

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4681 OF 2024

1. Sangita Sandip Jadhav

Age: 35 years, Occ: Housewife

2. Sandip Shivaji Jadhav

Age: 43 years, Occ: Business

R/at: Hajarmachi, Tal: Karad, District : Satara

Both 1 and 2 above through their PoA Holder

Sunil Dinkar Panaskar

Age: 40 years, Occ: Stamp Vendor,

R/at: Karad, District: Satara.

....Petitioners

: Versus :

1. The State of Maharashtra

Through its Secretary

Department of Registration & Stamps,
Mantralaya, Mumbai – 01.

**2. Inspector General of Registration
& Controller of Stamps,**

State of Maharashtra, Pune,
Ground Floor, New Adm. Building,
Pune – 411 001

desk14law@gmail.com

**3. The Office of Joint District Registrar
(Class – I) and Stamp Collector,**

Taluka and District: Satara, Maharashtra.

4. The Office of the Sub Registrar, Class II,

Karad 2, Karad, Satara.

....Respondents

Mr. S. R. Nargolkar with Ms. Neeta Patil i/b Mr. Arjun Kadam, for the
Petitioner.

Mrs. M. S. Bane, AGP for the Respondents-State.

CORAM : SANDEEP V. MARNE, J.

Judgment Reserved On : 25 March 2025.

Judgment Pronounced On : 2 April 2025.

JUDGMENT:

1) Petitioners have filed this petition challenging the order dated 24 June 2021 passed by the Chief Controlling Revenue Authority, Maharashtra State, Pune rejecting Appeal No.133/2020 preferred by them challenging the order dated 23 September 2020 passed by the Collector of Stamps, Satara rejecting their application for refund of stamp duty.

2) Brief facts of the case are that Petitioners intended to purchase Flat Unit No. 7 admeasuring 975 sq. foot (built-up area) in building Rukmini Heights, Kasbe-Karad, Satara. Initially Agreement for Sale was executed between the parties on 19 March 2020, under which the Petitioners paid part consideration of Rs. 4,00,000/- out of the agreed consideration of Rs. 26,00,000/-. The balance was agreed to be paid on sanction of loan. The Agreement came to be registered on 20 March 2020. Petitioners paid stamp duty of Rs. 1,56,000/- and registration fees of Rs.26,000/-, total amount of Rs.1,82,000/-. It is the case of the Petitioners that possession of the flat was not handed over to them. They applied for loan to various financial institutions, which was not sanctioned. Petitioners also faced same difficulties and decided not to go ahead with the transaction and communicated to the vendor that they were not in a position to purchase the flat. Accordingly, Deed of Cancellation came to be executed and registered on 10 September 2020. On 15 September 2020, Petitioners filed application for refund of stamp duty with the Collector of Stamps. The Collector of Stamps however

rejected the application by order dated 23 September 2020 referring to a covenant in the Agreement for Sale by inferring that possession of the flat was handed over to the Petitioners. The Collector of Stamps referred to Proviso to sub-section (1) of Section 48 of the Maharashtra Stamps Act, 1958 (**Stamp Act**) and held that refund was impermissible on account of handing over of possession of the flat in pursuance of the Agreement for Sale.

3) Petitioners preferred Appeal before the Second Respondent under the provisions of Section 53(A) of the Stamp Act. The Appeal is however rejected by order dated 24 June 2021. The Petitioner has accordingly filed the present petition challenging the orders passed by the Collector of Stamps on 23 September 2020 and by the Inspector General of Registration and Controller of Stamps and Chief Controlling Revenue Authority (**CCRA**) dated 24 June 2021.

4) Mr. Nargolkar, the learned counsel appearing for the Petitioner would submit that Respondent No.3 has grossly erred in rejecting the application for refund by erroneously inferring that possession of the flat was handed over to the Petitioners in pursuance of the Agreement for Sale. That flat's possession was not handed over with execution of the Agreement for Sale. That the Deed of Cancellation specifically records so. That it is otherwise inconceivable that Flat's possession would be handed over on payment of just 15% of agreed consideration.

