IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 3905/2008

1. Snehaprabha Co-operative Housing Society, Through its Secretary having its registered office at Priyadarshani Nagar, Near Regional Transport Office, Nagpur.

2. Shankar Nanduji Chandekar, Aged about 50 years, Occupn-Business, R/o 2/4, Priyadarshani Nagar, Near Regional Transport Office, Nagpur.

3. Vishram Vasudeo Dharmadhikary, Aged about 56 years, Occupn-Service, R/o 1/3, Priyadarshani Nagar, Near Regional Transport Office, Nagpur. **PETITIONERS**

-VERSUS-

1. State of Maharashtra, Through its Secretary for Revenue and Forest Department, Mantralaya, Mumbai-32.

2. Inspector General of Registrations & Controller of Stamps, Maharashtra State, Sadhu Waswani Chowk, New Administrative Building Pune.

3. Dy. Inspector General of Registrations & Controller of Stamps, Shivaji Nagar, Nagpur.

4. Joint District Registrar of Registrations & Controller of Stamps, Shivaji Nagar, Nagpur.

5. The Maharashtra Housing and Area Development Authority, Through its Chief Officer, Civil Lines, Nagpur. **RESPONDENTS**

WITH
WRIT PETITION NO. 4721/2008

1. Shivraya Co-operative Housing Society, Through its Secretary Suresh Panjabrao Giri, Aged about 52 years, H.I.G. Building No.B1, Near Hislop College, Samruddhi Sankul, Nagpur.

2. Anil S/o Suratlal Chaurasiya, Aged about 51 years, Flat No.403, H.I.G. Building No.B1, Near Hislop College, Samruddhi Sankul, Nagpur. **PETITIONERS**

-VERSUS-

1. State of Maharashtra, Through its Secretary for Revenue and Forest Department, Mantralaya, Mumbai-32.

2. Inspector General of Registrations & Controller of Stamps, Maharashtra State, Sadhu Waswani Chowk, New Administrative Building Pune.

3. Dy. Inspector General of Registrations & Controller of Stamps, Shivaji Nagar, Nagpur.

4. Joint District Registrar of Registrations & Controller of Stamps, Shivaji Nagar, Nagpur.

5. The Maharashtra Housing and Area Development Authority, Through its Chief Officer, Civil Lines, Nagpur. **RESPONDENTS**

WITH
WRIT PETITION NO. 5284/2008

1. A-1 Cooperative Housing Society, Through its Secretary/President Madan S/o Angmuthu Pillay, Aged about years, H.I.G. Building No.A-1, Near Hislop College, Samruddhi Sankul, Nagpur.

2. Madan S/o Angmuthu Pillay, Aged about years, H.I.G. Building No.A-1, Near Hislop College, Samruddhi Sankul, Nagpur.

3. The Samruddhi Sahniwas Sahakari Gruhnirman Sanstha Ltd., Nagpur, Through its President/ Secretary Krishnakumar Urkudaji Lanjewar, Aged about 50 years, H.I.G. Building No.C, Near Hislop College, Samruddhi Sankul, Nagpur.

4. Krishnakumar Urkudaji Lanjewar, Aged about 50 years, H.I.G. Building No.C, Near Hislop College, Samruddhi Sankul, Nagpur.

5. Mansarovar Cooperative Housing Society Ltd., Nagpur, Through its President/Secretary Sanjay S/o Basudeo Bose, H.I.G. Building No.A-3, Near Hislop College, Samruddhi Sankul, Nagpur.

6. Sanjay S/o Basudeo Bose, Aged: Major, R/o H.I.G. Building No.A-3, Near Hislop College, Samruddhi Sankul, Nagpur. **PETITIONERS**

-VERSUS-

1. State of Maharashtra, Through its Secretary for Revenue and Forest Department, Mantralaya, Mumbai-32.

2. Inspector General of Registration And Controller of Stamps, Maharashtra State, Sadhu Waswani Chowk, Near Administrative Building Pune.

