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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1556 OF 2017**

Aditya Developers ...Petitioner
Versus
The State of Maharashtra & Ors ...Respondents

**WITH
WRIT PETITION NO. 737 OF 2022**

Avani Developers ...Petitioner
Versus
The State of Maharashtra Ministry of Revenue and Forest & Ors ...Respondents

SHEPHALI
SANJAY
MORMARE

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Date: 2023.04.24
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**Mr MP Vora, i/b Pramodkumar & Co, for the Petitioner in
WP/1556/2017.**

**Mr Himanshu Takke, AGP, for the Respondent-State in
WP/1556/2017**

Ms Tanna Maulik Kirti, for the Petitioner in WP/737/2022.

Mr Amit Shastri, AGP, for the Respondent-State in WP/737/2022.

**CORAM G.S. Patel &
 Neela Gokhale, JJ.**

DATED: 12th April 2023

PC:-

1. The matters are covered by our decision in *Adityaraj Builders v State of Maharashtra & Ors.*¹
2. The Petitions are disposed of on identical terms with Rule issued, made returnable and made absolute in terms of prayer clauses (a) to (d) in Writ Petition No. 737 of 2022 and prayer clauses (a) to (c) in Writ Petition No. 1556 of 2017.
3. The prayers in Writ Petition No. 737 of 2022 are reproduced below.

“(a) This Hon’ble Court be pleased to declare the Impugned Circulars dated 23rd June 2015 and 30th March 2017 (Exhibit “A”) to be ultra vires of Section 4 of the Bombay Stamp Act, 1958 and being arbitrary, unreasonable and violative of Article 14 of the Constitution of India and thus unconstitutional;

(b) This Hon’ble Court may be pleased to issue a Writ of Certiorari or writ in the nature of certiorari or any other appropriate Writ, Order or direction under Article 226 of the Constitution of India calling for the records and proceedings of the issuance of the Impugned Circulars dated 23rd June 2015 and 30th March 2017 issued by Respondent No. 2 and impugned adjudication notices (more particularly described in Schedule annexed at Exhibit E1 hereto) issued by Respondent No. 3 and after going through the legality, validity and propriety thereof, quash and set aside the same.

¹ 2023 SCC OnLine Bom 540.

(c) The Hon'ble Court may be pleased to issue a Writ of Mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of directing:-

(i) The Respondent No. 1 to cancel, withdraw or revoke the Impugned Circulars dated 23rd July 2015 and 30th March 2017;

(ii) The Respondent Nos. 1 to 3 to correctly apply the ratio of Prabha Laxman Ghate's case, the Notification dated 9th May 2014 and Section 4 of the Maharashtra Stamp Act equally to the Society and its members as Owner/s and not to levy stamp duty of more than Rs. 100/- on the instrument entered into by the members of the Society with the Developer for the Permanent Alternate Accommodation."

4. The prayers in **Writ Petition No. 1556 of 2017** are reproduced below.

"(a) This Hon'ble Court be pleased to declare the Impugned Circulars dated 23rd June 2015 and 30th March 2017 (Exhibit "A") to be ultra vires of Section 4 of the Bombay Stamp Act, 1958 and being arbitrary, unreasonable and violative of Article 14 of the Constitution of India and thus unconstitutional;

(b) This Hon'ble Court may be pleased to issue a Writ of Certiorari or a writ in the nature of certiorari or any other appropriate Writ, Order or direction under Article

226 of the Constitution of India calling for the records and proceedings of the issuance of the Impugned Circulars dated 23rd June 2015 and 30th March 2017 issued by Respondent No. 2 and after going through the legality, validity and propriety thereof, quash and set aside the same.

(c) This Hon'ble Court may be pleased to issue a Writ of Mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of directing:-

(i) The Respondent No. 1 to cancel, withdraw or revoke the Impugned Circulars dated 23rd July 2015 and 30th March 2017;

(ii) Directing the Respondents to correctly apply the ratio of Prabha Laxman Ghate's case, the Notification dated 9th May 2014 and Section 4 of Maharashtra Stamp Act equally to the Society and its members as a Owner/s and not to levy stamp duty of more than Rs. 100/- on the instrument entered into by the members of the Society with the Developer for the Permanent Alternate Accommodation.”

5. Any question of refund will follow the directions in *Adityaraj Builders*.

(Neela Gokhale, J)

(G. S. Patel, J)

Note: This order is modified as per order dated 24th April 2023 passed on a praecipe. The corrections are shown in bold, italics and underlined in paragraph 4.