

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10244 OF 2024

WITH

WRIT PETITION NO. 10245 OF 2024

Bhaskar Ramgonda Patil

Age : 48 years, Occ.: Business

R/at.: Sankeshwar Road, Gadhinglaj,

Tal.:Gadhinglaj, Dist.:Kolhapur.

.... *Petitioner*

*-Versus-*

District Deputy Registrar (Class I)

And Collector of Stamps, Kolhapur.

Having Office at: Ranmala,

District: Kolhapur.

.... *Respondent*

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**Mr. Drupad Patil** *with Mr. Suyash Sule, for the Petitioner.*

**Ms. Vaishali S. Nimalkar**, *AGP for Respondent-State.*

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**CORAM : SANDEEP V. MARNE, J.**

***Judgment Reserved on : 4 March 2025.***

***Judgment Pronounced on : 17 March 2025.***

**JUDGMENT :**

1) These petitions are filed by the Petitioner challenging the order dated 3 March 2021 passed by the Collector of Stamps and order dated 17 May 2024 passed by the Chief Controlling Revenue Authority, (CCRA) Maharashtra State, Pune by which the Petitioner's application for refund of excess stamp duty paid has been rejected.

2) Petitioner executed Development Agreement dated 27 June 2017 with the land owner-Vishwanath Pattan Shetty and others for development of the land, which was registered in the office of the Sub-Registrar, Gadhinglaj at Serial No.1998. Draft of the said agreement was submitted before the Sub-Registrar, Gadhinglaj for determination of market value for payment of stamp duty. The Sub-Registrar calculated the market value by taking into consideration the ready reckoner valuation of commercial units and flats and the total market value was ascertained at Rs.4,41,34,000/-. Petitioner accordingly paid stamp duty of Rs.22,06,700/- and registration fees of Rs.30,000/-

3) Petitioner executed another Development Agreement dated 7 March 2018 with the landowners Mrs. Anuya Gune and Others which was registered in the office of the Sub-Registrar, Gadhinglaj at Serial No.708. In respect of Development Agreement dated 7 March 2018, the market value was ascertained by the Collector of Stamps by taking into consideration the Ready Reckoner rates of commercial units and flats at Rs.4,17,00,000/- and accordingly Petitioner paid stamp duty of Rs.25,02,000/- and registration fees of Rs.30,000/-.

4) It is Petitioner's case that in the year 2020, when he decided to acquire development rights of certain land situated at Kolhapur and had paid visit to the office of the Sub-Registrar, Kolhapur, he was informed that while calculating the market value for payment of stamp duty on a development agreement, cost of RCC construction is required to be taken into consideration and not the market value of commercial and residential units as per the ready reckoner rates.

5) Petitioner accordingly realised that the market value in respect of the Development Agreement dated 27 June 2017 was Rs.2,80,50,027/- and the stamp duty payable therein was Rs.14,03,000/-. In respect of Development Agreement dated 7 March 2018, the market value ought to have been Rs. 2,42,07,263/- and the stamp duty payable therein was Rs.12,11,000/-. According to the Petitioner, he had paid excess stamp duty of Rs.8,03,700/- on Development Agreement dated 27 June 2017 and Rs.12,91,000/- in respect of Development Agreement dated 7 March 2018.

6) Petitioner accordingly filed applications dated 2 July 2020 seeking refund of excess stamp duty paid by him alongwith interest before the Collector of Stamps. The Refund Application Nos.1325/2021 and 1326/2021 were rejected by the Collector of Stamps holding that Petitioner ought to have approached for refund of excess stamp duty within a period of 6 months from the date of execution of the Development Agreements. Petitioner filed Appeal Nos.67/2021 and 68/2021 before the Collector of Stamps and Chief Inspector General of Registration. The CCRA however has rejected the Appeals by order dated 17 May 2024. Petitioner has accordingly filed the present petitions challenging the order dated 3 March 2021 passed by the Collector of Stamps and order dated 17 May 2024 passed by the CCRA.

