

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15681 OF 2022
WITH
WRIT PETITION NO.13661 OF 2022
WITH
WRIT PETITION NO.15690 OF 2022
WITH
WRIT PETITION NO.13679 OF 2022
WITH
WRIT PETITION NO.13672 OF 2022

- 1 Vilas Eknath Nandgude
Age 62 years, Occ. Business,
Residing at Survey No.6/2,
Kranti Nagar, Pimple Nilakh
Aundh Camp, Pune – 411 027.PETITIONER

V/S

- 1 The State of Maharashtra
Through Revenue Ministry
Mantralaya, Mumbai – 400 032.
- 2 Inspector General of Registration &
Controller of Stamps, M.S.,
Having its office at ground floor
New Administrative Building,
Opp. Council Hall, Pune – 411 001.
- 3 The Deputy Inspector General of
Registration and Deputy Collector of
Stamps, having its office at 4th floor,
New Administrative Building,
Opp. Council Hall, Pune – 411 001.

- 4 The Joint Dist. Registrar (Class I) and
Collector of Stamps, having its office
At 1st floor, GPR Building,
Opp. B.J. Medical College,
Ladies Hostel, Pune – 411 001.RESPONDENTS

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WITH

WRIT PETITION NO.15682 OF 2022

- 1 Vilas Eknath Nandgude
Age 62 years, Occ. Business,
Residing at Survey No.6/2,
Kranti Nagar, Pimple Nilakh
Aundh Camp, Pune – 411 027.PETITIONER

V/S

- 1 The State of Maharashtra
Through Revenue Ministry
Mantralaya, Mumbai – 400 032.
- 2 The Chief Controller of Revenue
Authority and Inspector General of
Registration & Controller of Stamps
Having its office at ground floor
New Administrative Building,
Opp. Council Hall, Pune – 411 001.
- 3 The Deputy Inspector General of
Registration and Deputy Collector of
Stamps, having its office at 4th floor,
New Administrative Building,
Opp. Council Hall, Pune – 411 001.
- 4 The Joint Dist. Registrar (Class I) and
Collector of Stamps, having its office
At 1st floor, GPR Building,
Opp. B.J. Medical College,
Ladies Hostel, Pune – 411 001.RESPONDENTS

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Mr. Shriram Kulkarni i/b Ms. Vrushali U. Kabare for the Petitioner.
Mr. C.D. Mali, AGP for Respondent Nos.1 to 4/State.

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CORAM : **SANDEEP V. MARNE, J.**
RESERVED ON : **SEPTEMBER 15, 2023.**
PRONOUNCED ON : **SEPTEMBER 21, 2023.**

JUDGMENT:

1 **Rule.** Rule is made returnable forthwith. Heard finally with the consent of learned counsel appearing for Petitioner and learned AGP appearing for Respondent-State.

2 These six Petitions have been filed by Petitioner-Vilas Eknath Nandgude challenging Orders dated 31 December 2019 passed by the Deputy Inspector General of Registration and Deputy Collector of Stamps in Refund Applications as well as Orders dated 13 May 2022 passed by Inspector General of Registration and Controller of Stamps, Maharashtra. Petitioner is aggrieved by refusal on the part of the Respondents in refunding the amount of stamp duty purchased by him for execution of transactions, which have not materialized.

3 Petitioner has paid stamp duty of Rs.1,05,07,030/- for execution of six Sale Deeds and wants the said stamp duty to be refunded as sale transactions did not materialize. Respondents have refused the request for refund on the ground that the applications for refund were made after expiry of period of 6 months as provided under Section 48 of the

Maharashtra Stamp Act, 1958 (**Stamp Act**). Petitioner has accordingly raised an issue as to whether the State Government is justified in retaining the amount of stamp duty in respect of a failed transaction. For better understanding of the issue, it will be necessary to refer to the events leading to payment of stamp duty, failure of the purchase transactions and applications for refund.

4 Properties situated at Survey Nos. 21/3, 20/15/1 and 20/13/1 village Pimple Nilakh, Pune, stood in the ownership of one Pappuraj Dattatraya Sutar (Manmode) and others, who assigned and transferred their rights in favour of Apurva Krushna Bhandage vide Development Agreements and Power of Attorneys dated 16 September 2002 and 11 September 2002. Said Apurva Krushna Bhandage assigned his rights in favour of Baburao Vishwanath Bagade vide Development Agreements and Power of Attorneys executed on 1 June 2004. Said Baburao Vishwanath Bagade thereafter transferred and assigned his rights in Petitioner's favour vide Development Agreements and Power of Attorneys executed on 7 March 2006.

5. It appears that names of tenants (Laxman Nathoba Sathe and others) appeared on 7/12 extracts of those properties and the tenants had filed proceedings under Section 32G of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (**Tenancy Act**), which were dropped vide Order dated 15 April 1991 declaring that the tenant was minor. The said order was challenged before the Maharashtra Revenue Tribunal, which

directed that the land bearing Survey Nos.20/15/1 and 21/3 be given to tenants and land bearing Survey No.20/13/1 be given to the owners. Petitioner avers that the said tenants have executed have a registered Release Deed in his favour, in pursuance of which, the Tehsildar, Haveli passed order under section 15 of the Tenancy Act on 27 September 2007 recording surrender of tenancy rights and directed deletion of tenant's names from 7/12 extract of the properties.

