

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.916 OF 2024

Ethics Infra Development Pvt Ltd

A Company registered under The Companies
Act, 1956, Having its Office at :-
Radhakunj Bungalow, Maryland Complex,
Opposite : Corporation Bank, I.C.Colony,
Borivali (West), Mumbai : 400103.
Through one of its Partners :
Mr.Prashant B. Pawar.

...Petitioner

Versus

1. **The State of Maharashtra**

Through its Secretary, Housing Development
Department, Mantralaya, Mumbai : 400032.

2. **The Inspector General of Registration and
Controller of Stamps,**

Ground Floor, New Administrative
Building, Opposite : Vidhanbhavan
(Council Hall), Pune : 411001.

...Respondents

Ms.Hima Khumar i/b. Mr.Makarand Raut, Advocate for Petitioner.
Mr.Himanshu Takke, AGP, for the Respondents-State.

CORAM : M.S.KARNIK &
S. M. MODAK, JJ.

DATE : 9th FEBRUARY 2026

ORAL JUDGMENT : (PER : S.M.MODAK, J.)

1. Heard learned Advocate Shri.Raut for the petitioner and learned
AGP for the respondents-State.

2. The issue involved in this petition is about *entitlement of the petitioner to claim refund of a stamp duty paid on Redevelopment Rights Agreement dated 19th December 2013*. It was a '*Registered Agreement*'. The present petitioner has been described as a *Developer* and one Adinarayan Co-operative Housing Society Limited has been described as a *Society*. A stamp duty of Rs.20,49,000/- (Rupees Twenty Lakh Forty Nine Thousand) was paid. This Agreement was cancelled mutually and a "*Deed of Cancellation*" was executed on 8th March 2017 between the same parties.

3. On this background, the petitioner asked for refund of a stamp duty vide their Application dated 24th September 2019 to the Collector of Stamps for the reason that the parties have not acted upon the "*Redevelopment Agreement*" and even the possession of the property was not handed over. The Collector of Stamps has forwarded this proposal to the respondent No.2, who as per his order dated 27th October 2021, had rejected the proposal for two reasons, one being that the "*Redevelopment Rights Agreement*" does not fall within the purview of "*Agreement for Sale*" and it was observed that it was the "*Agreement for Redevelopment*". The provisions of Section 47(c)(5) and provisions of Section 48(1) of Maharashtra Stamp Act, 1958 ("**the**

said Act” for short) *are referred*. Secondly an application for refund was not filed within the prescribed period. It was applied for after 2 years, 6 months and 16 days from the date of cancellation of “*Original Agreement*”. The period of limitation is 6 months from the date of the instrument (“*Cancellation Deed*”). This decision is challenged by way of this Writ Petition.

4. Learned Advocate Shri.Raut has invited our attention to the contents of both the Agreements, that is to say, “*Redevelopment Rights Agreement*” (hereinafter, will be described as “*Original Agreement*”) and “*Deed of Cancellation*”. He also invited our attention to the provisions of Section 47(c)(5) and provision of Section 48(1) of the said Act. He relied upon observations in following judgments:-

- (i) *Bano Saiyed Parwaz V/s. Chief Controlling Revenue Authority and Inspector General of Registration and Controller of Stamps and Others.*¹
- (ii) *Sadoday Builders Private Ltd., and Another V/s. The Jt.Charity Commissioner, Nagpur and Others.*²
- (iii) *M/s.Satyam Construction V/s. Chief Controlling Revenue Authority and Ors.*³
- (iv) *Nanji Dana Patel V/s. State of Maharashtra, Through Government Pleader and Others.*⁴

5. Whereas, learned AGP supported the impugned order and he

1 (2025) 2 Supreme Court Cases 201

2 Writ Petition No.4543 of 2010 : High Court of Bombay (Bench at Nagpur) : 23rd June 2011

3 Writ Petition No.241 of 2015 : High Court of Bombay : 3rd September 2025

4 2024 SCC OnLine Bom 2817

relied upon the provisions of Article 25 of Schedule-I of the said Act (which lays down the stamp duty payable in a conveyance) and on the wordings of Article 5 (g-a) (which lays down stamp duty payable on a document giving authority to a developer for the purpose of construction). When such a document is there, a stamp duty, as laid down under Article 25, has to be paid. According to him, the “*Original Agreement*” is not an “*Agreement for Sale*” but it is a “*Redevelopment Agreement*” which falls within the purview of Article 5 (g-a) and not under Article 25.

