewable clause.

5. The petitioner and the lessor, therefore, prepared a fresh draft agreement which made it absolutely clear that the lease period was only for the period of five years and presented such draft before respondent No. 2 on 9.10.2017

requesting for adjudication of the stamp duty payable on such agreement. According to the petitioner, the second draft was prepared primarily to indicate the intention of the parties more clearly that the lease agreement was only for a period of five years. Respondent No. 2 on the said application passed the adjudication order on 2.11.2017 determining stamp duty payable at Rs. 77,36,500/-. On 8.11.2017, the petitioner paid the stamp duty as determined by respondent No. 2 and executed the lease agreement on 22.12.2017 which was duly registered on 27.12.2017.

6. On 12.2.2018, the petitioner addressed a letter to respondent No. 2 and withdrew the lease document which was submitted for adjudication on 29.5.2017. Respondent No. 2 also returned the document pursuant to the petitioner's request letter dated 12.2.2018. Subsequently, however on 5.4.2018, respondent No. 2 issued a letter dated 5.4.2018 demanding unpaid stamp duty of Rs. 6,90,51,450/- on the basis of the adjudication order dated 19.9.2017. It was conveyed to the petitioner that if such amount is not deposited, penalty @ 2% per month would be collected from

the petitioner. On 31.5.2018, respondent No. 2 wrote another letter to the petitioner conveying that the lease agreement in question was executed document; the subsequent lease agreement was a separate document; the petitioner, therefore, must pay the stamp duty. Yet another communication was issued on 11.7.2018 raising the same demand.

7. On 23.7.2018, the petitioner wrote to respondent No. 2 and contended that the first draft was never executed or acted upon by the parties. Upon determination of the stamp duty by respondent No. 2, parties decided to revise the draft agreement which was presented for adjudication and the duty was paid on the basis of such subsequent adjudication order. This lease agreement is the only valid agreement in existence for which full stamp duty as demanded by respondent No. 2 has already been paid. No fresh demand concerning the same premises and the same period can be raised.

8. Despite such representation of the petitioner, respondent No. 2 did not withdraw the demand notices, hence, this petition.

9. Appearing for the petitioner, Mr. Virag Tulzapurkar, the learned Senior Advocate took us extensively through the documents on record and the provisions contained in the said Act to raise following contentions:-

- (i) The document presented before respondent No. 2 on 29.5.2017 was merely a draft agreement. The same was wrongly interpreted by respondent No. 2 as an executed document. Even respondent No. 2 had all along treated the said document as unexecuted;
- (ii) Even if the document is taken to have been executed, the parties never desired to act on such agreement. The agreement was, therefore, never effected. No stamp duty, therefore can be levied;
- (iii) Learned counsel submitted that once respondent No. 2 passed his order of adjudication under

Section 31(1) of the Act, he becomes *functus officio* and can neither impound the document nor demand the stamp duty. Such impounding of document can be done only in terms of Section 33 of the Act;

(iv) Learned counsel further submitted that the petitioner had already executed a fresh agreement with the lessor on which the stamp duty as adjudicated by respondent No. 2 has already been paid up. The document is executed and registered. There cannot be separate demand for stamp duty for the same lease;

(v) In support of his contention, learned counsel has relied on following decisions:-

(a) Heavy reliance was placed on the decision of the Supreme Court in case of **The Government of Uttar Pradesh & Ors. Vs. Raja Manohar Amir Ahmad Khan**¹ in which in the context of Section 31 of the Act, it was held that the Collector after determination of the duty under Section 31

¹ AIR 1961 SC 787

of the Act, becomes *functus officio* and the provisions of Section 33 would have no application.