7) Mr. Drupad Patil, the learned counsel appearing for the Petitioner would submit that the Collector of Stamps and CCRA have grossly erred in rejecting the refund applications preferred by the Petitioner on the sole ground of delay without appreciating the position that there is obvious error in levy of stamp duty in respect of two Development Agreements. That both the Authorities do not seriously dispute that there is error in ascertaining the market value of the land taken up for development by considering the ready reckoner rates in respect of the flats and shops to be constructed in the building when infact mere construction cost ought to have been taken into account for determining the market value for levy of stamp duty. That once an obvious error is noticed, the Government cannot retain the excess amount of stamp duty as the same would amount to unjust enrichment by the Government. He would submit that the period of limitation prescribed under Section 50 of the Maharashtra Stamp Act, 1958 (**Stamp Act**) cannot bar the right of a party to claim refund of stamp duty. He would submit that the period of limitation may at the highest bar remedy of a party, but not the right to claim refund. He would submit that the Authorities have inherent powers to condone the delay for entertaining application for refund of excess stamp duty. He would submit that the Apex Court and this Court has repeatedly held that stamp duty erroneously paid must be refunded without citing technical ground of delay. In support of his contentions, Mr. Patil would rely upon the following judgments:

- (i) *The Committee-GFIL Versus. Libra Buildtech Private Limited and others*<sup>1</sup>
- (ii) *Bano Saiyed Parwaz Versus. Chief Controlling Revenue Authority and Inspector General of Registration and Controller of Stamps and Others*<sup>2</sup>

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<sup>1</sup> (2015) 16 SCC 31

<sup>2</sup> (2025) 2 SCC 201

- (iii) *Harshit Harish Jain and Another Versus. State of Maharashtra and Others*<sup>3</sup>
- (iv) *Nanji Dana Patel Versus. State of Maharashtra, Through Government Pleader and Others*<sup>4</sup>
- (v) *Satish Buba Shetty Versus. Inspector General of Registration and Collector of Stamps and Others*<sup>5</sup>

8) The Petition is opposed by Ms. Nimbalkar, the learned AGP appearing for the Respondents. She would submit that there is express bar under the provisions of Section 50 of the Stamp Act from entertaining the application for refund after expiry of period of six months, which was applicable till 31 July 2024. That the present case is governed by unamended provisions of Section 50, which had prescribed maximum period of six months for filing application seeking refund of excess stamp duty. She would submit that since the language of Section 50 is plain and unambiguous, it is impermissible for this Court to give different meaning to the provisions of the Act. She would submit that the Petitioner is a seasoned developer, who has entered into multiple transactions of development of properties and ought to have exercised the remedy of seeking refund of excess stamp duty within the period of six months prescribed under Section 50. That even otherwise, there is absolutely no reason for condonation of period of limitation prescribed under Section 50, which otherwise cannot be condoned in absence of any provision for condonation of delay. She would submit that none of the judgments relied upon by Petitioner have any remote application to the present case as all those judgments deal with payment of stamp duty in respect of the transaction which has actually not taken place. She would rely upon the judgment of this Court in Vilas Eknath Nandgude Versus. State of

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<sup>3</sup> 2025 SCC OnLine SC 166

<sup>4</sup> 2024 SCC OnLine Bom 2817

<sup>5</sup> 2024 SCC OnLine Bom 108

*Maharashtra Through Revenue Ministry Mantralaya and Others*<sup>6</sup>. She would pray for dismissal of the petitions.

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

10) Petitioner entered into two Development Agreements dated 27 June 2017 and 7 March 2018. According to the Petitioner himself, he had submitted both the Development Agreements for ascertainment of market value before the Sub-Registrar, who apparently took into consideration the Ready Reckoner rates of commercial units of Rs.42,750/- per sq. mtr. and residential units of Rs.26,430/- per sq. mtr. and determined the market value in respect of both the properties at Rs.4,41,34,000/- and Rs.4,17,00,000/-. The Petitioner accordingly paid stamp duty of Rs.22,06,700/- and Rs.25,02,000/- on both the Development Agreements. Now the Petitioner believes that while computing the market value, the ready reckoner rates in respect of residential and commercial units are irrelevant and what was required to be taken into consideration is cost of RCC construction, which at the relevant time was Rs.19,800/- thereby reducing the market value to Rs.2,80,50,027/- and Rs.2,42,07,263/-. Petitioner therefore contends that he has paid excess stamp duty of Rs.8,03,700/- on Development Agreement dated 27 June 2017 and Rs.12,91,000/- on Development Agreement dated 7 March 2018. With the above complaint, he filed applications for refund of excess stamp duty under the provisions of Section 50 of the Stamp Act on 2 July 2020.

