AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.243 OF 2025

Nanji Dana Patel … Petitioner
V/s.
The State of Maharashtra & Ors. … Respondent

Mr. Bernardo Reis with Mr. Pratik Dixit i/by Mr. Prashant Dingrani for the petitioner.

Mr. O.A. Chandurkar, Additional G.P. with Smt. V.S. Nimbalkar, AGP for the State.

CORAM : AMIT BORKAR, J.

DATED : APRIL 7, 2025

P.C.:

1. The challenge in the present Writ Petition, filed under Articles 226 and 227 of the Constitution of India, is directed against the order dated 30th October 2024 passed by Respondent No.2, whereby the claim of the petitioner for refund of stamp duty, which was allegedly levied twice in respect of the same property by virtue of a Development Agreement and a subsequent Deed of Conveyance, came to be rejected.

2. The facts and circumstances giving rise to the filing of the present Writ Petition, as are necessary for adjudication of the controversy involved, are briefly set out as under:

3. That one Keshav Syngal was the owner of the immovable property bearing CTS No.D/1111/33, admeasuring 676 square yards, together with a bungalow standing thereon, situated at Plot No.9, Union Park, Pali Hill, Khar (West), Mumbai. The said owner entered into a Development Agreement dated 3rd March 2014 with the petitioner herein, in respect of the said property. The said Development Agreement came to be duly registered with the Sub-Registrar of Assurances, Mumbai, on 3rd March 2014, upon payment of stamp duty in the sum of ₹78,65,000/-.

4. In terms of the said Development Agreement, the petitioner was conferred the right to develop the said property by utilizing the Floor Space Index (FSI) as per the sanctioned plans, subject to obtaining all necessary permissions and approvals from the competent authorities. In turn, the vendor (owner) was obligated to remove the existing licensees occupying the said property within a period of one month from the date of execution of the Development Agreement. However, as the vendor failed to discharge his contractual obligation within the stipulated time, the parties executed a Supplementary Agreement dated 4th July 2014, whereby the consideration amount payable by the petitioner to the vendor was reduced, commensurate with the non-performance of the vendor's obligations.

5. In view of the continued inability of the vendor to evict the licensees and hand over peaceful possession of the property to the petitioner, the parties mutually agreed to execute a Deed of Conveyance and simultaneously cancel the Development Agreement. Accordingly, a Deed of Conveyance came to be executed on 25th June 2015, whereby the owner conveyed the said property in favour of the petitioner for a consideration of ₹20 crore. The stamp duty payable on the said Deed of Conveyance was duly paid, amounting to ₹1 crore.

6. In the aforesaid circumstances, the petitioner, on 15th February 2018, made an application to the appropriate authority seeking refund of the stamp duty amounting to ₹78,65,000/-, which had been paid at the time of execution and registration of the Development Agreement. The petitioner contended that, in view of the subsequent execution of the Deed of Cancellation of the Development Agreement and the execution of the Deed of Conveyance upon payment of fresh stamp duty of ₹1 crore, the earlier amount of ₹78,65,000/- paid towards stamp duty on the Development Agreement was rendered surplus and therefore liable to be refunded, as the petitioner was burdened with double payment of stamp duty in respect of the same property transaction.

7. Initially, Respondent No.2, by order dated 3rd July 2018, rejected the petitioner's application for refund of stamp duty on the ground of limitation, holding that the application was filed beyond the prescribed period. However, the petitioner assailed the said order before this Court by filing Writ Petition No.1897 of 2019. This Court, by its judgment and order, was pleased to condone the delay in filing the refund application and directed Respondent No.2 to decide the petitioner's claim for refund of stamp duty on merits. In compliance with the said direction, Respondent No.2 considered the petitioner's application afresh and passed the impugned order dated 30th October 2024, whereby the petitioner's claim for refund was rejected on two principal grounds: firstly, that the Development Agreement, which was subsequently cancelled, and the Deed of Conveyance were two distinct and independent documents and were not transactions at par with each other; and secondly, that the application for refund had not been submitted to the Collector within a period of six months as contemplated under the Maharashtra Stamp Act, 1958.

8. Aggrieved by the rejection of his application, the petitioner challenged the said order passed by the Collector before Respondent No.2. However, by the impugned order dated 30th October 2024, Respondent No.2 once again rejected the petitioner's claim for refund of stamp duty. Being dissatisfied with the said order, the petitioner has approached this Court by filing the present Writ Petition under Article 226 of the Constitution of India.

9. Learned Advocate appearing for the petitioner submitted that the petitioner's case squarely falls within the ambit of Section 47(c)(5) of the Maharashtra Stamp Act, 1958. It was submitted that the said provision does not make any distinction between the nature of documents and applies uniformly to all instruments where the stipulated conditions are satisfied. It was further submitted that once this Court had condoned the delay in filing the refund application in Writ Petition No.1897 of 2019, it was not open for the Authority to once again reject the application on the ground of limitation. The learned Advocate contended that the Development Agreement dated 3rd March 2014 and the Deed of Conveyance dated 25th June 2015 pertained to the same property and the petitioner had duly paid stamp duty of ₹1 crore on the Deed of Conveyance. In such circumstances, it was submitted that the stamp duty of ₹78,65,000/- paid earlier on the Development Agreement was liable to be refunded, as both documents pertained to the same transaction, and the petitioner had effectively borne the burden of double payment of stamp duty. It was, therefore, contended that the impugned orders suffer from patent illegality and are liable to be quashed and set aside.

