IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2370 OF 2024

Jitendra Manohardas Thakker
& Anr. ...Petitioners

Versus

The Deputy Inspector General
of Registration and Deputy Controller
of Stamps & Ors. ...Respondents

WITH
WRIT PETITION NO. 12233 OF 2023

Mr. G.S. Godbole, Senior Advocate *a/w. Pradeep J. Thorat, Aditi S. Naikare and Aniesh S. Jadhav for the Petitioners in Writ Petition No. 2370 of 2024.*

Mr. Pradeep J. Thorat *a/w. Aditi S. Naikare , for the Petitioners in Writ Petition No. 12233 of 2023.*

Mr. R.S. Pawar, *AGP for the State in Writ Petition No. 2370 of 2024.*

Ms. V.R. Raje, *AGP for the State in Writ Petition No. 12233 of 2023.*

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : FEBRUARY 16, 2026

ORAL JUDGEMENT:

1. Rule. Rule made returnable forthwith and by consent parties taken up for final hearing.

Context and Factual Background:

2. This Petition is filed challenging orders of adjudication dated March 30, 2021 and August 27, 2021 by which a Sale Deed submitted by the Petitioners for adjudication before the authorities under the Maharashtra Stamp Act, 1958 (***"the Act"***) has been assessed with a stamp duty of Rs. 58,19,380/-. The stamp duty has been declared as payable on the premise that it ought to be computed on the market value of ~Rs.14.54 crores, valued as of 2020.

3. A brief factual overview necessary for purposes of these proceedings is set out below :-

A] Plot of Lands bearing Survey No. 655/1/1/9/3 admeasuring 2700 sq.mt. and Survey No.655/1/1/9/4 were owned by one Khatib Family. In 1987, Plot bearing Survey No. 655/1/1/9/3 was jointly purchased from the Khatib Family by J. M. Thakker Developers Pvt. Ltd, Rajendra M. Developers and Builders Pvt. Ltd. and M/s M. R. Thakker & Company Construction Pvt. Ltd.; and Plot bearing Survey No. 655/1/1/9/3 was jointly purchased by M/s Shubhkama Builders Pvt. Ltd. and M/s Shubhashani Constructions Pvt. Ltd. (collectively "***Purchasers***") .

B] The Purchasers agreed to sell both plots of land to one M/s Thakkers Developers Ltd. ("***Thakker Developers***") vide two separate agreements dated April 2, 1988 and April 22, 1988.

C] Thereafter, it was agreed that Thakkers Developers would sell portion of land admeasuring 2957 sq. mtrs. on the western side of Plot of land bearing Survey No. 655/1/1/9/3 along with Plot of land bearing Survey No. 655/1/1/9/4 ("***Subject Land***") in favour of the Petitioners (collectively, "***Thakkers***").

D] Consequently, the said Purchasers and Thakker Developers as confirming parties executed an Agreement for Sale dated July 25, 1990 in favour of the Thakkers ("***Agreement for Sale***"). The Agreement for Sale had been effected simply on a Rs.5/- stamp paper and it was not registered. The provisions of the Agreement for Sale entailed discharge of consideration of Rs.14,78,500, which is said to be the market value of Subject Land in the year 1990, and it also entailed handing over of possession concurrent with the execution.

E] The Thakkers submitted a Sub-division plan before the Assistant Director of Town Planning, which was approved, and consequently, vide order dated November 7, 2001, the Subject Land was numbered as Survey No. 655/1/1/5/6/9/3-4/Plot/A.

F] Under an amnesty scheme which was prevalent in 2020, the Thakkers sought adjudication of the Agreement for Sale and stamp duty in the sum of Rs. 1,17,640/- came to be assessed with attendant penalty of Rs. 4,70,560/-. These amounts appear to have been paid on July 22, 2020, and due certification endorsed on the instrument is found to have been dated July 24, 2020.

G] Pursuant to the amnesty scheme prevalent in 2020, the Thakkers intended to execute a sale deed and consequently, the Purchasers as Vendors and Thakker Developers as confirming party prepared a Sale Deed dated January 4, 2021 in respect of the Subject Land (“***Sale Deed***”) which was subsequently registered.