11) Section 50 of the Maharashtra Stamp Act deals with allowance for misused stamps and as on the date of filing of the Refund Application dated 2 July 2020, Section 50 read thus :

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<sup>6</sup> 2023 SC OnLine Bom 2051

**50. Allowance for misused stamps.**

(1) When any person has inadvertently used, for an instrument chargeable with duty, a stamp of a description other than that prescribed for such instrument by the rules made under this Act, or a stamp of greater value than was necessary or has inadvertently used any stamp for an instrument not chargeable with any duty; or

(2) when any stamp used for an instrument has been inadvertently rendered useless under section 15, owing to such instrument having been written in contravention of provisions of section 13;

the Collector may, on application made within [six months] after the date of the instrument, or, if it is not dated, within [six months] after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, if chargeable with duty, being re-stamped with the proper duty, cancel and allow as spoiled the stamp so misused or rendered useless.

12) Thus, as on 2 July 2020, the application for refund of excess stamp duty could be made within a period of six months from the date of instrument.

13) Provisions of Section 50 are amended by Mah. Act 32 of 2024 w.e.f. 31 July 2024 and the period of six months for making an application for refund is enhanced to one year. However, for the purpose of present proceedings, the amendment which came into effect from 31 July 2024, is irrelevant and the maximum permissible period for filing application for refund of stamp duty at the relevant time was six months. Even if the amended provision is to be considered, the applications were still beyond the period of one year.

14) Admittedly, the Petitioner has filed both the Refund Applications well beyond the period of six months. The only justification pleaded by him for doing so is the alleged acquisition of knowledge by him about erroneous calculation of market value while dealing with another property at Kolhapur in the year 2020. In my view, the reason for late filing of application for refund becomes irrelevant in view of absence of power conferred on the Collector of

Stamps to condone the delay under Section 50 of the Stamp Act. Faced with the situation where the maximum permissible period for filing of application for refund of excess stamp duty is six months coupled with absence of power of condonation of delay, Mr. Patil has relied upon several judgments of the Apex Court and of this Court in support of his contention that refund can be applied for even after expiry of period specified under the provisions of the Stamp Act. It would be necessary to consider the judgments relied upon by Mr. Patil.

15) In *Committee-GFIL* (supra), the case before the Apex Court involved a situation where auction proceedings were conducted through a Committee constituted by the Apex Court and the successful bidders had deposited 25% of the bid amount and had also purchased stamp papers of Rs.6.22 crores for execution of sale deeds in their favour. However, since the possession of property could not be handed over to the successful bidders, the Committee was directed to refund the amounts deposited by the bidders. Since the bid amount was refunded and the transaction could not go through, the bidders filed applications before the Government of Punjab for refund of stamp duty of Rs.6.22 crores. In the light of the above factual position, the Apex Court permitted refund of entire amount of stamp duty by recording following findings:

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 step. 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.

16) Thus, the case before the Apex Court in *Committee-GFIL* was entirely different where the transaction itself could not go through. The case involved unique facts and circumstances, where the auction was conducted through the Committee constituted by the Court and bid amount was deposited and stamp duty was paid under the expectation of Court conducted auction fructifying into successful transaction of sale. The transaction of sale was required to be cancelled on account of orders passed by the Apex Court

resulting in refund of bid amounts and it is in the light of these unique facts and circumstances that applications for refund of stamp duty of Rs.6.22 crores was made to the State Government. The present case does not involve eventuality of cancellation of sale transaction. The Development Agreements have resulted into successful transaction of vesting of development rights in favour of the Petitioner. Therefore, the reasoning adopted by the Apex Court while directing refund of stamp duty in *Committee-GFIL* would have no application to the facts of the present case.