5) Alternatively, Mr. Nargolkar would submit that even if possession of the flat is treated to have been handed over to the Petitioners, the application for refund of stamp duty was made under sub-section (1) of Section 48. That the application was made within the time limit of six months prescribed under sub-section (1) of Section 48. That the Proviso makes a special exception in case of Agreement for

Sale by providing for extended period for making an application for refund of stamp duty. That in the present case, the application for refund was made within a period of six months from the date of execution of Agreement for Sale and that therefore the case would be governed by sub-section (1) of Section 48 and not by Proviso thereto. He would therefore submit that in either of the cases, the Petitioner is entitled to refund of stamp duty,

6) The petition is opposed by Ms. Bane, the learned AGP appearing for the Respondents. She would submit that the Proviso to sub-section (1) of Section 48 would govern every case involving execution of Agreement for Sale. That the instrument executed between the parties was titled as 'साठेखत कायम व खुषखरेदी पत्राचे' and that the same was, in essence, Deed of Conveyance. That the Agreement contains a specific covenant relating to possession. That the Agreement envisaged payment of monthly taxes and other government taxes while enjoying possession of the flat. That the vendor relinquished of his right, title and interest in the flat with execution of the Agreement for Sale. She would therefore submit that proviso to sub-section (1) of Section 48 has rightly been applied in the present case. That under the Proviso, refund of stamp duty is admissible only if possession of the property is not handed over. She would therefore submit that no interference is warranted in the impugned orders and would pray for dismissal of the petition.

7) Rival contentions of the parties now fall for my consideration.

8) Petitioners executed Agreement for Sale dated 19 March 2020 with the vendor for purchase of Flat No.7 in building-Rukmini Heights for agreed consideration of Rs.26,00,000/-. The covenants of the

Agreement shows that by the time the Agreement was executed, total amount of Rs.4,00,000/- was paid to the vendor. The remaining amount of Rs.22,00,000/- was agreed to be paid after sanction and disbursal of loan. The Agreement further contained a covenant that on receipt of the entire consideration of Rs.26,00,000/-, the vendor was to execute Sale Deed in favour of the Petitioners. The relevant covenant in the Agreement reads thus:

येणेप्रमाणे निवासी सदनिका मिळकत तदंगभूत वस्तूसह या तिचे इजमेंट आदि सर्व हक्कासह तुम्हास र.रु. २६,००,०००/- अक्षरी रुपये सव्वीस लाख रुपये फक्त यांस कायम व खुषखरेदीपत्र लिहून देणेचे ठरवून व कबूल करून मी तुमचेपासून विसारत म्हणुन वर भरण्यात नमुद केले प्रमाणे घेतले ते रक्कम रुपये ४,००,०००/- अक्षरी रुपये चार लाख रुपये फक्त ते कबूल व या भरण्यात सामील व बाकी शिल्लक राहिलेली रक्कम रुपये २२,००,०००/- अक्षरी बावीस लाख रुपये फक्त हे सदर मिळकतीवर बँक कर्जप्रकरण मंजुर झालेनंतर पंधरा दिवसांचे आत तुम्हांस तुमचे नांवे तुमचे खर्चाने खरेदीपत्र करून देईन. तोपर्यंत सदरचे साठेखत मुदतीत राहणेचे आहे.

9) Further covenant in the Agreement relating to execution of Sale-Deed is as under:

मुदतीत तुम्ही उर्वरित रक्कम देवुन सुध्दा सदर मिळकतीचे खरेदीपत्र करून देणेस माझेकडून चुक अगर टाळाटाळ झालेस सदर मिळकतीचे खरेदीपत्र तुम्ही योग्य त्या कोटामार्फत तुमचे खर्चासह व होणारे नुकसानीसह पूर्ण करून घ्यावे.

10) However, the very next covenant in the Agreement has created a confusion leading to rejection of application for refund of stamp duty. It is on the basis of this covenant that Respondents have arrived at a conclusion that possession of the flat was handed over to the Petitioners. In fact in the Affidavit in Reply, Respondents have contended as under:

“The agreement of sale (Exhibit A), titled ‘साठेखत कायम व खुषखरेदी पत्राचे,’ is, in essence, a deed of conveyance. The recitals on page 10 of Exhibit A (W.P. Page No. 28) explicitly indicate the handing over of possession, granting liberty to enjoy said possession perpetually, while imposing the obligation to pay local authority revenue taxes following the execution of the deed.”