10. Per contra, the learned Additional Government Pleader appearing on behalf of the respondents opposed the petition and supported the impugned order. It was submitted that the petitioner had failed to demonstrate that there was any refusal on the part of the owner to perform his obligations under the Development Agreement, which would justify cancellation under the provisions of the Maharashtra Stamp Act. It was contended that the Deed of Cancellation was executed by mutual consent of both parties and, therefore, the case of the petitioner would not fall within the ambit of Section 47(c)(5) or (6) of the Maharashtra Stamp Act, 1958. It was, thus, urged that no fault could be found with the impugned order passed by the authority rejecting the petitioner’s application for refund of stamp duty.

11. Upon careful perusal of the impugned order dated 30th October 2024, it is evident that the Authorities under the Maharashtra Stamp Act, 1958 have rejected the petitioner’s claim for refund primarily on the ground that the Development Agreement and the Deed of Conveyance are instruments chargeable under different Articles of the Act. It has been observed that while the Development Agreement is chargeable under Article 5(g-a)(i), the Deed of Conveyance is chargeable under Article 25 (Explanation I) of Schedule I to the Act, and that distinct provisions govern refund in respect of such instruments.

12. Though the Authorities have reproduced the submissions advanced on behalf of the petitioner — that the petitioner had already deposited requisite stamp duty amounting to ₹78,65,000/- on the Development Agreement dated 3rd March 2014 and further paid ₹1 crore towards stamp duty on the Deed of Conveyance dated 25th June 2015 — the Authority has, however, brushed aside the said submission on a hyper-technical view, solely on the basis of different chargeability under different Articles, without appreciating the real nature of the transaction.

13. To consider the correctness of such reasoning, it would be apposite to extract the provisions of Section 4 of the Maharashtra Stamp Act, 1958, which reads thus:

> ***"4. Several instruments used in single transaction of development agreement, sale, lease, mortgage or settlement.* —** *(1) Where, in the case of any development agreement, sale, lease, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule I for the conveyance, development agreement, lease, mortgage or settlement, and each of the other instruments shall be chargeable with a duty of one hundred rupees instead of the duty, if any, prescribed for it in that Schedule.*
>
> *(2) The parties may determine for themselves which of the instruments so employed shall, for the purpose of sub-section*

(1), be deemed to be the principal instrument.

(3) If the parties fail to determine the principal instrument between themselves, then the officer before whom the instrument is produced may, for the purposes of this section, determine the principal instrument:

Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed."

14. On a meticulous reading of sub-section (1) of Section 4, it becomes evident that the provision specifically contemplates a situation where several instruments are employed in a single transaction, including a Development Agreement followed by a Conveyance Deed. In such eventuality, the principal instrument alone is chargeable with full stamp duty prescribed under Schedule I, whereas the other instruments are liable for nominal stamp duty of ₹100/- only.

15. The statute confers discretion upon the parties to determine which of the instruments is to be treated as the principal instrument. In the event of their failure to do so, the Officer before whom the instruments are produced is empowered to determine the principal instrument, with the statutory mandate that the duty chargeable on the principal instrument so determined shall be the highest among the instruments executed in relation to the transaction.

16. In my considered view, applying the above statutory scheme to the facts of the present case, it was incumbent upon Respondent No.2 to identify the Deed of Conveyance as the principal instrument, inasmuch as the duty chargeable thereon was higher — ₹1 crore — as compared to the stamp duty already paid on the Development Agreement. The petitioner has undisputedly paid stamp duty of ₹1 crore on the Deed of Conveyance, which is the highest duty payable in the transaction concerning the same subject-matter, namely CTS No.D/1111/33, admeasuring 676 square yards, together with bungalow situated at Plot No.9, Union Park, Pali Hill, Khar (West), Mumbai. Consequently, the instrument of the Development Agreement, upon which the petitioner had already paid stamp duty of ₹78,65,000/-, ought to have been treated as secondary, and therefore, the excess stamp duty paid thereon is liable to be refunded in accordance with the law.

17. It is a settled principle that no party can be compelled to pay stamp duty twice over for the same transaction concerning the same property. Applying this principle to the facts of the present case, it is clear that the Development Agreement and the Conveyance Deed formed part of the same transaction and related to the same property. Therefore, in my opinion, Respondent No.2 was not justified in mechanically rejecting the petitioner's claim on the ground that the instruments fall under different chargeable heads without appreciating that the transaction was a single one for all practical purposes.

18. In view of the foregoing discussion, I am of the considered opinion that Respondent No.2 is not entitled to levy and collect double stamp duty for the instruments of Development Agreement and Deed of Conveyance pertaining to the same subject-matter. Accordingly, the impugned order dated 30th October 2024, rejecting the petitioner's application for refund, cannot be sustained and is liable to be quashed and set aside.

19. Hence, Rule is made absolute in terms of prayer clause (c). No costs.

(AMIT BORKAR, J.)