17) In *Bano Saiyed Parwaz* (supra), the case involved refund of stamp duty paid towards unexecuted conveyance deed. The Appellant therein had agreed to purchase property and had paid stamp duty of Rs. 25.34 lakhs on draft Conveyance Deed. It later transpired that the vendors had played fraud on the Appellant and had already sold the property to third party in the year 1992. The Appellant therefore decided to cancel the transaction when the vendor executed Cancellation Deed. The Appellant thereafter applied for refund of stamp duty under Section 48 of the Stamp Act. In the light of the above facts, the Apex Court held in paras-11, 12, 15 and 16 as under:

11. From the above admitted facts, prima facie it appears that the appellant herein was pursuing her remedies in law and she was not lax in her approach towards seeking refund of the said stamp duty paid by her and she has been denied the same only on the ground of limitation.

12. The finding returned by the High Court in the impugned order [*Bano Saiyed Parwaz v. Chief Controlling Revenue Authority*, 2019 SCC OnLine Bom 13391] that the appellant's application for refund dated 22-10-2014 is not maintainable in law as it has been filed before the cancellation of the conveyance deed dated 13-11-2014 is misplaced insofar as while submitting the online application there was no caution to the appellant that all of the documents and materials for the satisfaction of the Collector should be filed with the application — either online or hard copy — itself and the finding of the learned Single Judge is contrary to the requirements stipulated by Sections 47 and 48 which envisages only the application for relief under Section 47 of

the Act to be made within six months of the date of the instrument, which prima facie appears to have been done by the appellant in the present case.

15. The legal position is thus settled in *Libra Buildtech* [*Committee-GFIL v. Libra Buildtech (P) Ltd.*, (2015) 16 SCC 31 : (2016) 3 SCC (Civ) 596] that when the State deals with a citizen it should not ordinarily rely on technicalities, even though such defences may be open to it.

16. We draw weight from the aforesaid judgment and are of the opinion that the case of the appellant is fit for refund of stamp duty insofar as it is settled law that the period of expiry of limitation prescribed under any law may bar the remedy but not the right and the appellant is held entitled to claim the refund of stamp duty amount on the basis of the fact that the appellant has been pursuing her case as per remedies available to her in law and she should not be denied the said refund merely on technicalities as the case of the appellant is a just one wherein she had in bona fide paid the stamp duty for registration but fraud was played on her by the vendor which led to the cancellation of the conveyance deed.

18) The observations of the Apex Court in para-16 of the judgment in *Bano Saiyed Parwaz* that expiry of period of limitation would bar remedy, but not the right, are made in the peculiar facts and circumstances of that case, where fraud was played on the Appellant leading to cancellation of the transaction. The judgment therefore would have no application to the facts of the present case where both the Development Agreements have resulted in vesting of development rights in favour of the Petitioner.

19) The judgment of the Apex Court in *Harshit Harish Jain* (supra) is relied upon by Mr. Patil. The case involved execution of Agreement for sale for purchase of flat on which stamp duty of Rs.27,34,500/- was paid and the Agreement was registered. The Developer, however could not handover possession of the flat and offered option of cancellation of the booking. The transaction was later cancelled by execution of Deed of Cancellation which was executed on 17 March 2015 but was registered on 28 April 2015. Between the two dates, the amendment was effected to Section 48(1) of the Stamp Act

on 24 April 2015 curtailing the time limit for seeking refund of stamp duty from 2 years to 6 months. The refund application was entirely allowed by the CCRA which order was subsequently recalled by rejecting the refund application as time barred. In the light of the above factual position, the Apex Court held in para-10 of the judgment as under :

10. Even if one were to hold that the Appellants' claim is examined under the amended six-month period, we are of the considered opinion that a mere technical delay should not, by itself, extinguish an otherwise valid claim. The scheme of stamp duty refund provisions is designed to ensure fairness when the underlying transaction is rescinded for bona fide reasons. The Appellants were compelled to cancel the purchase due to the developer's inability to deliver timely possession, and were in no way remiss or at fault.

20) In *Harshit Harish Jain* also the case involved refund of stamp duty under the provisions of Section 48 of the Stamp Act on account of cancellation of sale transaction. Therefore, the said judgment again would have no application to the facts and circumstances of the present case, where there is successful transaction of vesting of development rights in Petitioner's favour.