3. Deputy Inspector General of Registrations and Controller of Stamps, Shivaji Nagar, Nagpur.

4. Joint District Registrar of Registrations & Controller of Stamps, Shivaji Nagar, Nagpur.

5. The Maharashtra Housing and Area Development Authority, Through its Chief Officer, Civil Lines, Nagpur. **RESPONDENTS**

Shri Amol B. Patil, counsel for the petitioners in Writ Petition Nos.3905/2008 and 4721/2008.
Shri Pradeep S. Wathore, counsel for the petitioners in Writ Petition No.5284/2008.
Shri Neeraj R. Patil, Assistant Government Pleader for the respondent nos.1 to 4.
Shri Nitin A. Vyawahare, counsel for the respondent no.5.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.

DATE ON WHICH ARGUMENTS WERE HEARD : 29TH JULY, 2022.

DATE ON WHICH JUDGMENT IS PRONOUNCED : 28TH SEPTEMBER, 2022.

JUDGMENT (PER : A.S. CHANDURKAR, J.)

The challenge raised in these writ petitions is to the order dated 07.06.2008 issued by the Revenue and Forest Department, Mantralaya, Mumbai as well as to the Circular dated 09.06.2008 issued by the Inspector General of Registration and Controller of Stamps, Pune to the extent the same relate to payment of stamp duty on letters of allotment and letters of transfer issued by the Maharashtra Housing and Area Development Authority (for short, 'MHADA') in favour of the members of Co-operative Housing Societies. For sake of convenience, the facts in Writ Petition No.3905 of 2008 are being referred to.

It is the case of the petitioners that the petitioner no.1 is a Co-operative Tenant Co-Partnership Housing Society. The petitioner nos.2 and 3 are its members having been issued allotment letters by the said Society with regard to a high income group housing scheme. According to the petitioner nos.2 and 3 they had sought allotment of tenements pursuant to a notice and advertisement issued by MHADA. On being successful they were issued letters of allotment. The letters of allotment are dated 21.11.1985 and 26.05.1987 respectively. The housing scheme is governed by the provisions of the Maharashtra Housing and Area Development Act, 1976 (for short, 'the Act of 1976') as well as the Maharashtra Housing and Area Development (Estate management, Sale, Transfer and Exchange of Tenements) Regulations, 1981 (for short, 'the Regulations of 1981'). The petitioner nos.2 and 3 contend that all payments in terms of letters of allotment have been made by them. A conveyance in favour of the society is required to be issued by MHADA and till that time the members are entitled to continue as tenants of MHADA. According to the petitioners they have been informed that MHADA would not execute sale-deeds in their name and the conveyance would be issued only in favour of the housing society. Since allotment, there has been no demand of any stamp duty or other charges either by the State Government or by any other Authority.

2. On 07.06.2008 the Revenue and Forest Department came out with an Amnesty Scheme 2008 also known as 'Abhay Yojana'. In the said order it has been stated that the State Government was satisfied that it was necessary in public interest to reduce the amount of penalty chargeable under Sections 31(4)(ii), 32A(2) & (4) and 39(1)(b) of the Maharashtra Stamp Act, 1958 (for short, 'the Act of 1958'). The Scheme was to operate from 09.06.2008 to 08.09.2008. The documents eligible under the said Scheme were specified. It was also stated that except the instruments executed by MHADA, unstamped instruments executed on plain paper would not be entitled to any benefit under the Scheme. Pursuant to the aforesaid order, the Inspector General of Registration and Controller of Stamps issued a Circular indicating the manner in which the benefit under the said Scheme could be obtained. While indicating the scope thereof, reference was made to the documents pertaining to Bungalows, Flats, Shops, etc. of residential/non-residential nature. Similarly reference was also made to cases where proceedings under Sections 32A, 33, 33A and 46 of the Act of 1958 were pending. In the light of this Circular a public notice was issued by the Chief Officer, MHADA on 07.08.2008. It was informed that persons interested could take advantage of aforesaid Scheme by submitting all relevant documents with regard to the documents for which no stamp duty had been affixed. In the aforesaid backdrop, it is the case of the petitioners that since the aforesaid Scheme was sought to be made applicable to the documents

executed by MHADA in the form of allotment letters, they have challenged the order dated 07.06.2008 issued by the Department of Revenue and Forest as well as the Circular dated 09.06.2008 issued by the Inspector General of Registration and Controller of Stamps to that extent.

