# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## CIVIL APPELLATE JURISDICTION
## WRIT PETITION NO.13038 OF 2019

M/s. Phoenix Ventures ...Petitioner.
Versus
The State of Maharashtra & ors. ...Respondents

Mr. Abhijit P. Kulkarni a/w. Mr. Krushna Jaybhay for the Petitioner.
Ms M.S. Srivastava, AGP for the Respondent/State.

**CORAM : N. R. BORKAR, J.**
**DATE : 05 JANUARY 2024.**

**PC:-**

1. This petition takes exception to the order passed by respondent No.2- Deputy Inspector General of Registration and Deputy Controller of Stamps, Pune dated 28 May 2019 in Appeal No. 24 of 2018 and the order passed by respondent No.3-The Collector of Stamps (Rural), Pune dated 29 May 2018.

2. The respondent No.3 by order dated 29 May 2018 directed the petitioner to pay the stamp duty of Rs.48,66,400/- with penalty at the rate of 2% per month from the date of registration of Joint Venture Agreement dated 1 April 2017, as according to respondent No.3 the stamp duty paid on said Joint Venture Agreement between the petitioner and one M/s.Goldfield Developers was not paid by either of parties to it. By order dated 28 May 2019, the respondent No.2 has dismissed the appeal filed by the petitioner against the order of respondent No.3. Both these orders are impugned in this petition.

3. I have heard the learned counsel for the petitioner and the learned AGP for respondent Nos.1 to 6.

4. The petitioner is a partnership firm duly registered under the Indian Partnership Act, 1932. Admittedly, at the time of registration of Joint Venture Agreement in question, stamp duty of Rs.48,66,400/- was paid. According to respondent No.3, the stamp duty paid on Joint Venture Agreement in question cannot be treated as validly paid as the same was purchased by the partner of petitioner firm in his individual name.

5. Learned counsel for the petitioner submits that the stamp duty was purchased from the business account of the petitioner firm. It is submitted that in absence of any specific provisions the respondent No.3 was not empowered to treat such instrument as without stamp duty.

6. In support of the above submissions, learned counsel for petitioner has relied upon the judgement of Allahabad High Court in ***M/s. Supertech Limited vs. State of U.P. and ors.***[1]**.**

7. On the other hand, learned AGP for the respondent/State supported the impugned orders.

8. It is not in dispute that the requisite stamp duty was paid on the Joint Venture Agreement in question. It is also not in dispute that the stamp duty was purchased from the business account of the petitioner firm.

1 2014 SCC OnLine All 8516

9. In *M/s. Supertech Limited vs. State of U.P. (supra)*, the Allahabad High Court has held:

> *"7. Be that as it may, none of these provisions deal with to a situation where for any defect in respect to the description of the person who has purchased stamp, or if stamp has been purchased by a person other than the executant, such stamp shall not be treated to be valid in respect to the instrument in which they are used. On this aspect no provision has been shown by learned Standing Counsel despite repeated query and he fairly stated that there is no such specific provision in Act, 1899.*
>
> *8. In absence of any specific provision in this regard, it is not open to Collector to treat an instrument without any stamp duty if the stamp paid there contains description of a person other than the vendee or vendor or a wrong discretion of any of the parties to the document. Such power can be exercised by Collector only if it has been provided in the statute and not otherwise. The purpose of Act, 1899 is that the appropriate revenue must come to the State's exchequer and also to get an instrument prepared which would have appropriate evidenciary value but this by itself will not confer a power upon Collector, either to impound the document or to declare an instrument having no stamp duty or insufficient stamp duty, only for the reason that the description of purchaser in the stamp duty is not correctly stated or the purchaser of stamp duty is not one of the party to the instrument."*

10. Considering the overall facts and circumstances of the case, the orders impugned cannot be allowed to stand. In the result, the following order is passed.

A] Writ Petition is allowed;

B] The orders impugned are quashed and set aside.

**(N. R. BORKAR,J.)**