H] The Thakkers took the position that the Sale Deed would be covered by Section 4 of the Act and sought adjudication of the same by filing an application dated February 8, 2021. The Joint Registrar, Nashik, effected the adjudication with the aforesaid approach, but with the market rates as of 2020 being adopted, to return an assessment of market value at Rs. 14.54 crores and stamp duty at Rs. 58.19 lakhs. It was held that after a deduction of stamp duty of Rs,1,17,640, which was paid on the Agreement for Sale, the stamp duty payable on the Sale Deed would be Rs.57,01,760.

I] Respondent No.2, the Collector of Stamps, Nashik vide Order dated March 30, 2021, directed the Thakkers to pay the balance stamp duty of Rs.57,01,760 determined by the Joint Registrar, Nashik.

J] Being aggrieved by the said order, the Thakkers filed Appeal No. 8 of 2021 before Respondent No.1, the Deputy Inspector General of Registration and Deputy Controller of Stamps. By an order dated August 27, 2021, Respondent No.1 dismissed the appeal of the Thakkers.

4. The core contention of the Thakkers is that the Sale Deed is nothing but a formal conveyance documenting the transfer already contracted on July 25, 1990 and completed, pursuant to which the consideration was discharged and possession of the Subject Land had also been taken over. It is the Thakkers' case that at the time of the Agreement for Sale, the Registration Act, 1908 ("***Registration Act***") had not been amended to make registration mandatory for purposes of evidence of transfer of immovable property, and therefore, there had been no registration at the relevant time.

5. Therefore, the Thakkers would contend that there is no difference whatsoever between the Sale Deed and the original Agreement for Sale. Indeed the Agreement for Sale had not been

stamped and that too was cured by participation in the amnesty scheme with the duty and penalties as chargeable under the amnesty scheme having been paid. This led to a certification and endorsement of stamp on the original Agreement for Sale which, it is contended, ought to be treated as the "*Principal Instrument*" for purposes of Section 4 of the Act. Therefore, it is the Thakkers' contention that the stamp duty payable on the Sale Deed ought to have been Rs. 100/-, which was the duty for the "*other instrument*" provided for under Section 4(1) of the Act at the relevant time. The fixed duty of Rs. 100 has been substituted for a fixed duty of Rs. 500/- with effect from April 1, 2025.

6. Therefore the Thakkers' contention is that their entitlements under Section 4 of the Act have been given a go-by despite there being no change whatsoever to the contracting parties or the subject transaction. Although the principal instrument had already been executed and also adjudicated for Stamp Duty as an Agreement for Sale, a fresh adjudication as if a *de novo* transaction were taking place in 2020 has been resorted to, which is entirely untenable.

7. The Respondents, in their common Affidavit-in-Reply have alluded to the provisions of the Registration Act, and in particular, Section 17 thereof which makes registration mandatory. That apart, according to the Respondents, the proviso to Article 25 in the Schedule

to the Act, introduced in 2013, makes a reference only to registered agreements for sale, and not to agreements for sale which are unregistered. Therefore, it is contented that unless the stamp duty paid is on a registered agreement to sell an immovable property, a subsequent conveyance deed is not something that would get the benefit of the said proviso.

Analysis and Findings:

8. Having heard the Learned Advocates of the parties and having examined the record, with the assistance provided, it would be necessary to extract the provisions of Section 4 of the Act, which are as follows:-

> ***4.*** *(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 purposes 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****.*

[Emphasis Supplied]

9. Likewise, to appreciate the relevant proviso to Article 25, Explanation I to Article 25 in its entirety is extracted below:

> *Explanation I.— For the purposes of this article,* ***where in the case of agreement to sell an immoveable property, the possession of any immoveable property is transferred or agreed to be transferred to the purchaser before the execution, or at the time of execution, or after the execution of, such agreement then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly:***
>
> *Provided that,* ***the provisions of section 32A shall apply mutatis mutandis to such agreement which is deemed to be a conveyance as aforesaid****, as they apply to a conveyance under that section:*
>
> *Provided further that,* ***where subsequently a conveyance is executed in pursuance of such agreement of sale, the stamp duty, if any already paid and recovered on the agreement of sale which is deemed to be a conveyance, shall be adjusted towards the total duty leviable*** *on the conveyance:*
>
> ***Provided also that, where proper stamp duty is paid on a registered agreement to sell an immovable property, treating it as a deemed conveyance and subsequently a conveyance deed is executed without***