3. Shri Amol Patil, learned counsel for the petitioners in Writ Petition Nos.3905 and 4721 of 2008 referred to the various statutory provisions of the Act of 1958 as well as the Act of 1976 including the Regulations of 1981 to urge that various Sections mentioned in the Circular dated 09.06.2008 were not at all attracted insofar as the petitioners were concerned. There had been no adjudication with regard to the letters of allotment executed in favour of the petitioners. All the allotment letters were executed within the State of Maharashtra and no instrument was shown to have been undervalued. In absence of such statutory adjudication the allotment letters could not have been subjected to the Amnesty Scheme thus compelling the petitioners to pay the stamp duty thereunder. The letters of allotment could not be treated to be a conveyance for the purposes of the Act of 1958. It was only after MHADA executed a deed in favour of the Co-operative Housing Society that it could be said that a conveyance had been issued. Reference in that regard was made to Article 25(d) of Schedule-I to the Act of 1958 to substantiate the said contention. It was further submitted that though the allotments in question were made in the year 1987-88 the same were

sought to be subjected to payment of stamp duty after almost twenty one years. In some cases there had been a transfer of the tenements by the original allottee and despite that stamp duty was being sought even on earlier transactions that were already complete. It was thus submitted that when the letter of allotment in favour of original allottee was not chargeable under the Act of 1958 there was no justification in seeking to issue a public notice on 07.08.2008 requiring participation of the allottees in the Amnesty Scheme. To substantiate his contention that there was no conveyance issued yet in favour of the allottees, reliance was placed on the decisions in *Veena Hasmukh Jain & Another Versus State of Maharashtra & Others* [**(1999) 5 SCC 725**], *Hanuman Vitamin Foods Pvt. Ltd. & Others Versus State of Maharashtra & Another* [**(2000) 6 SCC 345**] and *Kishore K.Shahani & Others Versus State of Maharashtra & Another* [**2001(3) Mh.L.J. 724**].

It was pointed out that pursuant to the interim orders passed in the writ petitions the petitioners had paid the stamp duty under the Amnesty Scheme under protest and subject to final outcome of the writ petitions. It was thus submitted that the prayers as made in the writ petitions be granted.

Shri Pradeep Wathore, learned counsel for the petitioners in Writ Petition No.5284 of 2008 adopted the aforesaid submissions. In addition it was submitted that the petitioners had paid all the requisite demands and there were no outstanding dues/service charges that were required to be paid by them. The learned counsel sought leave to delete paragraph 8 in the writ petition wherein it was pleaded that MHADA had got a tenancy agreement executed in Form VI as per Regulation 20(2) of the Regulations of 1981. The learned counsel also referred to the decisions in *M/s Terai Tea Company Limited Versus Kumkum Mittal & Others* [**2019 ALL SCR 2506**], *Asset Reconstruction Company (India) Limited Versus M/s Alpha & Omega Diagnostics (India) Ltd. & Others* [**2017(2) ALL MR 29**] and *Pandurang R. Kanade & Another Versus The State of Maharashtra & Others* [**2018(5) ALL MR 329**]. He too prayed for grant of appropriate relief.

4. Shri Neeraj Patil, learned Assistant Government Pleader for the respondent nos.1 to 4 opposed aforesaid submissions. He referred to the affidavit-in-reply filed on behalf of the respondent nos.2 to 4. It was his submission that even if the documents by which the tenements were allotted to the petitioners were styled as allotment letters they were infact in the nature of an agreement for sale of a specific tenement allotted to such member. What was relevant was the nature of the transaction and the title given to the document in question would be immaterial. It was further submitted that various transactions had taken place since the issuance of the allotment letters and according to him if it was the case of the petitioners that the documents executed in their favour were not liable to payment of stamp duty then there was no question of

participation in the Amnesty Scheme since the same was voluntary in nature. The persons having title in the property in question were liable to pay the requisite duty and hence there was no illegality in the order dated 07.06.2008 or the Circular dated 09.06.2008 to warrant interference by this Court.