6 It appears that Petitioner desired to have a Sale Deed in respect of the entire property executed in his name and apparently prepared draft Sale Deeds and submitted the same for adjudication to the Joint District Registrar and Collector of Stamps for valuation of the property. In the meantime, some other tenants raised objections and raised their tenancy claims by filing Special Civil Suit No.1191 of 2009 as well as proceedings before the Agricultural Lands Tribunal under section 32G of the Tenancy Act. Petitioner claims that during pendency of the said Civil Suit and proceedings before the Tribunal, the tenants showed their readiness and willingness to settle the disputes and to execute Sale Deeds in respect of the property in Petitioner's favour. Petitioner believed that he was not required to pay any stamp duty as per section 32 of the Stamp Act since he had already paid stamp duty on the Development Agreements. He therefore filed an application before the Collector of Stamps and prayed for concession in the stamp duty. The Collector of Stamps however rejected his prayer and directed him to pay stamp duty again on the sale deeds. Petitioner claims that he paid stamp duty in respect of six proposed sale deeds as under:

Sr. No.	Details of document alongwith Property description	Consideration	Amount of Stamp Duty paid	Challan No./ Case No.
1	Sale Deed by Pappuraj Sutar with consent of tenant namely Neeta Manik Sathe, Usha Arjunrao Sathe, Sharda Laxman Sathe and family members with respect to the Area admeasuring 51.24 Aar of Survey no.20/15/1	Rs.73,29,000	Rs.7,95,100	0715964 Dated 04.09.2013 Case No. 207/2013
2	Sale Deed by Pappuraj Sutar with the consent of Sharda Laxman Sathe & Ors. Neeta Manik Sathe & Ors. And Ashalata Arjun Sathe & Ors. With respect to the area admeasuring 48.90 Aar of Survey No.21/3	Rs.1,57,04,000	Rs.28,10,370	0715964 Dated 04.09.2013 Case No. 206/2013
3	Sale Deed by Pappuraj Sutar with the consent of Sharda Laxman Sathe & Ors. Neeta Manik Sathe & Ors. And Aashalata Arjun Sathe & Ors. With respect to the area admeasuring 67.76 Aar out of entire area of Survey no. 20/15/1	Rs.1,58,04,000	Rs.39,12,870	0715964 Dated 04.09.2013
4	Sale deed executed by Pappuraj Sutar & Ors. With consent of Sharda Laxman Sathe & Ors. With respect to the area admeasuring 32.16 Aar out of the entire area of Survey no. 20/13/1	Rs.1,40,04,000	Rs.19,47,750	0715964 Dated 04.09.2013 Case No. 209/2013
5	Sale deed by Pappuraj Sutar with the consent of Sharda Laxman Sathe & Ors. And Ashalata Arjun Sathe & Ors. With respect to the area admeasuring 49.10 Aar out of	Rs.75,20,000	Rs.7,71,200	0715964 Dated 04.09.2013 Case No.

	the total area of Survey no. 21/3			210/2013
6	Sale deed by Pappuraj Dattatray Sutar & Ors. With the consent of Sharda Laxman Sathe & Ors. And Ashalata Arjun Sathe & Ors. With respect to the area admeasuring 11.84 Aar out of the total area of Survey no. 20/13/1	Rs.58,29,000	Rs.3,49,740	0715964 Dated 04.09.2013 Case No. 211/2013
		Total	Rs.1,05,07,030	

7 This is how Petitioner paid total stamp duty of Rs.1,05,07,030/-. He avers that when he approached the Registration Authorities for registration of the six separate Sale Deeds for separate group of tenants, the Joint District Registrar did not allow registration of the sale deeds by questioning Petitioner's right to execute the same. He claims that the tenants thereafter showed unwillingness for registration of the sale deeds or to settle the proceedings before Civil Court and Revenue Authorities. This is the reason why the Petitioner could not get the Sale Deeds executed in his favour despite making payment of stamp duty Rs.1,05,07,030/-.

8 Petitioner filed six applications in July 2019 for refund of stamp duty paid on each draft sale deed. He also issued Notice under section 80 of the Code of Civil Procedure on the Inspector General of Registration and Collector of Stamps proposing to file suit against them. A Notice was issued by the Joint District Registrar cum Collector of Stamps, Pune to

Petitioner on 16 July 2019 calling him upon to produce the original Sale Deeds. Petitioner produced the original unexecuted Sale Deeds vide letter dated 28 August 2019. The Deputy Inspector General of Registration and Controller of Stamps rejected Petitioner's request for refund of stamp duty by holding that the application for refund was made beyond the prescribed period of limitation of six months as provided under section 48(3) of the Stamp Act.