21) The judgment of Division Bench of this Court in *Nanji Dana Patel* (supra) is relied upon by Mr. Patil. The Division Bench has dealt with a case where the Petitioner therein had entered into Development Agreement with the developer through a registered Agreement by payment of stamp duty. The parties decided to cancel the Development Agreement and executed Cancellation Deed. In the light of the above position, the Division Bench of this Court relied upon judgments in *Committee-GFIL* and *Bano Saiyed Parwaz* and held in paras-15, 16 and 17 as under:

15. On an analysis of the Stamp Act, we find that there is no provision which excludes applicability of Section 5 of the Limitation Act, 1963 to the Stamp Act and more particularly in Section 48 of the said Act which provides for time limit for making the application for refund of stamp duty. We also note that

the authority constituted under the Stamp Act does not have the power to condone the delay if the application is made beyond the time specified in Section 48 of the said Act. However, the present petition is filed under Article 226 of the Constitution of India for seeking condonation of delay in making application for refund of the stamp duty. Admittedly, there is no dispute that Petitioner is entitled to apply for the refund under consideration, but the only ground of the denial of the refund is the delay on the part of Petitioner in making the refund application. The merits have not been discussed in the impugned order. In our view, the present petition is to be treated as an application under Section 5 of the Limitation Act which provides that any application may be admitted after the prescribed period if the applicant satisfies the Court that he had sufficient cause for not making the application within the period specified. In the instant case, Petitioner has averred in the petition that as he was ill-advised, there was a delay in making the application for refund. However, that would prima-facie not result into Respondent-State to retain the amount which, is admittedly refundable to Petitioner. Moreover, retention of stamp duty of the amount of Rs. 78,65,000/- would be contrary to Article 265 and 300A of the Constitution of India. Therefore, in our view, the present petition can be treated as an application under Section 5 of the Limitation Act and accepting the reason for the delay, the petition is required to be allowed by condoning the delay in making the refund application.

16. The view which we have taken above by invoking Section 5 of the Limited Act, 1963 is supported by a recent decision of the Supreme Court in *Mohd. Abaad Ali v. Directorate of Revenue Prosecution Intelligence*<sup>3</sup>, wherein the Supreme Court observed that unless there is an express or implied bar to the applicability of the Limitation Act in a particular Special Act, the provisions of Section 5 of the Limitation Act would apply. That was a case where a belated appeal against acquittal was filed under Section 378 of the Code of Criminal Procedure and the appeal was accompanied by an application for condonation of the appeal. The delay condonation application was allowed by Delhi High Court and, thereafter, an application was moved for recalling of the said order on the ground that Section 5 of the Limitation Act would not apply, since the period of filing an appeal against acquittal has been prescribed under Section 378(5) of the Code of Criminal Procedure itself and there is no provision for condonation of delay. The said application came to be dismissed which was challenged before the Supreme Court and the Supreme Court after analysing the provisions of the Criminal Procedure Code, 1973 and Limitation Act, 1963 held that the benefit of Section 5 can be availed in an appeal against acquittal in the absence of exclusionary provision under Section 378 of the Code of Criminal Procedure or at any other place in the Court. In our view, the ratio laid down by the Supreme Court would apply to the facts of the present Petitioner before us moreso, when this Court is exercising its extra-ordinary jurisdiction under Article 226 of the Constitution of India and when there is no dispute that Petitioner is admittedly entitled to apply for refund. The fiscal lis is not an adversarial proceeding but if a particular person is entitled to refund, since he has paid the excess tax then certainly the State cannot retain it. Therefore, in our view, the belated application made by Petitioner for refund of the duty is required to be considered on merits by condoning the delay in making such application.

17. Mr. Reis submits that Petitioner was ill-advised and did not make the requisite application within the prescribed period of 6 months, but it does not take away the fact that a total amount of Rs. 1,78,65,000/- has been paid by him for a transaction where only Rs. 1 crore had to be paid as stamp duty. Respondents have collected a surplus amount of Rs. 78,65,000/- and Petitioner only wants the refund of that amount which according to Petitioner, the Revenue is not entitled to collect. In our view, Respondents should consider the matter on merits and pass an order then rejecting on technicalities.