5. Shri Nitin Vyawahare, learned counsel for MHADA also opposed the writ petition. At the outset, he submitted that though the petitioner no.1 in the writ petitions was the Co-operative Housing Society there was no proper authorization in favour of the society to raise the aforesaid challenges. He too referred to the affidavit-in-reply filed on behalf of the respondent no.5. According to him, pursuant to issuance of the allotment letters each member of the Co-operative Housing Society was required to pay hire purchase charges. He referred to various provisions of the Regulations of 1981 and submitted that various allottees had not paid the entire hire purchase installments. Some allottees had not paid service charges, ground rent as well as the requisite surcharge. Until all such dues were cleared there was no question of executing any conveyance in favour of the Housing Society. It was the liability of the person occupying the tenement to pay requisite stamp duty and hence the allottees could not contend that they were not liable to pay the stamp duty in any manner. It was submitted that the writ petitions were liable to be dismissed.

6. In reply, it was submitted by the learned counsel for the petitioners that in the reply as filed there was no objection raised on behalf of MHADA to the maintainability of the writ petitions. The same was being raised at a belated stage. The writ petitions had been filed on the basis of valid authorization. Reference was made to Regulation 24 of the Regulations of 1981 to urge that transfer of tenancy was permissible and there was no illegality committed by the petitioners.

7. We have heard the learned counsel for the parties at length and we have perused the documents placed on record. Before considering the challenge as raised it would be necessary to first refer to the order dated 07.06.2008 issued by the Revenue and Forest Department, Mantralaya, Mumbai. The said order has been issued in exercise of the power conferred by Section 9A of the Act of 1958. Under the said provision if the State Government is satisfied that it is necessary in the public interest to reduce or remit either prospectively or retrospectively the duties or penalties or both with which any instrument or class of instruments are chargeable, the same can be done by publishing the requisite rule or order in the official gazette. The said power therefore can be exercised with a view to reduce or remit the duties or penalties payable on any instrument. This is after being satisfied that it is necessary to do so in public interest. In the order dated 07.06.2008 it has been stated that on being satisfied that it was necessary in public interest to reduce the amount of penalty

chargeable under Sections 31(4)(ii), 32A(2), 32A(4) and 39(1)(b) of the Act of 1958 with regard to instruments relating to residential or non-residential units the same was issued. Where the deficit stamp duty was up to Rupees Twenty Five Thousand the amount payable was Rupees Five Hundred and where the amount of deficit stamp duty was Rupees Twenty Five Thousand or more an amount of Rupees One Thousand was payable. The Scheme was known as Amnesty Scheme, 2008. The terms and conditions for reduction in penalty to be availed were stipulated and except instruments executed by MHADA, unstamped instruments were not entitled for any benefit. It was also provided that documents eligible under the Scheme for which action under Sections 32A, 33 or 33A had been initiated or action under Section 46 of the Act of 1958 to recover dues as arrears of land revenue or cases in which proceedings were pending before any Court or Authority under the Act of 1958, the same would be entitled to the benefit of the Scheme. Section 31 of the Act of 1958 relates to an adjudication with regard to stamp duty payable. Section 32A indicates the manner in which an undervalued instrument of conveyance is to be dealt with. Section 39 refers to the Collector's power to stamped instruments that are impounded. Under Section 46 the manner in which recovery of duties and penalties are to be effected by way of land revenue has been laid down.

8. On the perusal of the order dated 07.06.2008 it becomes evident that the same is issued only with an intention to reduce the amount of penalty that is chargeable under various provisions of the Act of 1958 as quoted therein. Admittedly in the present case there has been no adjudication as to the amount of stamp duty that is liable to be paid on the instruments in question. The liability to pay penalty would arise after an adjudication with regard to determination of proper stamp duty has been undertaken. The order dated 07.06.2008 will have to be viewed in that context. In other words, unless there has been the requisite adjudication as provided under Section 31(4), 32A(2) & (4), 39(1)(b) or steps with regard to recovery of arrears of stamp duty under Section 46 there would be no occasion to fall within the ambit of the order dated 07.06.2008 to seek reduction in the amount of penalty as imposed. As stated above the statutory adjudication of the letters of allotment in favour of the petitioners has yet not been undertaken.