6. There are two issues involved. One is about the true nature of the document and the provisions of Section 47 and Section 48 of the Maharashtra Stamp Act and second is the period of limitation. Section 47 contains a provision for “*spoiling of stamps*”. The impressed stamps can be spoiled if certain conditions are fulfilled. If the rules provide for keeping the evidence and after conducting an inquiry, the Collector can allow spoiling of impressed stamps as per the three clauses mentioned therein. Mr.Raut relied upon the provisions of Section 47 clause (c)(5). For ready reference, Section 47, Clause (c)(5) is reproduced as below:-

“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)

(b)

(c) *the stamp used for an instrument executed by any party thereto which—*

(1)

(1A)

(2)

(3)

(4)

(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)

(7)

(8)

Provided that,.....

Explanation.—.....”

7. Mr.Raut emphasized that even though there is a transfer of the development rights by the Society in favour of his client, the same was not acted upon. There was also a dispute between his client and the Society. He invited our attention to the following documents:-

- (a) The “*Consent terms*” executed in between his client and the Society before the sole Arbitrator on 2nd May 2017.
- (b) The “*Consent Award*” drawn on 7th June 2017.
- (c) An Application made by the petitioner for refund.
- (d) ‘*NOC*’ given by other directors of the petitioner and the Affidavit.

Nature of Instrument

8. We have also read the impugned order. As the dispute arose, the Society terminated the “*Original Agreement*” and accordingly, the petitioner/developer initiated an arbitration proceeding. There was a settlement between the parties and it was decided that the “*Original Agreement*” be cancelled and that is how, a “*Deed of Cancellation*” was executed. There is no dispute raised on behalf of the respondents that possession was handed over.

9. In this case, the “*Original Agreement*” was executed on 19th December 2013 and the Deed was cancelled on 8th March 2017 i.e. well within 5 years. The refund was claimed on 24th September 2019 i.e. after a period of 6 months from the “*Cancellation Deed*” dated 8th March 2017. In that sense, the period calculated by respondent No.2 for filing Application for refund belatedly, is proper. So, the issue is whether the Court can issue directions if the refund is claimed beyond the statutory period.

About correct interpretation of “*Redevelopment Rights Agreement*”

10. The respondent No.2 in the impugned order has given several reasons as to why the “*Development Agreement*” cannot be considered as an “*Agreement for Sale*”. On the basis of an “*Agreement for Sale*”, a Sale-Deed is required to be executed whereas, as per “*Development Agreement*”, agreements for sale of flats and shops are to be executed in favour of the purchaser and there is no requirement of execution of separate Sale-deed. The order further records that as per the “*Development Agreement*”, the developer can claim excess FSI and the developer has to pay rent for Alternate Accommodation to the existing occupants of the old building. It is further recorded that the ownership of the land remains with the owner of the land. This is an incorrect interpretation of the law. Because, depending upon the nature of association to be formed, a “*Conveyance Deed*” is required to be executed in favour of the Society if the Co-operative Society is formed. However, such ownership is always transferred after formation of the Society. The possession of the property is handed over to the developer as a licensee.

11. There is a reference made to Article 25 and Article 5(g-a). The reasonings given by respondent No.2 are erroneous and based on an

incorrect interpretation of the law. It is for this reason that the “*Conveyance Deed*” was executed after formation of the Society and the Society was formed after construction was completed and after minimum number of persons had purchased the flats.

12. There is one more reason for rejecting these reasonings. When the “*Original Agreement*” was lodged for registration, the Registering Authorities have valued it as per Article 25. It is applicable in case of conveyance. Whereas as per Article 5(g-a), “*if power is given for the purpose of development*”, such document has to be charged in the manner laid down under Article 25. So, whatever may be the nomenclature of the document, stamp duty is charged on the basis of rights given as per that Agreement. When it comes to the registration of “*Redevelopment Rights Agreement*”, it is charged as Conveyance and when refund is sought, the Registration Authorities take a different stand. This approach is unjustified. Mr.Raut relied upon observations in case of ***Sadoday Builders Private Ltd.*** (cited supra). It is held that “*TDR is a benefit arising from the land, same would be immovable property*”.