> ***any modification then such a conveyance shall be treated as other instrument under section 4 and the duty of one hundred rupees shall be charged.***
>
> ***[Emphasis Supplied]***

10. From a plain reading of the foregoing, it is apparent that the scheme of Section 4 of the Act is meant to cover any sale of any immovable property being effected with only the principal instrument being chargeable with stamp duty under Schedule I of the Act for the conveyance. Where in the case of such a transaction several instruments are employed for completing the transaction, the intent behind Section 4 of the Act is to charge only the principal instrument with stamp duty for purposes of administration of the Act. Each of the other instruments constituting the remainder of the instruments that are employed to complete the transaction are meant to be charged with a fixed duty which currently stands at Rs. 500/-. It is clear that Section 4(1) of the Act stipulates that such fixed stamp duty shall be paid "***instead of***" the duty prescribed in the Schedule.

11. Therefore, inherent in the very scheme of Section 4(1) of the Act is an ouster of the application of the Schedule to the Act, where a principal instrument is identifiable, and other instruments are but one of several other instruments employed for purposes of completing the transaction.

12. Against this backdrop, if one examines the facts in hand, it is evident that the Agreement for Sale (dated July 25, 1990) was executed with possession also being passed on that date. Clearly, the requirement to register had not been introduced in the statute book, which was introduced by amendment to the Registration Act later. The transaction was one of conveyance and the principal instrument was the Agreement for Sale. That instrument was meant to be stamped as a conveyance, which took place along with penalty and interest in terms of the amnesty scheme. At this stage, merely for registration of the Sale Deed, the scheme of Section 4(1) would be attracted and the Stamp Duty payable would be governed by Section 4(1) instead of the Schedule.

13. The contention that the last proviso to Explanation I to Article 25 in the Schedule requires the conveyance deed to have been registered, warrants consideration. *First*, as stated above, Section 4(1) supplants the Schedule since Section 4(1) would apply instead of the Schedule. Therefore, it begs the question as to whether the proviso should apply. *Second*, the parties could not be faulted for not having registered the Agreement for Sale in 1990. In any case, full duty was paid when the amnesty scheme was availed of treating the Agreement for Sale as a conveyance deed. Third, there is no other allegation on the record of parties having manipulated or backdated any instrument to

indicate as if the instrument was executed in the past, whereas the transaction was executed in 2020. Therefore, the application of the market value as of 2020 for an instrument that had already conveyed property in 1990 and was also stamped as such under the amnesty scheme is arbitrary and unreasonable.

14. Effectively, the Stamp Authorities are treating the Sale Deed as if it were a de novo transaction being effected now, which is not in accordance with the scheme of even Article 25.

15. In that backdrop, the Agreement for Sale having been duly stamped, it would follow that if there is no other change in what the Sale Deed evidences, i.e., the Sale Deed is a reiteration of what the Agreement for Sale stood for and recorded, and is now being registered for purposes of completing the transaction under the Agreement for Sale, it would logically follow that the Agreement for Sale was the principal instrument with the subsequent Sale Deed being an instrument employed for purposes of completing the sale, within the meaning of Section 4 of the Act.

16. Section 4 (2) of the Act permits the parties to the instrument to determine for themselves which of the instruments so employed would, for purposes of Section 4(1) of the Act, be deemed to be the principal instrument. It is only if the parties fail to so determine what

the principal instrument between themselves is, that the authorities before whom the instrument is produced would have the right to determine what the principal instrument is. The proviso to Section 4(3) of Act indicates that the duty chargeable on the instrument so determined as the principal instrument shall be the highest duty that would be chargeable in respect of any of the said instruments so employed.