- (b) Our attention was drawn to the decision of a Division Bench of Gujarat High Court in the case of **Reliance Mobile Limited Vs. Collector & Additional Superintendent of Stamps & Anr.**² in which relying upon the decision of the Supreme Court in the case of Raja Mohammad Amir Ahmad Khan (supra), it was held that the document in question had remained unexecuted.
- (c) Reliance was placed on the decision of the Division Bench of this Court in the case of **Nirmala Manherlal Vs. State of Maharashtra**³ in which it was observed that power under Section 31 of the Act is for adjudication of stamp duty payable. While deciding such an application, the document in question cannot be impounded.
- (d) Reliance was placed on the decision in case of **Kamlabai & Ors. Vs. Shantirai & Ors.**⁴

2 2014 SCC OnLine Guj 2281

3 2005(3)Mh.L.J. 829

4 1983 Mh.L.J. 221

in which it was observed that a person cannot be said to execute a document where he does not do so with the intention of making it. It was further observed that the word "execution" in a sense means the making of a document, and a person can be said to have made or authorised a document where with the intention and knowledge of bringing into existence a particular kind of document he prepares or gets prepared, such a document and signs it in token of his having accepted that document, with a desire to bring it into existence. Mere signing of a document without the intention of bringing that document into existence would not attract the expression "execution".

- (e) Reliance was placed on the decision of a single Judge of this Court in the case of **Life Insurance Corporation of India Vs. Dinanath Mahadeo Tembhekar & Ors.**⁵

in which it was observed that provisions of taxing statutes such as the Stamp Act must be construed strictly.

5 AIR 1976 Bom 395

(f) Reliance was placed on the decision of a single Judge of this Court in the case of **Sanman Trade Impex Pvt Ltd Vs. State of Maharashtra & Ors.**⁶ in which referring to Section 47 of the Act, it was held that pursuant to the transaction of sale, when the transferer fails to deliver the actual possession of the property to the purchaser and the sale transaction was cancelled, the parties were entitled to refund of the stamp duty in terms of Section 47(c) of the Act.

10. On the other hand, learned AGP Ms. Jyoti Chavan submitted that the document in question was duly executed, signed by both the parties and initialed on each page. The Collector has, therefore, held the document as executed document. Such document was presented before him for adjudication. He has correctly held that the lease was in perpetuity and thereby assessed the stamp duty on such document. This order is appealable. No appeal is filed. Our attention was drawn to sub-section 4 of Section 31 of the Act which was inserted by the Amendment Act of 1997 w.e.f. 15.5.1997. On the basis of this provision, she contended

⁶ AIR 2005 Bom. 94

that on the said executed document, the petitioner was required to pay stamp duty within one month. When the petitioner failed to do so, notices were issued by respondent No. 2. Subsequent execution of the fresh lease would not permit the petition to avoid the liability to pay stamp duty on the original document. She pointed out that the decisions cited by the counsel for the petitioner were rendered before the insertion of sub-section (4) in Section 31 of the Act. According to her, with insertion of said sub-section, the entire situation has changed.

11. At this stage, we may refer to the relevant statutory provisions contained in the Act. Section 2(1) of the Act defines the term "executed" and "execution" used with reference to instrument as to mean "signed" and "signature". Section 17 of the Act provides that all instruments chargeable with duty and executed by any person in the State shall be stamped before or at the time of execution or immediate thereafter or on the next working day following the day of execution.

12. Chapter III of the Act pertains to adjudication as to stamps. Section 31 contained in the said chapter reads as under:-

"31. Adjudication as to proper stamps.

(1) When an instrument, whether executed or not and whether previously stamped or not, is brought to the Collector, [by one of the parties to the instrument and such person] applies to have the opinion of that officer as to the duty (if any) with which [or the Article of Schedule I under which] it is chargeable and pay [a fee of one hundred rupees] the Collector shall determine the duty (if any) with which [or the Article of Schedule I under which] in his judgment, the instrument is chargeable].