22) The case before the Division Bench in *Nanji Dana Patel* again involved cancellation of the transaction and refund of stamp duty under Section 48 of the Stamp Act. The judgment would therefore have no application to the facts of the present case.

23) Lastly, Mr. Patil has relied upon judgment of Coordinate Bench of this Court in *Satish Buba Shetty* (supra) which involved execution of Agreement for purchase of a flat and payment of stamp duty thereon. Since possession of the flat was not delivered, the Petitioner therein approached Real Estate Regulatory Authority which directed the developer to refund the consideration by executing the Deed of Cancellation. The developer ultimately refunded the paid amount of consideration and Deed of Cancellation was executed between the parties after which the Petitioner applied for refund of stamp duty. In the light of the above position, this Court held in paras-22 and 23 as under :

22. I am mindful the Supreme Court has resorted to the plenary power under Article 142 of the Constitution. However, in my considered view the principle enunciated by the Supreme Court that where a party would suffer consequences of judicial delay or would be prejudiced for non-compliance of the condition which was impossible for it to perform, such course would violate equity, justice and fairness, deserves to be followed.

23. The authorities under the Stamp Act, 1958 may be justified in rejecting the application in strict adherence to the letter of the law. The statutory provision does not vest any discretion in the authorities. It is trite, refund of the amount paid under any enactment is a matter of a statutory right. Reading down the

proviso to sub section (1) of section 48 of the Stamp Act, 1958 as directory may have serious repercussions on the revenue. But, the High Court in exercise of the extraordinary writ jurisdiction cannot be denuded of the power to delve into the question as to whether the non-compliance of the stipulation as to time was brought about by factors which were beyond the control of the affected party and to insist performance would have amounted to compelling such party to do impossible and, thus, relieve such party of the hardship in deserving cases, where injustice is writ large.

24) In my view, all the judgments relied upon by Mr. Patil essentially dealt with a case of cancellation of the transaction wherein the Apex Court and this Court have taken consistent view that mere delay in applying for refund of stamp duty cannot be a ground for the Government to retain the excess stamp duty paid. In the present case, there is no cancellation of the transaction. The transaction has gone through and the Petitioner has secured development rights in respect of the lands in question. He is a seasoned developer who has repeatedly executed Development Agreements in respect of multiple properties. Therefore, he cannot be placed on the same pedestal as that of the cases involving complete cancellation of the transaction. All the judgments rendered by the Apex Court and by this Court dealt with a situation where the underlying transaction, on which stamp duty was paid, ceased to remain in existence. The Apex Court and this Court has accordingly held that permitting the Government to retain the amount of stamp duty in respect of the cancelled transaction would tantamount to unjust enrichment. However, in a case where the transaction has the effect of vesting of rights in respect of the land in favour of the purchaser/developer, it would not be open for this Court to go against the spirit of provisions of Section 50 of the Stamp Act which prescribes limitation of six months (now extended to one year) for filing application for refund of excess stamp duty. As observed above, Petitioner is not a layman who has paid stamp duty and has ultimately not secured any rights in respect of the land in question. The execution of Development Agreements by the Petitioner were towards his commercial

venture. He was fully guided by a proper legal advice while executing multiple Development Agreements. Therefore, he ought to have been vigilant in the matter of payment of stamp duty and ought to have exercised the remedy of seeking refund within the period prescribed in the Statute. Petitioner cannot be permitted to rely upon judgments relating to cancellation of transactions for the purpose of seeking refund of alleged extra amounts spent by him towards purchase of the stamps.

25) The Petitioner has filed the refund application after considerable period of 2/3 years in respect of both the transaction. It is not that zero stamp duty was payable on the instruments executed in favour of the Petitioner. The case merely involves interpretation of the covenants of the Development Agreement and ascertainment of market value of the land and the building for levy of stamp duty. It is Petitioner's contention that he was required to pay stamp duty only on cost of construction and not on the ready reckoner value of commercial units and residential flats. If Petitioner is correct in his interpretation, he ought to have been vigilant by exercising the remedy provided to him in law by making application for refund within the permissible period of time.