9 Petitioner preferred Appeals before the Inspector General of Registration and Collector of Stamps, Maharashtra State, Pune, under the provisions of section 53(1A) of the Stamp Act. Petitioner's Appeals came to be rejected by the Inspector General of Registration and Collector of Stamps by order dated 13 May 2022. Petitioner has accordingly filed present Petitions.

10 Mr. Kulkarni, the learned counsel would appear on Petitioner's behalf and submit that since the intended transactions could not fructify, Petitioner is entitled for refund of the amount of stamp duty. That stamp duty was paid for execution of the purchase transactions vide draft Sale Deeds and that the said transactions could not go through on account of non-cooperation on the parts of tenants. That in such circumstances, Petitioner cannot be saddled with the burden of stamp duty in respect of failed transactions. That permitting the State Government to retain the amount of stamp duty in respect of unexecuted transactions would amount to unjust enrichment.

11 Referring to the provisions of Sections 47 and 48 of the Stamp Act, he would submit that the period of limitation prescribed in Section 48 of the Stamp Act cannot be rigidly applied, which results in unjust enrichment to the Government. He would submit that in some cases, like the present one, where disputes prevail over longer period of time, on account of which, a party purchasing stamp duty is unable to take a final call within the prescribed period of limitation to apply for refund of stamp duty. That in the present case, Petitioner could not get the sale deeds executed on account of filing of proceedings and continuous non-cooperation on the part of tenants. That Petitioner is already suffering on account of initiation of proceedings by the tenants and he cannot be put to a double whammy in the form of non-refund of huge amount of stamp duty of Rs.1,05,07,030/-.

12 Mr. Kulkarni would place heavy reliance on the judgment of the Madras High Court in *Syed Ismail vs. District Registrar & Ors.*, (2020) 7 Mad LJ 657 in support of his contention that the State Government cannot be permitted to retain the amount of stamp duty in respect of failed transactions by misinterpreting the limitation under the Stamp Act. He would also rely upon judgment of this Court in *Nerulata Gyandev Sadh vs. State of Maharashtra & Ors.*, 2019 SCC OnLine Bom 8424 in support of his contention that the State Government cannot resort to profiteering by retaining stamp duty paid on a document, which is not executed. He would also place reliance on the judgment of the Apex Court in *COMMITTEE-GFIL vs. Libra Buildtech Private Limited & Ors.*, (2015)

16 SCC 31 in support of his contention that the period of limitation for seeking a refund of stamp duty in the present case commences from the date on which the transactions have failed and not from the date of payment of stamp duty. He would also rely on judgment of Delhi High Court in *Vimal Kumar Saigal vs. Office of Collector of Stamps* 2020 SCCOnline Del 289.

13 Lastly, Mr. Kulkarni would rely upon recent judgment of the Apex Court in *Rajeev Nohwar vs. Chief Controlling Revenue Authority, Maharashtra State, Pune & Ors.* (2021) 6 ALL MR 429 in support of his contention that this Court can, in appropriate cases, exercise powers under Article 226 of the Constitution of India to direct refund of amount of stamp duty.

14 *Per contra*, Mr. Mali, the learned AGP would oppose the Petition. He would submit that since the draft sale deeds in questions are not signed or executed by any party, Petitioner's case is clearly covered by clause (b) of section 47 of the Stamp Act. That therefore the period of limitation prescribed in section 48 of the Stamp Act would be attracted in the present case. That the stamp duty in the present case is paid in the year 2013 and the application for refund came to be made for the first time in 2019, which is clearly barred under provisions of section 48 of the Stamp Act. He would distinguish various judgments on which reliance is placed by Petitioner. He would further submit that the relief in the case of

Rajeev Nohwar (supra) is granted by the Apex Court in exercise of its powers under Article 142 of the Constitution of India, which relief cannot be granted by this Court in the present Petition. He would pray for dismissal of Petitions.

15 Rival contentions of the parties now fall for my consideration.

16 The issue involved in the present Petitions is about Petitioner's entitlement to claim refund of stamp duty paid under the provisions of the Stamp Act. It would therefore be necessary to refer to the relevant provisions of the Stamp Act. Chapter V of the Stamp Act deals with 'Allowances for Stamps in Certain Cases'. Section 47 provides for allowance for spoiled stamps and reads thus:

"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 enquiry 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 :—

(a) the stamp on any paper inadvertently and undersignedly spoiled, obliterated or by error in writing or any other means rendered unfit for the purpose intended before any instrument written thereon is executed by any person;

(b) the stamp on any document which is written out wholly or in part, but which is not signed or executed by any party thereto ;

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

(1) has been afterwards found by the party to be absolutely void in law from the beginning;

(1A) has been afterwards found by the Court, to be absolutely void from the beginning under section 31 of the Specific Relief Act, 1963;

(2) has been afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended;

- (3) by reason of the death of any person by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, cannot be completed so as to effect the intended transaction in the form proposed;
- (4) for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended;
- (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;
- (6) becomes useless in consequence of the transaction intended to be thereby effected by some other instrument between the same parties and bearing a stamp of not less value;
- (7) is deficient in value and the transaction intended to be thereby effected had been effected by some other instrument between the same parties and bearing a stamp of not less value;
- (8) is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped:

Provided that, in the case of an executed instrument, except that falling under sub-clause (1A), no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence and that the instrument is given up to be cancelled or has been already given up to the Court to be cancelled.