(2) For this purpose the Collector may require to be furnished with [a true copy or] an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein and may refuse to proceed upon any such application until [such true copy or abstract] and evidence have been furnished accordingly:

Provided that,-

(a) no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in any inquiry as to the duty with which the instrument to which it relates is chargeable; and

(b) every person by whom any such evidence is furnished shall, on payment of the full duty with which the instrument to

which it relates is chargeable, be relieved from any penalty which he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

(3) Where the Collector acting under sub-sections (1) and (2) is not the Collector of the District and if he has reasons to believe that the market value of the property, which is the subject matter of the instrument, received by him for adjudication, has not been truly set forth therein, [he shall, for the purpose of assessing the stamp duty, determine the true market value of such property, as laid down in the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995.]

(4) When an instrument is brought to the Collector for adjudication,-

(i) within one month of the execution or first execution of such instrument in the State; or

(ii) if, such instrument is executed or first executed, out of the State, within three months from the date of first receipt of such instrument in this State,

the person liable to pay the stamp duty under section 30 shall pay the same within sixty days from the date of service of the notice of demand in respect of the stamp duty adjudicated by the Collector. If such person fails to pay the stamp duty so demanded within the said period, he shall be liable to pay a penalty at the rate of two per cent of the deficient portion of the stamp duty, for every month or part thereof, from the date of execution of such instrument, or as the case may be, date of the first receipt of such instrument in the State]

[Provided that, in no case, the amount of the penalty shall exceed double the deficient portion of the stamp duty.]

13. Chapter IV of the Act pertains to instruments not duly stamped. Section 33 contained in the said Chapter pertains to examination and impounding of instruments and reads as under:-

"33. Examination and impounding of instruments

(1) [Subject to the provisions of section 32-A, every person] having by law or consent of parties authority to receive evidence and every person in charge of a public office, except an officer of police [or any other officer, empowered by law to investigate offences under any law for the time being in force,] before whom any instrument chargeable, in his opinion, with duty, is produced or comes in the performance of his functions shall, if it appears to him that such instrument is not duly stamped, impound the same [irrespective whether the instrument is or is not valid in law.]

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him in order to ascertain whether it is stamped with a stamp of the value and description required by the law for the time being in force in the State when such instrument was executed or first executed:

Provided that,-

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do any instrument coming before him in the course of any proceeding other than a proceeding under [Chapter IX or Part D of Chapter X of the Code of Criminal Procedure, 1973];

(b) in the case of a judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court may appoint in this behalf.

(3) For the purposes of this section, in cases of doubt, -

(a) the State Government may determine what offices shall be deemed to be public offices; and

(b) the State Government may determine who shall be deemed to be persons in charge of public offices.

As per Section 34 of the Act, no instrument chargeable to duty would be admitted in evidence for any purpose, having authority to receive evidence or would be acted upon, registered or authenticated. Section 37 of the Act reads as under:-

"37. Instruments impounded how dealt with

(1) When the person impounding an instrument under section 33 has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by section 34 or of duty as provided by section 36, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

[(2) In every other case, a person so impounding the original

instrument shall prepare an authentic copy of such instrument and where it is a true copy or an abstract referred to in section 31 or true copy referred to in section 33A, he shall send such authentic copy or, true copy or, as the case may be, an abstract to the Collector, for the purpose of taking action on the authentic copy or a true copy or, as the case may be, an abstract as if it were the original instrument and endorsing thereon a certificate with reference to the instrument under clause (a) of sub-section (1) of section 39 or under sub-section (1) of section 41, as the case may be. On receipt of the authentic copy, the true copy or, as the case may be, an abstract with the certificate as aforesaid endorsed thereon, the person who had impounded the original instrument shall copy on the original instrument the certificate endorsed on the authentic copy and shall authenticate such certificate; and where it is a true copy or an abstract on which the certificate as aforesaid is endorsed, the registering officer who had forwarded the true copy or an abstract shall make appropriate entries in respect of the instrument of which it was a true copy or an abstract, in the relevant register maintained by him and on an application made in this behalf issue under his signature a certificate to the effect that the proper duty or, as the case may be, the proper duty and penalty (stating the amount of each) have been levied in respect of that instrument, and the name and residence of the person paying such duty and penalty.]