17. It is common ground that the instrument, when charged with stamp duty under the amnesty scheme, was adjudicated under Article 25 of the Act, inasmuch as possession was also said to have been conveyed alongside the execution of the Agreement for Sale. The amount charged in the Certificate dated July 24, 2020 also indicates that the stamp duty amount is in excess of 5% of the stated value on the instrument. There being no other difference between the two instruments, and the Sale Deed now being executed to perfect the title, and to have the same registered, the parties were indeed entitled to elect that the Agreement for Sale on which full stamp duty had been adjudicated and paid under Article 25 of the Act is the principal instrument. Therefore, it is apparent that under Section 4(1) of the Act, the Thakkers were entitled to treat the Agreement for Sale which got duly stamped in 2020, as the principal instrument.

18. The following analysis of the Supreme Court in ***Shyamsundar***[1] would bear iteration:

> *10. The aforesaid provision, especially, Section 4(1), makes it clear that where several instruments are executed for completing a transaction, the principal instrument alone shall be chargeable with duty prescribed in Schedule I. The proviso makes it clear that the duty chargeable on the instrument so determined shall be the highest duty which could be chargeable in respect of any of the said instruments forming part of the same transaction. Each of the other instruments is chargeable with a fixed duty. That apart, sub-section (2) also gives an opportunity to the parties to determine for themselves, which of the instruments shall be deemed to be the principal instrument. We shall therefore look into the documents in question and determine whether they are required to be stamped and registered.*
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> *12. On a reading of all these six documents, it could be seen that the instruments/documents were not forming part of a single transaction between the same parties and they were different transactions between different vendors and purchasers. Further, for several documents to form part of a single transaction, there must be a transaction in furtherance of which several other documents are executed to complete that transaction and then it becomes imperative to charge stamp duty on the principal instrument / document. The language used in the provision is very clear, whereby the stamp duty is on the instrument and not on the transaction.*
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> *14. It will be apropos to mention here that the agreements were not only between different parties but also were executed during different periods, by which time Explanation I to Article 25 of Schedule I underwent a change. The words "without executing the conveyance in respect thereof" was deleted with effect from 17-8-1994 by Maharashtra Act 38 of 1994.* ***The***

1 *Shyamsundar Radheshyam Agrawal & Anr. v. Pushpabai Nilkanth Patil & Ors. – (2024) 10 SCC 324*

above Explanation I makes it lucid that an agreement for sale is to be treated as a "conveyance" if either possession is handed over immediately or if it is agreed to be handed over within a particular time. A reading of the above Explanation I along with Section 4 makes it clear that the duty is levied only on the instrument and not on the transaction.

16. In the instant case, in the documents, though there was a clause for conveyance between the vendors and purchasers in relation to the respective properties, the value of the properties were above Rs 100 and ***there was also a clause by which possession was admittedly handed over on the date of the agreement, implying acquisition of possessory rights protected under Section 53-A of the Transfer of Property Act, which requires payment of proper stamp duty and registration as mandated under Section 17 of the Registration Act****. Further, as per Section 4(2) of the Maharashtra Stamp Act, the parties are at liberty to determine as to which of the document shall be principal document.*

17. ***As noted above, the agreement for sale consists of a clause whereby the possession was handed over to the purchaser satisfying the requirement to treat the instrument as conveyance and what remained was only the formality of execution of the sale deed. Therefore, it can be safely concluded that the agreement for sale was the principal document on which stamp duty was to be paid as per Article 25****.*

[Emphasis Supplied]

19. In ***Shyamsundar***, the Supreme Court indicated in Paragraph No. 17 extracted above, that when the agreement for sale consists of a clause, whereby the possession was handed over on the consideration being satisfied to treat the instrument as a conveyance, what remained was only the formality of execution of a sale deed. On this basis, the

Supreme Court concluded that the agreement for sale was a principal document on which stamp duty was to be paid as per Article 25 of Act.