Explanation.—The certificate of the Collector under section 32 that the full duty with which an instrument is chargeable has been paid is an impressed stamp within the meaning of this section.”

17 Since the application for allowance for spoiled stamps under section 47 of the Stamp Act can be made only within the period prescribed in section 48 of the Stamp Act, it would be necessary to refer to the provisions of section 48 of the Stamp Act, which reads thus:

“48. **Application for relief under section 47 when to be made.** The application for relief under section 47 shall be made within the following period, that is to say,—

(1) in the cases mentioned in clause (c)(5), within six months of the date of the instruments:

Provided that where an Agreement to sale immovable property, on which stamp duty is paid under Article 25 of the Schedule I, is presented for registration under the provisions of the Registration Act, 1908 and if the seller refuses to deliver possession of the immovable property which is the subject matter of such agreement the application may be made within two years of the date of the Instrument or where such agreement is cancelled by a registered cancellation deed on the grounds of, dispute regarding the premises concerned, inadequate finance, financial dispute in terms of agreed consideration, or afterwards found to be illegal construction or suppression of any other material fact, the application may be made within two years from the date of such registered cancellation deed;

(2) in the case when for unavoidable circumstances any instrument for which another instrument has been substituted cannot be given up to be cancelled, the application may be made within six months after the date of execution of the substituted instruments;

(3) in any other case, within six months from the date of purchase of stamps.”

18. In the present case, the stamp duty has been paid by Petitioner on 4 September 2013 and the applications for refund have been made in the month of July 2019. Petitioner has placed on record one of the draft sale deeds on which stamp duty has been paid. The sale deeds do not bear signatures of any parties thereto. This would mean that the sale deeds have not been signed or executed by any of the parties and therefore the Respondents have treated the case of the Petitioner under clause (b) of section 47 of the Stamp Act.

19. I have already narrated the events leading to preparation of draft sale deeds, payment of stamp duty and filing of application for refund as averred in the Petition. From those averments as well as on perusal of the draft sale deeds, it appears that Petitioner claimed rights in respect of the

properties at Survey No.21/3, 20/15/1 and 20/13/1 of village Pimple Nilakh, Pune, on strength of a chain of Development Agreements and Power of Attorneys. The lands were originally claimed to be in the ownership of Pappuraj Dattatraya Sutar (Manmode) and others and by various Development Agreements and Power of Attorneys the same has changed hands from Sutar (Manmode family) to Apurva Krushna Bhandage to Baburao Vishwanath Bhandage and finally to Petitioner. The last Development Agreements and Power of Attorneys are claimed to have been executed in Petitioner's favour on 7 March 2006. It is Petitioner's case that there were already tenancy proceedings going on in respect of the said lands and a Release Deed came to be executed in Petitioner's favour by the tenants surrendering their tenancy rights under section 15 of the Tenancy Act. He claims that in view of such surrender, Tahsildar has deleted the names of tenants from the property in question by order dated 27 September 2007. It appears from the averments made in the Petition that the tenancy rights of all the tenants were not settled and some of them kept pursuing their rights by filing Special Civil Suit No.1191 of 2009 as well as proceedings under Section 32G of the Tenancy Act before the Agricultural Lands Tribunal. In this background, Petitioner desired execution of six separate sale deeds in his own name, in which he is described as purchaser, Sutar (Manmode) family is described as vendors and Sathe family (tenants) are described as consenting parties. Petitioner was to execute the said Sale Deeds on behalf of the owners in his capacity as power of attorney holder through a chain travelling through Apurva Krushna Bhandage, Baburao

Vishwanath Bagade and finally the Petitioner. It is Petitioner's case that he initially believed that no stamp duty was payable on such Sale Deeds in lieu of stamp duty already paid on Development Agreements and that the Collector of Stamps rejected Petitioner's prayer and directed him to pay full stamp duty on the sale deeds. It is in pursuance of those directions of the Collector of Stamps that he paid total stamp duty of Rs.1,05,07,030/- on the six sale deeds.

20 Having considered the background in which the draft sale deeds were prepared and the stamp duty was paid, it would be necessary to examine the reasons pleaded by Petitioner for non-execution of the Sale Deeds. The reasons are to be found in paragraphs 10 and 11 of the Petition which reads thus:

"10. The Petitioner states that, he paid huge stamp duty on the draft of sale deeds as mentioned hereinabove and approached the registration authority for allowing the Petitioner to register the separate sale deeds for separate group of tenants as mentioned hereinabove. However, it was observed by the Joint District Registrar that the Petitioner do not hold right to execute the sale deed and did not allow the Petitioner to execute separate sale deed for each group.

11. The Petitioner states that, in the meanwhile the tenants of the subject land shown their unwillingness for registration of abovementioned sale deeds and to settle the Civil Suit and proceedings before Revenue authorities and thus the said Civil Suit and Revenue proceeding remained pending before respective forums. Thus the Petitioner could not get the abovementioned sale deed registered with respective tenants despite making huge payment of stamp duty to the Respondents."