Section 39 of the Act provides for the Collector's power to stamp instrument impounded. Section 42 pertains to prosecution for offence against stamp law. Section 46 provides for the mechanism for recovery of duties and penalties.

14. Chapter V pertains to allowances for stamps in certain cases. Section 47 contained in the said Chapter pertains to allowance for spoiled stamps, relevant portion of which reads as under:-

"47. Allowance for spoiled stamps.

Subject to such rules as may be made by the State Government as to the evidence to be required, or the inquiry to be made, the Collector may on application, made within the period prescribed in section 48, and if he is satisfied as to the facts, make allowance for impressed stamps spoiled in the cases hereinafter mentioned, namely:-

.....

(c) the stamp used for an instrument executed by any party thereto which-

.....

(5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose;

15. We may recall that the learned counsel for the petitioner had challenged the impugned communications principally on two grounds. Firstly that the Collector once passed an order under sub-section (1) of Section 31 of the Act, he becomes *functus officio* and therefore, cannot demand unpaid stamp duty even if the document was

already executed. The second contention of the petitioner was that in fact the lease deed presented to the Collector for his opinion was not a final document, a document which was not executed.

16. We would first take up the legal contention. Section 17 of the Act, as noted, requires all instruments chargeable with duty and executed by any person in the State to be stamped before or at the time of execution or immediately thereafter. Section 31 of the Act originally did not contain sub-section (4). Under sub-section (1) of Section 31, when an instrument is brought before the Collector by one of the parties to the instrument, applying for the opinion of the Collector as to the duty with which it is chargeable, the Collector would determine the duty which in his judgment, the instrument is chargeable. Such an instrument would either be executed or unexecuted and may be previously stamped or unstamped. Thus, under sub-section (1) of Section 31, a person can seek the opinion of the Collector as to the determination of the duty chargeable on an instrument even before it is executed. Even an executed

instrument can similarly be placed before the Collector for his determination. Under sub-section (2) of Section 31, the Collector is clothed with certain powers to collect material and evidence as found necessary.

17. Sub-section (1) of Section 33 provides that subject to the provisions of Section 32-A, every person having by law or consent of parties authority to receive evidence and every person in charge of a public office, except an officer of police, before whom an instrument chargeable, in his opinion, with duty, is produced or comes in the performance of his functions shall, if it appears to him that such instrument is not duly stamped, impound the same. Section 37 of the Act, in turn, provides as to how the instrument impounded would be dealt with. Section 39 of the Act provides for Collector's power to stamp instruments impounded. Under sub-section (1) of Section 39, when the Collector impounds any instrument under Section 33, or has received any instrument sent to him under sub-section (2) of Section 37, he would adopt the procedure laid down therein and if found necessary, levy the deficient portion of the

stamp duty and penalty.

18. It was in the background of such provisions that the Supreme Court in the case of Raja Mohammad Amir Ahmad Khan (supra) had come to the conclusion that once the Collector passed an order under Section 31 of the Act, he becomes *functus officio* and the provisions of Section 33 would have no application. The decision of the Gujarat High Court in the case of Reliance Mobile Limited (supra) proceeded on the same basis. So also the decision of this Court in the case of Nirmala Manherlal (supra).

19. After the Supreme Court rendered its judgment in case of Raja Mohammad Amir Ahmad Khan (supra), the legislature inserted sub-section (4) of Section 31 w.e.f. 15.5.1997. This sub-section (4) provides that when an instrument is brought to the Collector for adjudication, within one month of the execution or first execution of such instrument in the State and if such instrument is executed or first executed, out of the State, within three months, the person liable to pay the stamp duty under Section 30 shall

pay the same within sixty days from the date of service of the notice of demand in respect of the stamp duty adjudicated by the Collector. If such person fails to pay the stamp duty so demanded, he would be liable to pay penalty at the prescribed rate.

