IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.537 OF 2023

PETITIONER :- Shri. Mohan S/o Wasudeo Kelkar, Aged about 69 years, Occ: Retired Govt. Servant, R/o Plot No.90, Ambazari Layout, Gandhi Nagar, Nagpur-440010.

..**VERSUS**..

RESPONDENTS :-

1) State of Maharashtra through its Secretary, Revenue and Forest Department, Mantralaya, Mumbai.

Amendment carried out as per order dt. 23/01/2023 in the Court.

2) Collector of Stamp, Nagpur City, Collectorate, Nagpur.

3) Shri. Ulhas S/o Wasudeo Kelkar, Aged about 71 years, Occ: Retired, R/o Plot No.90, Ambazari layout, Gandhi Nagar, Nagpur-440010.

4) Smt. Kanchan Godbole, aged about 67 years, Occ: Housewife, R/o Plot No.121, Swavalambi Nagar, Nagpur-440022.

Mr.S.P. Dharmadhikari, Senior Advocate a/b Chinmay Dharmadhikari, Raghav Bhandakkar, Advocates for Petitioner.
Mr. S.B. Bissa, A.G.P. for the Respondents/State.
Mr. Rohan K. Joshi, Advocate for respondent Nos.3 and 4.

CORAM : ROHIT W. JOSHI, J.

DATE OF RESERVING THE JUDGMENT: 14.10.2025
DATE OF PRONOUNCING THE JUDGMENT: 03.11.2025

1. Heard.

2. **Rule**. Rule is made returnable forthwith. Heard finally with consent of learned counsel for the respective parties.

3. By the present petition, the petitioner has challenged the order dated 03.03.2022, passed by the respondent No.2/Collector of Stamps in Adjudication Case No.18 of 2022.

4. The petitioner is the brother of respondent Nos.3 and 4. An immovable property bearing Plot No.90, Khasra Nos.73 and 74, CTS No.908, situated at Ambazari, Gandhi Nagar, Ambazari Layout, Nagpur, admeasuring around 2400 sq.ft. was owned by the late Wasudeo Krushnarao Kelkar, father of the petitioner and respondent Nos.3 and 4. The said property is hereinafter referred to as "suit property".

5. The suit property was bequeathed by late Wasudeo Kelkar to his wife and after his demise on 03.03.1992, the suit property stood vested with his wife, who is mother of the petitioner and respondent Nos.3 and 4. The mother of the petitioner and the respondent Nos.3 and 4 died intestate on 12.09.2011. Accordingly, the suit property was inherited by the petitioner and the respondent Nos.3 and 4, each having 1/3rd undivided share in the same. The respondent No.4 thereafter, vide a registered release deed dated 05.07.2021, released a 13.33% share in the suit property in favour of her brothers, the petitioner and the respondent No.3. Accordingly, the petitioner and respondent Nos.3 and 4 became the co-owners of the suit property, each having share of 40%, 40% and 20%, respectively.

6. The petitioner and respondent Nos.3 and 4 decided to construct a five storied apartment building on the suit property, known and styled as "Ushakkal", with one apartment on each floor. The parties decided that the petitioner would retain two apartments on the 1st and 2nd floor, respondent No.3 shall retain two apartments on 3rd and 4th floor and respondent No.4 shall retain one apartment on the 5th floor. The petitioner and respondent Nos.3 and 4 executed a Deed of Declaration under the Maharashtra Apartment Ownership Act, 1970 (hereinafter referred to as "Apartment Act"), thereby, submitting the suit property to the provisions of the Apartment Act. The said Deed of Declaration is executed and registered on 06.07.2021.

7. The building structure is constructed by the petitioner and respondent Nos.3 and 4 from their own funds, without involving any builder or developer.

8. The above facts are not in dispute.

9. Since the property was subjected to the provisions of the Apartment Act, it was decided to execute a Deed of Apartment with respect to the apartments for allotment of the same in favour of the petitioner and respondent Nos.3 and 4.

10. The petitioner submitted a draft of the Deed of Apartment for obtaining opinion of the respondent No.2 under Section 31 of the Maharashtra Stamp Act, 1958 (hereinafter referred to as “Stamp Act”) as regards the stamp duty payable on the proposed Deed of Apartment. The respondent No.2 passed order dated 03.03.2022 stating that stamp duty of Rs.2,04,000/- would be payable on the proposed Deed of Apartment.