20. Applying the same principle to the facts of this case, it was clear that the parties electing that the Agreement for Sale was the principal instrument was not only their entitlement under Section 4(2) of the Act, but also comports with the legislative objectives and scheme of the fiscal provisions in the Act. That apart, even the proviso to Article 25 of the Act would indicate that if a subsequent instrument is to be separately stamped, the credit would be given for the duty already paid on a prior instrument as is seen from the second proviso to the Article 25 of the Act. By even applying the second proviso to the explanation in Article 25 of the Act, it would be clear that the duty has already been paid on the Agreement for Sale with an actual adjudication being effected. When one gives credit for the same, the duty payable on the Sale Deed, which is but a reiteration of the same transaction, would be nil since the credit would have been already granted. It is the application of the market value as obtaining in 2020 that has led to an excess amount being charged in the instant case.

21. As regards the third proviso to the explanation to Article 25, the allusion in the Affidavit-in-Reply is that the proviso would apply only where there is a registered agreement to sale for that original

agreement to be treated as a principal instrument. This, while attractive at first blush, on a specific analysis of Section 4(1) read with Article 25 of the Act would indicate that it would not be an appropriate interpretation in the facts of this case.

22. To begin with, when the Agreement for Sale was executed, there was no requirement for registration of the said instrument. Second, the proviso is a clarificatory proviso to the explanation to Article 25 of the Act and points out circumstances in which the stamp authorities must not exercise discretion so that they would have guidance as to when they would treat an instrument as a principal instrument and as a subsequent instrument. The proviso is not a proviso to Section 4, but a proviso to Article 25 of the Act, which gives clarity to the stamp authorities while interpreting Article 25 of the Act. Section 4 of the Act, on the other hand, in fact stipulates the standard to be applied to a subsequent iteration of the same instrument, giving credit for the principal instrument being stamped fully and subsequent instruments being stamped at Rs. 500/- per instrument instead of computing the duty under the Schedule.

23. Therefore, Section 4 of the Act substitutes and occupies the field that would have otherwise been occupied by Article 25 of the Act. Therefore, a last proviso on Article 25 cannot erode Section 4 of the Act.

If the legislative intent had been to insist on registration alone being relevant for purposes of Section 4 of the Act, care would have been taken by the legislature to stipulate such a requirement in Section 4 rather than place it in the proviso to Article 25 of the Act. Since Section 4 of the Act applies instead of the Schedule, including Article 25 of the Act, it would not be possible to give the proviso an overriding effect to Section 4(1) of the Act.

24. It is in this light, that the articulation of first principles by the Supreme Court in ***Shyamsundar*** makes it abundantly clear that when the first instrument coupled with transfer of possession is executed, the same ought to be treated as a conveyance, and duty as such should be paid on the same. In the facts of this case that has taken place.

25. The only gap between the parties in fact is the date on which the market value has been assessed. The market value ought to be assessed as of 1990 which is when the principal instrument was effected while the stamp authorities have applied the market value as of 2020 when the Sale Deed was presented with a request to treat it as an instrument covered by Section 4 of the Act. It is quite clear that the market value ought to be the value as of 1990. Since the transaction in question was of 1990, the Agreement for Sale and the Sale deed are

several instruments employed by the parties for effecting completion of the same transaction, thereby bringing these two instruments within the mischief of Section 4(1) of the Act. This being a fiscal legislation, the provisions must be literally and strictly construed.

26. For the aforesaid reasons, the Impugned Orders deserves to be interfered with and the Petition is therefore ***allowed***. The Sale Deed would need to be franked in terms of Section 4(1) of the Act, paying duty as applicable under Section 4(1) of the Act instead of the duty under the Schedule to the Stamp Act.

27. The Writ Petition is therefore ***disposed of as allowed***.

Writ Petition No. 12233 of 2023 :-

28. While Writ Petition No. 2370 of 2024 falls within the roster of this Bench, although Learned Advocates for both sides jointly submit that Writ Petition No. 12233 of 2023 would be identical in its terms on the issues to be covered with only different adjoining plots being the differentiator.

29. It would not be possible to comment on a petition that is not within my roster. Needless to say the parties are at liberty to the parties to approach the appropriate Bench and indicate the judgement passed in Writ Petition No. 2370 of 2024. Alternately, the parties may

move an application before the Hon'ble the Chief Justice seeking directions on listing before this Bench.

30. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court’s website.

[SOMASEKHAR SUNDARESAN, J.]