21 Petitioner has thus given vague reasons of Registration Authorities not allowing him to register separate sale deeds for separate group of tenants. However, no document is produced on record by Petitioner in support of this assertion. The averment in paragraph 10 would indicate as if all parties to the draft sale deeds approached the Registration Authorities for execution of sale deeds but the Registration Authorities turned them away. It is difficult to assume that all parties had approached the Registration Authorities for execution of sale deeds on account of averments in paragraph 11 of the Petition, in which Petitioner vaguely contends that “*in the meanwhile the tenants of the subject land shown their unwillingness for registration of abovementioned sale deeds*”. The averment in paragraphs 10 and 11 of Petition thus appears to be self contradictory. Be that as it may, on these vague assertions, sans any particulars about dates, Petitioner approached the Respondent for refund of stamp duty straight in the month of July 2019 i.e. after a period of six long years. The events that occurred during those six years are missing in the pleadings.

22 Petitioner has not demonstrated as to what prevented him from filing applications for refund of stamp duty within six months from the date of payment thereof. Though it is vaguely alleged that the Registration Authorities refused to register the sale deeds, no particulars are given as to when Petitioner attempted registration. If the registration was indeed denied immediately after 4 September 2013 when the stamp duty was paid, Petitioner could have applied for refund of stamp duty

immediately thereafter. Under the Rules, the validity of stamp duty paid is only for a period of six months and Petitioner was aware that after expiry of six months, the draft sale deeds could no longer be executed or registered. Therefore, if Petitioner's case in Para 10 of the Petition is to be believed that he must have approached for registration of Sale Deeds within 6 months of payment of stamp duty. If he was indeed turned away by the registration authorities, he could have immediately applied for refund of stamp duty. However, there is absolutely no explanation in the entire Petition or even in the application filed for refund or appeal filed before the Appellate Authority as to what prevented Petitioner from seeking the refund within the prescribed period of six months. In all judgments relied upon by Mr. Kulkarni, which are being dealt with in paragraphs to follow, there were special circumstances where the limitation period is counted from the happening of a peculiar event. In the present case, Petitioner has not given any particulars of the events that have occurred between the date of payment of stamp duty and the date of filing of application for refund. He seems to have woken up from his slumber after 6 years and claimed refund of stamp duty paid.

23 Now I turn to the submissions of Mr. Kulkarni that stamp duty paid on an instrument which has not been executed must be refunded to the purchaser of stamp duty. His contention is that the very purpose of the payment of stamp duty in the present case was for proposed execution of sale transactions. Since the sale transactions did not fructify, State Government does not have any right to retain the amount of stamp duty.

He has submitted that prescription of period of limitation in section 48 of the Stamp Act would not come in the way of Petitioner claiming his lawful right of refund. He has placed reliance on the judgment of the Apex Court in **COMMITTEE-GFIL** (supra). The case before the Apex Court arose out of auction proceedings conducted in respect of properties of Golden Forest India Limited-GFIL, through a Committee constituted by the Apex Court viz. **COMMITTEE-GFIL**. The successful bidders deposited 25% of the bid amount and also purchased stamp papers of Rs. 6.22 crores for execution of sale deeds in their favour. However, since the possession of the property could not be handed over, the GFIL Committee was directed to refund the amount deposited by the bidders. Since the bid amount was refunded and transaction could not go through, the bidders filed application before the Government of Punjab for refund of stamp duty of Rs.6.22 crores. The Court directed refund of the entire amount of the stamp duty for following reasons:

“25. In the first place, admittedly the transaction originally intended between the parties i.e. sale of properties in question by GFIL Committee to the applicants was not accomplished and failed due to reasons beyond the control of the parties. Secondly, this Court after taking into consideration all facts and circumstances also came to the conclusion that it was not possible for the parties to conclude the transactions originally intended and while cancelling the same directed the seller (GFIL Committee) to refund the entire sale consideration to the applicants and simultaneously permitted the applicants to claim refund of stamp duty amount from the State Government by order dated 26-9-2012. Thirdly, as a result of the order of this Court, a right to claim refund of amount paid towards the stamp duty accrued to the applicants. Fourthly, this being a court-monitored transaction, no party was in a position to take any steps in the matter without the permission of the Court. Fifthly, the applicants throughout performed their part of the contract and ensured that transaction in question is accomplished as was originally intended but for the reasons to which they were not responsible, the transaction could not be accomplished. Lastly, the applicants in law were entitled to claim restoration

of all such benefits/advantages from the State once the transaction was cancelled by this Court on 26-9-2012 in the light of the principle contained in Section 65 of the Contract Act which enable the party to a contract to seek restoration of all such advantage from other party which they took from such contract when the contract is discovered to be void or becomes void. This was a case where contract in question became void as a result of its cancellation by order of this Court dated 26-9-2012 which entitled the applicants to seek restitution of the money paid to the State for purchase of stamp papers.