11) Thus, the Respondents have treated the Agreement dated 19 March 2020 as a conveyance. The relevant clauses relied upon by the Respondents for drawl of inference of the document for treating the document as conveyance and for inferring of possession reads thus:

तरी यापुढे नगरपरिषद कर व इतर सरकारी कर बाब परभारे देत जाऊन वहिवाट तुम्ही आपले पुत्रपौत्रादी वंशपरंपरा निरंतर मालकीने व मर्जीप्रमाणे करावी. तुमचे वहिवाटीस कोणाची हरहरकत आलेस ती मी स्वखर्चाने दूर करुन देईन. त्याची तोषीस तुम्हास लागू देणार नाही. आता सदर निवासी सदनिका मिळकतीवर माझा अगर माझे इतर वालीवारस यांचा दावा, हक्क, हितसंबंध राहीलेला नाही. निघालेस त्याचे निराकरण स्वखर्चाने करुन देईन.

12) There thus appears to be slight contradiction in the covenants of the Agreement. The Petitioners had paid only part consideration of Rs.4,00,000/- on execution of the Agreement for Sale which represented only about 15% of the total amount of consideration of Rs.26,00,000/-. It is therefore inconceivable that any person could acquire title in respect of the flat on payment of only 15% of agreed amount of consideration. It is also quite unbelievable that possession of a flat would be handed over on receipt of only 15% of the consideration. There is no specific covenant that possession of the flat was handed over to the Petitioners simultaneously with the execution of the Agreement for Sale. Therefore, inference about handing over Flat's possession cannot really be drawn only on the strength of the above quoted covenant. Infact, the covenant that the vendor shall not have any right, title or interest in the flat is contradictory to the other covenant for execution of Sale-Deed upon receipt of balance consideration of Rs.22,00,000/-. I am therefore of the view that a concrete inference of handing over of possession upon execution of Agreement for Sale dated 19 March 2020 cannot be drawn in the unique facts and circumstances of the present case.

13) Since the sale transaction could not fructify, the parties executed Cancellation Deed dated 7 September 2020. In the said

Cancellation Deed, it was explicitly made clear that possession of the flat was never handed over to the Petitioners. The relevant clause in the Cancellation Deed reads thus:

येणेप्रमाणे निवासी सदनिका मिळकतीचे रक्कम रुपये २६,००,०००/- अक्षरी रक्कम रुपये सव्वीस लाख फक्त चे रजिस्टर साठेखत तुम्ही आमचे नांव लिहून दिले. तो दस्त मे. कराडचे दु.नि.कराड क्रं. २ याचे कार्यालयात दस्त नं. १७१३/२०२० दि. २०/०३/२०२० रोजी नोंदला आहे. व साठेखताने आम्ही तुम्हांस खरेदी रक्कमेपैकी रक्कम रु. ४,००,०००/- अक्षरी रक्कम रुपये चार लाख फक्त हे साठेखतामध्ये लिहले प्रमाणे दिले होते. मात्र सदर मिळकतीचा कब्जा आम्हाला खरेदीपत्रानंतर देणेचा होता त्यामुळे सदर मिळकतीत लिहून घेणार यांचा कब्जा होता व आहे. सदरची मिळकत साठेखताने कब्जात घेतलेली नव्हती.

14) The vendor refunded part consideration of Rs.4,00,000/- and parties cancelled the Agreement for Sale dated 19 March 2020. The Deed of Cancellation was registered on 10 September 2020. If Flat's possession was in did handed over upon execution of the Agreement dated 19 March 2020, the Deed of Cancellation would have contained a covenant evidencing return of possession. On the contrary the Deed of Cancellation clarifies that the possession of the Flat was never handed over to the Petitioners.

15) Thus, the Deed of Cancellation leaves no manner of doubt that possession of the house was never handed over to the Petitioners in pursuance of the Agreement for Sale dated 19 March 2020.

16) Turning to the statutory scheme of Stamp Act relating to refund of stamp duty, Chapter-V dealt with allowances for stamp in certain cases. Section 47 provides for spoiled stamps and provides 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 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 :—

(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) Section 48 of the Stamp Act provides for the period of limitation within which application for refund under Section 47 can be made. Section 48 provides 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 registered under the provisions of the Registration Act, 1908 and thereafter such agreement is cancelled by a registered cancellation for whatsoever reasons before taking the possession of the property which is subject matter of such agreement to sale, then the application for relief may be made under within a period of six months from the date of registration of 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) It must be clarified that by Mah. Act 32 of 2024, the period of '*six months*' prescribed for making application for refund of stamp duty in all three sub-sections of Section 48 has been amended to '*one year*'. However since the present case deals with execution of the instruments and making of applications and decision thereof before coming into effect of the Mah. Act of 2024, the unamended provisions of Section 48 have been taken into consideration.