26) If this Court is to grant a leeway to a Petitioner by directing refund of stamp duty on applications filed beyond the period of limitation prescribed under Section 50 of the Stamp Act, the same would open floodgates where several developers across the State would then file applications for refund of excess stamp duty paid over the period of time. The Apex Court and this Court have relaxed the condition of limitation in a case where the underlying transaction was cancelled but the purchaser still is made to bear the burden of stamp duty. The underlying objective behind various judgments rendered by the Apex Court and by this Court is that the purchaser has

already suffered on account of cancellation of the transaction and to make him bear the burden of stamp duty in respect of such cancelled transaction would tantamount to adding premium to the injury already suffered by him. The golden thread that runs through all the judgments relied upon by Mr. Patil is the principle that '*when there is no transaction, there should be no stamp duty payable*'. However, this principle would not apply to a case where there is a successful transaction in favour of a party but there is difference in the opinion about the manner in which the market value of the property is to be ascertained. For applying the period of limitation prescribed in the statute for claiming refund of stamp duty, the cases involving payment of excess stamp duty in respect of fructified transaction cannot be put on the same pedestal with that of transactions which are fully cancelled.

27) It would therefore be necessary to draw a line between cases involving cancelled or non-fructified transactions where claim for refund of whole of stamp duty is made and cases involving refund of excess stamp duty paid on successful transactions which essentially arise out of interpretational exercise. Later cases may involve (i) difference in the opinion about ascertainment of market value (ii) difference in opinion about the nature of transaction (iii) application of wrong Article of the Stamp Act, etc resulting in payment of excess stamp duty. In such cases, the person making payment of stamp duty must be vigilant by filing application for refund within the prescribed time limit under Section 50 of the Act. Though period of limitation is also prescribed for refund of stamp duty in respect of cancelled transactions under Section 48 of the Act, the Courts have recognised a principle that the state exchequer cannot unjustly enrich itself by retaining stamp duty where there is no transaction at all. That principle, made applicable for former cases, cannot be invoked in the latter cases.

28) Permitting filing of applications for refund of excess stamp duty by filing application beyond the prescribed period of limitation by developers would result in a complete chaotic situation where the developers across the State would then file applications for refund of excess stamp duty in respect of the transactions executed 20 to 30 years ago. The law of limitation is based on public policy of achieving a degree of certainty to the established position. It is aimed at putting an end to the claims by barring the remedy rather than right with the passage of time.

29) Ms. Nimablkar has relied on my judgment in *Vilas Eknath Nandgude* (supra). However, that judgment deals with the issue of absence of provision in the Stamp Act for refund of stamp duty in respect of un-executed document. This Court has relied on the Apex Court judgment in *Rajeev Nohwar v. Chief Controlling Revenue Authority, Maharashtra State, Pune & Ors.*<sup>7</sup>. Since the issue involved in the present case is completely different, the judgment in *Vilas Eknath Nandgude* would have no application here.

30) Even otherwise, this Court is called upon to exercise jurisdiction under Article 227 of the Constitution of India. Petitioner is a developer, who has sensed an opportunity of seeking refund of excess stamp duty of Rs.8,03,700/- and Rs.12,91,000/- and has started pursuing the proceedings for such refund. Considering the facts and circumstances of the case, this Court would not exercise the corrective jurisdiction under Article 227 of the Constitution of India for aiding a developer to claim refund of alleged excess stamp duty by filing applications beyond the period of limitation under Section 50 of the Stamp Act. This Court while exercising supervisory jurisdiction is not expected to correct every error of fact or even a legal flaw. In this regard, reference can be made to the judgment of the Apex Court in

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<sup>7</sup> (2021) 6 ALL MR 429

*Garment Craft Versus. Prakash Chand Goel*<sup>8</sup>. I am therefore not inclined to interfere in the impugned decisions of the Collector of Stamps and CCRA.

31) Resultantly, I do not find any valid reason to interfere in the impugned orders. The petitions are devoid of merits and are accordingly **dismissed** without any order as to costs.

NEETA  
SHAILESH  
SAWANT

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SHAILESH  
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[SANDEEP V. MARNE, J.]

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<sup>8</sup> (2022) 4 SCC 181