30. Even apart from what we have held above, when we examine the case of the applicants in the light of Sections 49 and 50 of the Act, we find that the case of the applicants can be brought under Section 49(d)(2) read with Section 50(3) of the Act to enable the State to entertain the application made by the applicants seeking refund of stamp duty amount. The interpretation, which advances the cause of justice and is based on the principle of equity, should be preferred. We hereby do so.

31. As mentioned above, it is not in dispute that this Court on 26-9-2012 cancelled the transaction in question, and hence by reason of the orders of this Court, the stamps used for an instrument executed by the applicants were found unfit thereby defeating the purpose originally intended. This occurred either due to some error or mistake therein. Since the execution of sale deeds and its implementation was subject to the orders of the court, the parties were required to apply to the court for appropriate orders for every It is due to this reason, the right to claim the refund of the amount of stamp duty arose for the first time in the applicants' favour on 26-9-2012. The applicants had accordingly filed their applications within 6 months from the date of this order, as provided in Section 50. In the light of these facts, the applications should have been entertained treating the same to have been filed under Section 49(d)(2) read with Section 50 of the Act for grant of refund of stamp duty amount claimed therein by the applicants."

24 Thus, the case before the Apex Court in **COMMITTEE-GFIL** (supra) was entirely different where the auction proceedings were conducted in pursuance of orders of the Court and the same could not fructify on account of reasons beyond the control of the bidders. Also in view of peculiar facts and circumstances of the case, the Apex Court held that the period of limitation in that case would begin from the date of Court's

order. In the present case, Petitioner has not even disclosed the details of the events that have occurred between the date of payment of stamp duty and the date of filing of application for refund. Therefore, the judgment of the Apex Court in *COMMITTEE-GFIL* (supra) would not apply to the facts and circumstances of the present case.

25 Reliance is also placed on judgment of a Single Judge of Madras High Court in *Seyed Ismail* (supra). In that case, the Petitioner therein wanted to purchase a property, for which stamp papers were purchased in February 2018. However, it appears that the transaction was delayed. In the meantime, a new Rule was introduced which required stamp vendors to upload the details of stamp papers, which were sold, failing which the documents were not to be accepted for registration. This Rule came into effect on 20 September 2018. Owing to the change in the Rules, Petitioner therein was forced to purchase new stamp papers and the transaction was completed in January 2019. It is considering these facts and circumstances that the Madras High Court directed refund of stamp duty even though the application was made after the period of six months from the date of purchase of stamp papers. The facts and circumstances in *Seyed Ismail* (supra) are thus altogether different where the transactions have ultimately been completed by purchase of fresh stamp papers. The Petitioner therein was required to purchase new stamp papers on account of change in the Rules. In the present case, there are no such special circumstances and on the contrary, there is complete absence of any justification on the part of Petitioner for failure

to apply for refund for a period of six long years. Therefore, the judgment in ***Seyed Ismail*** (supra) would not assist the case of Petitioner.

26 Petitioner has also relied upon the judgment of Single Judge of this Court in ***Nirulata Gyandev Sadh*** (supra). In that case, an agreement to sale was executed on 16 March 2012, on which stamp duty was paid. Subsequently, an deed of cancellation was executed cancelling the agreement to sale on 14 February 2014 on account of inability to handover possession of the flat. The application for refund was apparently made within time limit, however the same was rejected on the ground that it was beyond the scope of Section 48 of the Stamp Act. In that case, the issue of limitation was not even raised, which is clear from findings in paragraph 13 of the judgment. The issue was whether Petitioner therein was entitled to seek refund in respect of a cancelled agreement. Therefore, the judgment in ***Nirulata Gyandev Sadh*** (supra) would also not apply to the present case.

27 Petitioner has also relied upon judgment of Single Judge of the Delhi High Court in ***Vimal Kumar Saigal*** (supra) in which, the Petitioner therein was allotted a Unit by the Delhi Development Authority, which had provided him a draft conveyance deed. He paid stamp duty of Rs.2,86,020/- on the conveyance deed, but did not realize that the same was required to be registered. Petitioner therefore got a fresh conveyance deed issued from DDA on payment of stamp duty afresh of Rs.2,14,525/- the conveyance deed was registered. The reduction in the stamp duty

was on account of reduction of rates owing to Notifications issued by Government of NCT, Delhi. Within 12 days of execution of the fresh conveyance deed, Petitioner therein applied for refund of stamp duty. One of the reasons for rejection of application for refund was payment of lesser stamp duty on the subsequent instrument. Also in that case, a Circular was issued on 3 January 2003 directing Collector of Stamps to refund the stamp duty to the allottees paid on previous instruments. It is in the light of these peculiar circumstances, that the Delhi High Court directed refund of stamp duty. In that case, stamp duty was paid twice for the same transaction and this fact weighed with the mind of the Delhi High Court for ordering refund of stamp duty. This is not the fact situation in the present case. The judgment therefore will not assist Petitioner's case.