11. Perusal of the order will demonstrate that the respondent No.2 arrived at the market value of the apartment at Rs.50,99,348/-

and held that, stamp duty will be payable on 2/3rd of the amount (Rs.33,99,565/-) of the market value as per Article 25(b)(1) in Schedule 1 of the Stamp Act. It is held that, 5% of the market value of the property will be payable as per the said provision and 1% of the market value will be payable for local body tax. Accordingly, stamp duty of Rs.2,04,000/- was computed, by the respondent No.2. The said order is impugned in the present petition.

12. Mr. Subodh Dharmadhikari, learned Senior Advocate for the petitioner contends that since all three co-owners of the suit property had developed apartment scheme from their own expenses and had submitted the building to the provisions of the Apartment Act only with a view to ensure that each individual can deal with his/her property without interference of others, the proposed deed of apartment will not be a conveyance within the meaning of Section 2(g) or Article 25 of the Stamp Act. He further contends that a Deed of Apartment was earlier covered under Article 25(d)(1)(B), however, the said provision is deleted by Section 2 of the Maharashtra Tax Laws (Levy, Amendment and Validation), Act, 2012, which has come into force from 25.04.2005.

13. Mr. Dharmadhikari, learned Senior Advocate further contends that the order passed by the respondent No.2 is unsustainable and deserves to be quashed and set aside.

14. Mr. Bissa, learned A.G.P. raises a preliminary objection with the impugned order is appealable under Section 53(1A) of the Stamp Act. As regards merits, the learned A.G.P. states that admittedly three persons are co-owners of the property and by virtue of deed of apartment exclusive ownership with respect to each apartment is conferred of each individual. He therefore contends that deed of apartment falls within the definition of 'conveyance' within the meaning of Section 2(g) of the Stamp Act. He also contends that no date for bringing into force provisions of Section 2 of the Maharashtra Tax Laws (Amendment) Act, 2012, is notified by the State Government and therefore, Article 25(d)(1)(B) is still in force and therefore, stamp duty will be payable on the deed of apartment even according to the said provisions.

15. In order to decide the controversy, it will be appropriate to refer to the provision of Apartment Act. The said Act was enacted with a view to provide for ownership of individual apartment in a building and to make an apartment heritable and transferable property. Section 3(a) of the Apartment Act defines the term 'apartment' to mean a separate and self-contained part of any building which may be a chamber, dwelling unit, flat, office, showroom, shop or godown. The term 'building' is defined under Section 3(e) of the Apartment Act, to mean a building comprising of five or more apartments. The land on which the building is constructed falls within a meaning of, "common areas and facilities" as defined under Section 3(f) of the Apartment Act. Section 5 of the Apartment Act provides each apartment owner shall be entitled to the exclusive ownership and possession of his apartment. Section 6 of the Apartment Act states that each apartment owner shall be entitled to an undivided interest in the common areas and facilities as per the percentage mentioned in the Deed of Declaration.

16. Perusal of the Deed of Declaration dated 06.07.2021 will demonstrate that the petitioner and respondent No.3 have 40% undivided share each and the respondent No.4 has 20% undivided share in the common areas and facilities.

17. As stated above, common areas and facilities includes land on which the building is constructed. Perusal of the Release Deed dated 05.07.2021, will demonstrate that after the said document was executed, the petitioner and respondent No.3 have 40% share each and the respondent No.4 has 20% share in the suit property. Thus, the share of each of the co-owners i.e. the petitioner and respondent Nos.3 and 4 have remained in unaltered after execution of the deed of apartment.

18. In view of the above, in the facts of the present case, the deed of apartment does not result in transfer of property from one person to other with respect to the land in question.

19. As regards the building, perusal of the Deed of Declaration and sanctioned building permit will demonstrate that five apartments of exact dimension are constructed in the apartment scheme. Two apartments, each are retained by the petitioner and respondent No.3 and one apartment is retained by the respondent No.4. As stated above, the petitioner and respondent Nos.3 and 4 have 40%, 40% and 20% share each in the property. Thus, in the building constructed also they have retained the same share. As stated above, the building is constructed by the petitioner and respondent Nos.3 and 4 from their own funds without involving any developer or builder. Therefore, there is no transfer of property with respect to the building as well.

20. Having regard to the definition of the term ‘conveyance’ as defined under Section 2 (g) of the Stamp Act, in considered opinion of this Court, in the facts of the present case, the Deed of Apartment is not a conveyance as per the said provision since there is no transfer of property from one person to another. Stamp duty on the deed of apartment cannot be made payable treating it to be conveyance under Section 2(g) of the Stamp Act.