19) Thus, Section 47 of the Stamp Act provides for refund of stamp duty where the stamp is used for an instrument executed by parties which fails for the intended purpose either by reason of refusal of any person to act under the same or to advance any money intended to secure thereby or by refusal of non-acceptance of any office thereby granted. In other words, upon failure of the transaction for which the instrument is executed and stamp is used for its execution, refund of stamp duty is admissible under Section 47(c)(5) of the Stamp Act.

20) Under sub-section (1) of Section 48, the application for refund of stamp duty in cases governed by Clause (c)(5) of Section 47 could be made within six months of the date of the instrument.

21) Proviso to sub-section (1) of Section 48 makes a special exception in case of Agreement for Sale of immovable property on which stamp duty is paid under Article 25 of Schedule-I and which is registered. In case of cancellation of such Agreement for Sale by a registered Cancellation Deed before taking possession of the property within a period of 5 years from the date of execution of the Agreement for Sale, the application for refund can be made within a period of six months from the date of registration of the Cancellation Deed. Thus, in case the transaction in respect of which stamp duty is paid ultimately fails, there are two different periods of limitation prescribed under Section 48 of the Stamp Act for filing application for refund as under:

- (i) When the transaction does not involve Agreement for Sale, but the transaction has failed the intended purpose under Section 47(c)(5), the application for refund can be made within six months of the date of instrument.
- (ii) If the transaction involves execution of Agreement for Sale which is registered and with execution of which possession is not handed over, the parties can execute Deed of Cancellation and register the same within a period of five years from the date of execution of the original Agreement for Sale and thereafter application for refund can be filed within a period of six months from the date of registration of Cancellation Deed.

Thus, the Proviso is essentially intended to carve out a special exception by providing for longer time of five years plus six months in case of execution of registered Agreement for Sale, whereas in all other cases

governed by Section 47(c)(5), shorter period of six months from the date of execution of the instrument has been prescribed.

22) In my view, there are three classes of cases governed by the provisions of Section 48 for which different periods of limitation are prescribed for making an application for refund of stamp duty. The three classes of cases are as under:

- (i) in cases governed by Section 47(c)(5) (failure of intended transaction), application for refund must be made within six months from the date of the instrument.
- (ii) where substituted instrument has been executed and the original instrument cannot be given up for cancellation, application for refund can be made within six months from the date of execution of the substituted instrument.
- (iii) in any other case governed by various clauses and sub-clauses of Section 47, application for refund can be made within six months from the date of purchase of stamp duty.

23) The Proviso to sub-section (1) of Section 48 does not create a separate category of cases. It is merely a sub-category of the first category governed by sub-section (1). Thus, every transaction which fails of the intended purpose and which is governed by Section 47(c)(5) would be the one governed by the first category. Therefore, even an Agreement for Sale is actually governed by Section 47(c)(5). Where the transaction intended to be executed through the Agreement for Sale fails, the application for refund can be made within six months from the date of execution of the agreement. However, a special dispensation is made by creating a sub-category in the first category. For this special category governed by the Proviso, following conditions must be fulfilled:

- (i) Agreement for Sale must be for immovable property.
- (ii) Stamp duty thereon must be paid under Article 25 of Schedule-I.
- (iii) Agreement for Sale must be registered.
- (iv) Possession of the property forming subject matter of the Agreement should not be handed over in pursuance of the Agreement.
- (v) Cancellation Deed is executed within a period of five years from the date of execution of Agreement for Sale.
- (vi) Cancellation Deed is also registered.

24) If all the above conditions are satisfied, a special dispensation is made in the Proviso, where application for refund need not be made within six months from the date of Agreement for Sale but the same can be made within six months of execution of the Deed of Cancellation.

25) The Proviso to Section 48(1) thus creates a sub-category within the first category and is not a separate category within itself. Every Agreement for Sale of immovable property is essentially governed by Section 47(c)(5) and an application for refund of stamp duty paid on such agreement must ordinarily be made within six months from the date of the instrument. It is when such Agreement for Sale satisfies the above six conditions that the extended period of limitation applies for making application for refund where a person can wait upto 5 years, execute registered Cancellation Deed and then apply for refund of stamp duty within 6 months. In my view, therefore it is a choice available to a party to either avail period of normal limitation prescribed under Section 48(1) or the extended period of limitation under the Proviso. The submission of Ms. Bane that every Agreement for Sale must be governed by the Proviso and cannot be governed by

ordinary period of limitation prescribed under Section 48(1) deserves outright rejection. True it is that in ordinary circumstances, no one would opt for shorter period of limitation when the Proviso makes a special dispensation of extended period of limitation. However, in a given case where the transaction does not fulfill all the six conditions enumerated above, the parties will be left with no alternative but to avail normal period of limitation prescribed under Section 48(1).