28 This leaves me with the last judgment relied upon by Mr. Kulkarni in *Rajeev Nohwar* (supra). In my view, reliance by Petitioner on that judgment, far from assisting his case, actually militates against him. In the case before the Apex Court, the fact situation was somewhat similar to the present case, where the sale transaction could not go through on account of litigation and the application for refund of stamp duty has been rejected on the ground of limitation prescribed under section 48 of the Stamp Act. The Apex Court has considered the provisions of sections 47 and 48 of the Stamp Act. Considering the scope of entitlement for allowance under section 47 of the Stamp Act, the Apex Court has held that a case where stamp has not been utilized at all, will not fall within

the purview of section 47 of the Stamp Act. The Apex Court has held in para 14 of the judgment as under:

14. Section 47 covers three classes of cases within it: (i) spoiled; (ii) obliterated; and (iii) unfit for the purpose by an error in writing or 'any other means'. It is contended by the State that the case of the appellant would fall within the purview of the third category since it was rendered unfit for the purpose, i.e., the purpose of purchase of the property. This submission thus places reliance on the expression 'purpose' used in the provision. The submission does not accord with a plain reading of the provision. The expression "any other means" must be read in the context of the words which immediately precede it, namely, "error in writing". The expression "by any other means" would indicate that the legislature intended to refer to defacement of a stamp paper in any manner analogous to an error in writing the instrument on the stamp paper. "Any other means" refers to any other modality by which the stamp paper is rendered unfit for the purpose for which it was purchased. Moreover, the prefatory words in Section 47 state that the collector must be satisfied that the stamp is 'spoiled'. Clauses (a) to (c) lay down the cases that are covered within the ambit of the expression 'spoiled stamps'. The emphasis of Section 47 is not on the *purpose* but on *unfit stamps*. **Therefore, a case where the stamp has not been utilized at all because it is not needed subsequent to the purchase will not fall within the purview of Section 47. Only those cases where the stamp is unfit for the purpose by an error in writing or any other means would be covered by the provision. It is not the case of the appellant that the stamp paper has been spoiled or obliterated or rendered unfit for the purpose for which it was required. In the present case, it is common ground that the stamp paper is not spoiled but the purpose for which the stamp was purchased has become redundant in view of the judgment of the NCDRC. Therefore, there would be no occasion to apply the provisions of clause (a) of Section 47."**

(emphasis supplied)

29 Thereafter, the Apex Court has considered the scope of Section 48 of the Stamp Act and has held that Section 48 of the Stamp Act applies to only those cases where application for relief is governed by Section 47. It held in paragraph 18 as under:

18. The revenue authorities rejected the application filed by the appellant on the ground that the application was not filed within six months from the date

of the purchase of the stamp paper, treating the case to fall within the residuary provision in Section 48 of the Act. This view has been accepted by the Single Judge of the Bombay High Court. What this view misses is that Section 48 in its entirety applies only to those cases where the application for relief is governed by Section 47. If the application for refund is not with reference to the provisions of Section 47, the period of limitation in Section 48 clearly has no application. Since the application of the appellant does not fall within the purview of any of the clauses in Section 47, the 6 month limitation period prescribed in Section 48 would not be applicable to the application for allowance filed by the appellant.

30 The Apex Court has thereafter proceeded to determine whether the case fell within the purview of other Sections of Chapter V of the Stamp Act and found that the case did not fall within the ambit of sections 47, 52 and 52A of the Stamp Act. It observed in paragraph 28 as under:

28. Evidently, and for the reasons that we have indicated above, the application filed by the appellant did not fall within the ambit of Sections 47, 52 and 52A. It is true that the application for refund was titled with reference to the provisions of Section 47. But, it is well settled that a reference of a wrong statutory provision, cannot oust the citizen of an entitlement to refund which otherwise follows in terms of a statutory provision.

31 After arriving at a finding that the case did not fall within the ambit of section 47 of the Stamp Act for claiming a refund, the Apex Court thereafter exercised power under Article 142 of the Constitution of India for grant of relief in favour of the Appellant before it. The Court has held in paragraph 31 of the judgment as under:

31. We are conscious of the fact that as a general rule of law, the right to refund is a statutory creation. A refund can be sought in terms envisaged by statute. As discussed above, the case of the appellant is not specifically barred by any substantive provision. It is an established principle that this Court while exercising its power under Article 142 of Constitution must not ignore and override statutory provisions but must rather take note of the express

statutory provisions and exercise its discretion with caution. [AR Anthulay v. RS Nayak, (1988) 2 SCC 602; Union Carbide Corporation v. Union of India, (1991) 4 SCC 584; Supreme Court Bar Association v. Union of India. (1998) 4 SCC 409.] **Therefore, if a statute prescribes a limitation period, this Court must be slow to interfere with the delay under Article 142. However, in the case of an eventuality such as the instant case where the facts of the case are not covered by the statute, this Court under Article 142 will have the power to do complete justice by condoning the delay.** We are of the view that since the delay in filling the application for refund in the instant case was due to the prolonged proceedings before the NCDRC, the application cannot be rejected on the ground of delay. A litigant has no control over judicial delays. A rejection of the application for refund would violate equity, justice and fairness where the applicant is made to suffer the brunt of judicial delay. Therefore, this is a fit case for the exercise of the power under Article 142 of the Constitution.