21. Perusal of the order passed by the respondent No.2 will demonstrate that the said authority has referred to Article 25(b)(1) of the Stamp Act, held that stamp duty will be payable under the said provision. However, Article 25 deals with stamp duty on conveyances, and since the transaction in question does not amount to a ‘conveyance’ within the meaning of Section 2(g) of the Stamp Act, the said provision is not applicable. The respondent No.2 has erred in adjudicating the application by placing reliance on the said provisions which is clearly inapplicable.

22. As regards Article 25(d)(1)(B), the said provision is deleted from the Stamp Act by virtue of Section 2 of the Maharashtra Tax Laws (Amendment) Act, 2012. The said Act is published in the Maharashtra Government Gazette on 25.04.2012 after having received the assent of the Hon'ble Governor. Section 1(2) of the said Act reads as under :-

> *"1(2) Save as otherwise provided in this Act, -*
>
> *(a) sections 3 to 6, sub-section (2) of section 7, sections 8 to 11, sub-sections (2) and (3) of section 12, sections 13 and 14, section 17, sub-section (3) of section 18, section 19, sub-section (2) of section 20, sections 21 and 22, sections 24 and 25, sub-section (1) of section 26, sections 27 to 30 and section 32 shall come into force with effect from the 1st May 2012;*
>
> *(b) sub-section (1) of section 7, sub-section (1) of section 20, section 23, sub-section (2) of section 26 shall come into force from such date as the State Government may by notification in the Official Gazette, appoint, and different dates may be appointed for different sections."*

23. Thus, provisions enumerated in Section 1(2)(a) are brought into force w.e.f. 01.05.2012. Section 1(2)(b) further provides that the provisions enumerated in therein shall come into force on such date as the State Government may specify by issuing a notification in the Official Gazette. Section 1(2) of the said Act is silent with respect to the date on which Section 2 of the Act will come into force. Section 2 of the said Act will therefore, be governed by Section 5 of the Maharashtra General Clauses Act, which reads as under :-

> *"**5. Coming into operation of Bombay Acts [or Maharashtra Acts.]** -[(1) Where an Bombay Act [or Maharashtra Act] is not expressed to come into operation on a particular day, then,*
> *(i) ....*
> *(ii) in the case of a Bombay Act [or Maharashtra Act] made after the commencement of the Constitution, it shall come into operation on the day on which the assent thereto of the Governor or the President, as the case may require, is first published in the Official Gazette."*

24. In view of Section 5 of the Maharashtra General Clauses Act, it needs to be held that Section 2 of the Maharashtra Tax Laws Act, 2012 has come into force w.e.f. 25.04.2012 i.e. the date on which the said Act is published in the Official Gazette after receiving assent of the Hon'ble Governor. Article 25(d)(1)(b) of the Stamp Act is thus deleted from the statute book w.e.f. 25.04.2012. The said provision will therefore not be applicable to the Deed of Apartment which is executed after 25.04.2012.

25. The impugned order is passed under Section 31(1) of the Stamp Act which falls under Chapter III. Orders passed under Chapter III are subject to appeal under Section 53 (1A) of the Stamp Act. The learned A.G.P. is right in his submission that alternate remedy of filing of appeal is available to the petitioner. The learned Senior Advocate for the petitioner has placed reliance on the judgment of the Hon'ble Supreme Court in the matter of *Godrej Sara Lee ltd. ..vs.. Excise and Taxation Officer-cum Assessing Authority*, **2023 SCC Online SC 95** to contend that in the facts of the case, petition should be entertained ignoring the objection of alternate remedy since the petition can be decided on a pure question of law without any investigation into the facts. Having regard to the fact that, the petitioner and respondent Nos.3 and 4 who are the co-owners of the property are aged around 74 years, 73 years and 70 years, respectively and adjudication of the petition involves interpretation of statutory provisions without going into any disputed question of fact, this Court is not inclined to relegate the petitioner to alternate remedy of filing of appeal under Section 53(1A) of the Stamp Act, particularly, in view of the fact that the petition is filed on 02.01.2023 and is pending for a period of around two years and ten months. Accordingly, I pass the following order:-

i) Writ petition is **allowed**.

ii) The order dated 03.03.2022, passed by the respondent No.2/Collector of Stamp, Nagpur City, Nagpur, in Adjudication Case No.18 of 2022, is hereby quashed and set aside.

Rule is made absolute in above terms. No order as to costs.

(ROHIT W. JOSHI, J.)

C.L. Dhakate