9. Coming to the Circular dated 09.06.2008 issued by the Inspector General of Registration and Controller of Stamps the same has been issued to facilitate the working of the Amnesty Scheme, 2008 pursuant to the order dated 07.06.2008. It also refers to the concession to be given in the amount of penalty payable. It is pursuant to this Circular that a public notice was issued by the Chief Officer, MHADA on 07.08.2008 informing members of public of Amnesty Scheme, 2008 being implemented and the

same being in force from 08.09.2008. Perusal of the said public notice merely indicates that it is by way of intimation to persons interested to take advantage of the Amnesty Scheme, 2008.

10. Another aspect to be noted is that the general nature of an Amnesty Scheme is to provide an opportunity to persons interested in taking benefit of the decision taken by the State Government to reduce or remit the duty or penalty payable on an instrument. There is no element of compulsion therein and participation in such Amnesty Scheme is purely voluntary. The order dated 07.06.2008 or the Circular dated 09.06.2008 as well as the public notice dated 07.08.2008 nowhere indicate any aspect of compulsion therein by which any person is forced to submit himself to such Amnesty Scheme. Participation therein is purely voluntary in nature. In the present case too it has not been indicated that the petitioners were compelled to submit themselves to the Amnesty Scheme-2008. The public notice issued by the Chief Officer, MHADA is merely by way of an intimation to the persons interested to take benefit of that Amnesty Scheme.

11. It is therefore found that in absence of primary adjudication of the relevant instruments any aspect as to whether any duty or penalty is payable thereon cannot be the subject matter of determination in such manner. Only after there has been some adjudication determining the

amount of duty or penalty payable, would the question of participation in an Amnesty Scheme aimed with reducing the amount of penalty would arise. It is also found that there is a dispute raised with regard to the entire dues liable to be paid by the petitioners. While according to the petitioners all amounts due have been paid by them, the same has been denied by MHADA in its reply by stating that most of the petitioners have still not cleared all the necessary dues. This would be another reason that would not enable the Court to undertake determination of the liability to pay duty or penalty for the first time in the present proceedings. The petitioners by raising challenge to the order dated 07.06.2008 and the Circular dated 09.06.2008 infact are seeking a declaration that they are not liable to pay any duty or penalty on their respective instruments. Such determination, in our view cannot be undertaken for the first time in exercise of writ jurisdiction. The statutory scheme of the Act of 1958 requires such adjudication to be made initially by the Authorities constituted under the Act of 1958. After such statutory adjudication is undertaken in which the petitioners are free to deny their liability can a challenge be raised to the said adjudication if the same is incorrect. We are therefore not inclined to go into the question as to whether the said instruments can be termed to be 'conveyance' under the Act of 1958 and especially in the context of Article 25 of Schedule-I thereto. For these reasons we find that at present there is no cause of action for the petitioners to challenge the order dated 07.06.2008 or the Circular dated 09.06.2008 wherein the Amnesty Scheme-2008 is sought to be operated. We have therefore not gone into the various decisions relied upon by the learned counsel for the petitioners in that regard. Examination of that contention would be permissible either during or after any statutory adjudication is undertaken by the Authorities under the Act of 1958.

12. Hence for all these reasons we do not find that the challenge as raised to the order dated 07.06.2008 and the Circular dated 09.06.2008 can be successfully upheld. It is seen that pursuant to the interim orders passed in the writ petitions, the petitioners have paid some duty under the Amnesty Scheme-2008 under protest. Such payment would enure to the benefit of the petitioners who have paid that amount in any future statutory adjudication that would be undertaken under the Act of 1958. If in future there is any demand made from the petitioners who have made such payments under protest the same shall be taken into consideration in accordance with law. With these observations, the writ petitions are dismissed. Rule stands discharged leaving the parties to bear their own costs.

(**URMILA JOSHI-PHALKE, J.**) (**A.S. CHANDURKAR, J.**)

APTE