20. Had sub-section (4) not been inserted to Section 31 of the Act, the learned counsel for the petitioner would have been correct in contending that once the Collector passed his adjudication order, he could not have issued notice for recovery of unpaid stamp duty. However, the insertion of sub-section (4) of Section 31 has totally changed the complexion. The Collector can now issue a notice for recovery of unpaid stamp duty, even when the document is not impounded by him or sent to him by some other authority after impounding it as is referred to in Section 39 of the Act. Sub-section (4) of Section 31 in plain terms authorizes the Collector to issue a notice for demand of unpaid duty of an instrument which is executed on which he had passed the order of adjudication, failing which he would impose penalty. We are, therefore, unable to accept the first

contention of the learned counsel for the petitioner that even if the lease agreement produced before the Collector for his adjudication was executed, the Collector could not have demanded payment of stamp duty as adjudicated.

21. This brings us to the second contention of the learned counsel for the petitioner that in fact, the execution of the document in the present case was not complete. The outcome of the petition would hinge on the answer to this question. Perusal of the lease agreement would show that it does not contain the date of the agreement nor does it contain the date on which the parties had signed it. This document is thus, an undated document. It is true that at the end of the document, the signature of the lessor with the photograph and the thumb impression and the signature of the lessee without the photograph and the thumb impression are found. The document also contained initials of one of them. This document was presented before the Collector for adjudication of payable stamp duty along with an application dated 29.5.2017. This application was made in a printed proforma. The nature of the document described as "Lease

Deed". Serial No. 5 of this printed format required the applicant to state the date of execution of the document to which the applicant states "2017". Along with the application, the applicant had to file an affidavit which also comes in a prescribed format. Here also the deponent had to state the date of execution in which again the answer given is "2017". The consideration is kept blank.

22. The Collector in his order dated 19.9.2017 in the top portion which contains the description of the document, the situation of the property etc in response to the printed column for "document under consideration" has recorded that this document is the lease agreement which is yet unexecuted document which has been presented to the office on 31.5.2017. In the very next column for date of execution, he has recorded as "unexecuted". It is true that in the body of the order, he refers to the said document as the document executed between the vendor and the purchaser.

23. It can, thus, be seen that the Collector himself has described the very document differently at different places in the same order. At the top of the order, as noted, at two places, he has described the document which is not yet executed. In the body of the order, he has referred to the document as a lease executed between the lessor and the lessee. However, the description of the document in isolation in any of the documents, would not be decisive of the nature of the document itself. We would, therefore, have to view the document in the facts and attending circumstances emerging from the material on record.

24. What we have on the record is that the lease agreement in question was signed by both the sides at the end of the document. The lease agreement neither carried a date in front nor at the end of the document where both the sides put their signatures. This was thus a completely undated document. In the application made by the petitioner to the Collector and in the affidavit filed in support of such application, the date of the document has not been mentioned. In the column for the date of execution of the

document, merely the year 2017 is mentioned. The perusal of the lease agreement itself would show that the petitioner was already in possession of the premises in question. The previous period of the lease having expired, both sides mutually agreed to revise the lease period. Such revision would apply from 14.9.2016 and end on 13.9.2021. When this document was presented by the petitioner before the Collector sometime in May 2017, the original lease period had already expired. The parties were, thus, merely regulating their bilateral relations and mutual obligations through this formal document of lease agreement which would operate for a period interior to its execution. There was no necessity for them, therefore, to present an executed document to the Collector for his adjudication of payable stamp duty, when in terms of sub-section (1) of Section 31 of the Act, they had option to present the draft agreement. This is just an attending circumstance which in addition to the primary facts noted earlier, would convince us that the document in question was not an executed lease agreement. As noted, the Division Bench of this Court in the case of Kamlabai & Ors (supra) had observed that mere signing of

the document would not complete its execution unless the signatories had put the signatures after fully understanding all the contents of the documents and with intention of executing the same. Following observations of the Court may be noted:-