(emphasis supplied)

32 Thus in ***Rajeev Nohwar***, the Supreme Court has held that there is no provision in the Stamp Act for refund of stamp duty in respect of a document which is not executed, where stamp paper is not spoiled. The Supreme Court has also held that right to refund is a statutory creation. In the present case, the stamp paper has not been spoiled and applying the ratio in ***Rajeev Nohwar***, Petitioner cannot seek refund. After holding that there is no provision in the Stamp Act for refund of stamp duty in respect of a unspoiled stamp paper, the Supreme Court has invoked special powers under Article 142 of the Constitution of India for granting the relief of refund.

33. Faced with the situation where the Supreme Court has invoked powers under Article 142 for directing refund in a similar case, Mr. Kulkarni would urge before me that this Court can also issue similar directions by exercising its jurisdiction under Article 226. I am unable to

agree. Firstly, I am exercising jurisdiction under Article 227 of the Constitution in determining correctness of orders passed by quasi-judicial authorities, which is supervisory in nature. Secondly, even if this Petition was to be filed and/or to be considered under Article 226, High Court cannot exercise powers akin to the plenary powers of Supreme Court under Article 142 of the Constitution of India to do complete justice. It is well settled that High Court's power under Article 226 cannot be compared with the Supreme Court's plenary power under Article 142. Reference in this regard can be made to decision in ***State of Punjab v. Surinder Kumar***, (1992) 1 SCC 489 in which it is held as under:

6. ----- There is still another reason why the High Court cannot be equated with this Court. The Constitution has, by Article 142, empowered the Supreme Court to make such orders as may be necessary "for doing complete justice in any case or matter pending before it", which authority the High Court does not enjoy. The jurisdiction of the High Court, while dealing with a writ petition, is circumscribed by the limitations discussed and declared by the judicial decisions, and it cannot transgress the limits on the basis of whims or subjective sense of justice varying from Judge to Judge.

7. It is true that the High Court is entitled to exercise its judicial discretion in deciding writ petitions or civil revision applications but this discretion has to be confined in declining to entertain petitions and refusing to grant relief, asked for by petitioners, on adequate considerations; and it does not permit the High Court to grant relief on such a consideration alone.

34. A Division Bench of this Court in ***Yeshwant Natthuji Meshram v. State of Maharashtra***, (1995) 1 Mah LJ 48 has reiterated the principle that the power of High Court under Article 226 of the Constitution of India cannot be equated with Supreme Court's power under Article 142. The Court has held thus:

23. The legal position which emerges very clearly from the aforesaid discussion is that though the power of the High Court under Article 226 of the Constitution of India is wide and comprehensive, but certainly not as wide and as extraordinary as the Supreme Court under Article 142 of the Constitution. The power of the High Court under Article 226 cannot be equated with the power of the Supreme Court under Article 142 of the Constitution and the width, amplitude and scope of the power of the Supreme Court under Article 142 of the Constitution is much more than the power of the High Court under Article 226 of the Constitution. Prohibitions or limitations in the statutory provisions do not limit the power of the Supreme Court under Article 142, but that is not so as far as the power of the High Court under Article 226 of the Constitution is concerned. Article 142 vests in the Supreme Court a plenary power which is not possessed by the High Court under Article 226. **The power under Article 142 is at an entirely different level and of different quality which stands on much higher pedestal than the powers of the High Court under Article 226 of the Constitution of India.** That is why the exercise of the extraordinary jurisdiction conferred on the Apex Court under Article 142(1) of the Constitution of India can be of no guidance on the scope of Article 226. The High Court in exercise of its jurisdiction can only issue writ, order or direction keeping in view the provisions of particular law or statute. **The High Court while exercising its power under Article 226 of the Constitution of India has to consider the provisions of law or prohibitions or limitations contained therein even while passing the orders in the interest of justice which is not the matter when the Apex Court exercises its power under Article 142 of the Constitution of India in assessing needs of complete justice of the cause or matter.** In exercising such power by the Supreme Court no question of lack of jurisdiction or of nullity could arise.

(emphasis supplied)

35. Thus, this Court is not in a position to give any relief to Petitioner contrary to the statutory scheme under Article 226 or by following the Supreme Court's directive issued under Article 142 of the Constitution of India. Therefore, relying on judgment in *Rajeev Nohwar* (supra), this Court would not be in a position to direct refund of stamp duty.

36 I therefore find that Petitioner has not made out any case for refund of stamp duty. If Petitioner's contention about unjust enrichment

on the part of State Government in retaining stamp duty on every unexecuted document is accepted, the same would enable parties to approach for refund after infinite time. In all cases relied upon by Mr. Kulkarni, there were special circumstances. In the present case, Petitioner has not given any justification for not filing an application for refund of stamp duty for six long years. The reasons cited for alleged failure of transactions are also vague. In these circumstances, the decision of the Revenue Authorities in rejecting the application for refund of stamp duty cannot be faulted.

37 I, therefore, do not find any merit in the Petitions filed by the Petitioner. Writ Petitions are accordingly dismissed without any orders as to costs. Rule is discharged.

(SANDEEP V. MARNE, J.)