26) This would essentially mean that within Section 48(1), there are three sub-categories as under:

- (i) Cases not involving execution of Agreement for Sale of immovable property but are covered by Section 47 (c)(5).
- (ii) Cases involving execution of Agreement for Sale of immovable property and satisfy all 6 conditions specified in the Proviso.
- (iii) Cases involving execution of Agreement for Sale of immovable property, but which do not fulfill one or more conditions specified in the Proviso.

Thus, the cases governed by illustration No. (i) and (iii) would be governed by normal period of limitation of 6 months, whereas the cases governed by illustration No. (ii) would be governed by extended period of limitation of 5 years plus 6 months.

27) In the present case, no doubt there is execution of registered Agreement for Sale and ordinarily, the case would be governed by proviso to sub-section (1) of Section 48. However, it is contended by the Petitioners that they do not desire to avail the benefit of extended period provided for in the Proviso and the claim for refund is made under the provisions of sub-section (1) of Section 48. This submission is premised on the fact that the application for refund of stamp duty was filed before expiry of period of six months from the

date of execution of Agreement for Sale. The Agreement for Sale was executed on 19 March 2020, whereas the application for refund of stamp duty was filed on 15 September 2020. It is therefore contended that since the refund application was filed within the period prescribed under Section 48(1), the Petitioners are not desirous of taking benefit of extended period of Proviso. This submission is essentially made with a view to obviate the objection of handing over possession of the flat raised in both the impugned orders. In short, what Petitioners contend is that though they were never handed over possession of the flat upon execution of Agreement for Sale dated 19 March 2020, in the event of any covenant of the said Agreement being construed to mean handing over of possession, the application for refund could still be considered as the one made under Section 47(c)(5) read with Section 48(1) of the Stamp Act. On the other hand, if the transaction is correctly read to mean non-handing over possession of the flat to the Petitioners, the case would fit even in Proviso to sub-section (1) of Section 48.

28) In my view, the Petitioner is entitled to refund of stamp duty on both the alternate pleas raised by them. This is on account of the following reasons:

- (i) Petitioners were actually not handed over possession of the flat as observed above. Therefore, their case would clearly fit into the Proviso to Section 48(1).
- (ii) Even if handing over possession of the flat alongwith Agreement dated 19 March 2020 is inferred, Petitioner's application for refund is within six months from the date of execution of the said Agreement and would fully conform to the provisions of sub-section (1) of Section 48 read with sub-clause (5) of clause (c) of Section 47. This is because the

intended transaction has admittedly failed. The Petitioners have not acquired ownership in respect of the flat agreed to be sold by Agreement dated 19 March 2020. Since there is failure of transaction, the case would be governed by Section 47(c)(5) and the period of limitation for making application for refund would be six months of execution of Agreement dated 19 March 2020. The refund application having been preferred on 15 September 2020, would be within the limitation prescribed under sub-section (1) of Section 48.

29) Thus, for either of the aforesaid reasons, Petitioners would be entitled to refund of stamp duty paid on Agreement dated 19 March 2020.

30) In my view, therefore the Collector of Stamps, as well as the CCRA have grossly erred in rejecting Petitioner's prayer for refund of stamp duty. As held above, refund of stamp duty to the Petitioners is admissible in the present case, either under Section 48(1) or under Proviso to Section 48(1). The transaction of sale has clearly failed. Petitioners have received back the paid consideration of Rs.4,00,000/-. They are not in possession of the flat in question. In such circumstances, it would amount to unjust enrichment if the State is permitted to retain the stamp duty of Rs.1,56,000/- paid by the Petitioners.

31) The petition accordingly succeeds and I proceed to pass the following order:

- (i) The order dated 24 June 2021 passed by the CCRA and order dated 23 September 2020 passed by the Collector of Stamps are set aside.

- (ii) Respondents are directed to refund the stamp duty of Rs.1,56,000/- to the Petitioners within a period of 8 weeks. The refund be processed in the name of Petitioner No.2- Sandeep Shivaji Jadhav.

32) With the above directions, the Writ Petition is **allowed**. Rule is made absolute. There shall be no order as to costs.

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[SANDEEP V. MARNE, J.]