"82. It seems to us plain that a person cannot be said to execute a document where he does not do so with the intention of making it. This may appear to be simple, but it is clearly, in our opinion, full of meaning and import. The word "execution" in a sense means the making of a document, and a person can be said to have made or authorised a document where with the intention and knowledge of bringing into existence a particular kind of document he prepares or gets prepared, such a document and signs it in token of his having accepted that document, with a desire to bring it into existence. Mere signing of a document without the intention of bringing that document into existence, meaning thereby giving effect to it would not properly speaking attract the expression "execution". A person may, for instance, prepare and sign a document and put it away without any intention of bringing it into existence at that time. The intention to bring it into existence may be contingent, may also be dependent and may never be acted upon. Where a document is delivered to a person intended to be delivered to, or with a view that it should be acted upon, it could be said that the document has not been brought into existence. The execution, therefore, would mean a conscious making out of a kind of document intended to be made out, acknowledging it that it is so made out by affixing his signature or thumb mark to that document in token of having accepted it, and when it is delivered or communicated, or any act is done in that behalf with a view to bring it into existence. The intention must be to

bring it into effect. It is when all these transactions and acts are intended and also completed, that a document in a proper sense can be said to have been executed."

Merely because the document contained signatures of the parties at the end and initials of one of them on pages would not indicate execution of it. As correctly pointed out by the petitioner's counsel, this may have been done to avoid disputes or disagreement between the parties as to correct document and terms thereof which was presented for assessment of stamp duty. The document itself did not contain the date of its execution. the dates in the documents were deliberately kept blank.

25. We also find substance in the explanation of the petitioner that at the assessed rate of stamp duty, it was commercially not viable to execute the lease agreement. According to the petitioner, the parties never intended to enter into an agreement of lease in perpetuity. The lease period specifically was fixed for a period of five years with a renewable clause upon mutual agreement. The Collector, however, interpreted the terms of the lease agreement as one of bringing into existence a lease in perpetuity. It was,

therefore, that the Collector had assessed the stamp duty of Rs. 6,90,51,450/-. Learned counsel for the petitioner pointed out that this would be equivalent of almost one full year of lease rent for a lease of five years. The parties, therefore, instead of challenging such adjudication order of the Collector, prepared a fresh draft of lease agreement which would put the intention of the parties beyond any controversy. They presented such draft to the Collector for its execution, assessed the same at a much lessor amount of stamp duty of Rs. 77,36,500/- which the petitioner has paid, completed execution of the lease agreement and also got the same registered. The entire chain of events, thus, would show that the parties had never intended to bring into existence the lease agreement which was presented to the Collector for adjudication under application dated 29.5.2017.

26. There is yet another interesting angle to this dispute. Section 47 of the Act pertains to allowance for spoiled stamps which provides that subject to the rules as may be made by the State Government, the Collector may on application made within the prescribed period, if satisfied

as to the facts, make allowance for impressed stamps spoiled in the cases mentioned in different clauses contained in the said Section. Clause (c) pertains to the stamp used for an instrument executed by any party which, as per item (5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any office thereby granted, totally fails the intended purpose. In our opinion, even if the Government was to collect the stamp duty as insisted by the Collector, in terms of Section 47(c)(5) of the Act, the same would become refundable. As noted, the parties found that it was totally unviable to execute the lease agreement by paying stamp duty of more than Rs. 6.90 Crores. The parties, therefore, abandoned the document, decided to govern themselves by fresh set of contract which culminated into execution of fresh lease. This is, therefore, a case where by reason of refusal of both the sides to act under the agreement, the very intended purpose has totally failed.

27. Be that as it may, on the main ground of the

document itself not having been executed at the time of its presentation to the Collector, we accept the petitioner's stand. Consequently, we hold that the assessment of the stamp duty by the Collector was purely in the nature of his opinion. The stamp duty had not become payable. It would become payable only upon execution of such document which parties never did.

28. In result, the impugned notices are set aside. The petition is allowed and disposed of accordingly.

[S.J. KATHAWALLA, J.]

[AKIL KURESHI, J]