13. In this case, the Society had transferred development rights to the petitioner. This was accepted by Registration Authorities when the

“Original Agreement” was lodged for registration. That is why, they charged the stamp duty of Rs.20,49,000/- (Rupees Twenty Lakh Forty Nine Thousand). Considering this background, the respondent No.2 is not justified in refusing refund by giving a reason that *“Original Agreement”* is not an *“Agreement for Sale”*.

14. The petitioner had executed the *“Original Agreement”* with the Society with the understanding that they could develop the property after following the procedure and complying with the rules. For some reason or the other, a dispute arose between the parties and the transaction did not materialize. The petitioner and the Society were hopeful that the arrangement entered into by them will materialize. There are certain transactions which take effect in law immediately whereas there are certain transactions wherein there is no immediate transfer of the property but there is an Agreement to do certain acts and the transfer of ownership takes place in future. However, sub-clause (g-a) was inserted in Clause No.5 as per the Maharashtra Amendment Act 9 of 1997. There is practice of developing the property by undergoing construction through a developer. The developer constructs the building. He is neither the owner of the land nor of the building but he acts as an agent on behalf of the

owner. A “*Conveyance Deed*” is always executed in favour of the Society and the land and building are transferred in favour of the Society. There are innumerable cases wherein “*Conveyance Deed*” is never executed in favour of the Society. In such a case, the transfer of the ownership does not take place in favour of the Society. Considering this position, this amendment is made thereby taxing a document authorizing the developer to develop the property by treating it as a conveyance. In a strict sense it is never an “*Agreement for Sale*”. However, we are interpreting provisions of a taxing statute and not dealing with a title dispute. The respondent No.2 was wrong in refusing the prayer for refund for the reason that, it is not an “*Agreement for Sale*”. This decision is required to be set aside.

Objection about limitation

15. There is limitation prescribed as per Section 48 for claiming the refund. If the documents fall within the purview of clause (c)(5) of Section 47, the limitation period would be calculated in the following manner:-

“It has to be within 6 months of the date of the instrument. There is proviso. If an Agreement to Sell immovable property is charged as per Article 25 and if such Agreement is cancelled within the period of 5 years from the date of

execution of the Agreement of Sale, then refund can be claimed from 6 months of the date of registration of the Cancellation Deed.”

16. We have already observed that the “*Redevelopment Agreement*” is levied with stamp duty as it is in the nature of a conveyance. Mr.Raut invited our attention to the observations in case of ***Bano Saiyed Parwez*** (paragraph No.16) and ***Nanji Dana Patel*** (cited supra).

17. The observations in paragraph 14 of ***Bano Saiyed Parwez*** (supra) are relevant. For easy understanding, they are reproduced hereinbelow:-

“14. In *Committee-GFIL v. Libra Buildtech (P) Ltd.*², wherein the issue of refund of stamp duty under the same Act was in question, this Court has observed and held inter alia as under:(SCC pp.44-45, paras 29&32)
 “29. This case reminds us of the observations made by M.C. Chagla, C.J. in *Kaluram Sitaram (Firm) v. Dominion of India*³. The learned Chief Justice in his distinctive style of writing observed as under in para 19: [*Kaluram (Firm) case*³, SCC OnLine Bom]
 ‘19. ... we have often had occasion to say that when the State deals with a citizen it should not ordinarily rely on technicalities, and if the State is satisfied that the case of the citizen is a just one, even though legal defences may be open to it, it must act, as has been said by eminent Judges, as an honest person.’

It is further observed:-

“We are in respectful agreement with the aforementioned observations, as in our considered

opinion these observations apply fully to the case in hand against the State because except the plea of limitation, the State has no case to defend their action.”

18. It is a cardinal principle of Limitation Act that if the Application is not filed within the prescribed period, the remedy is lost but not the right. In this case, it is true that the petitioner did not apply for refund within 6 months from the date of registration of “*Cancellation Deed*”. The question is, under such circumstances, when the petitioner is entitled to claim refund, whether it is possible for respondents to hold the money which they are bound to refund. There is always a purpose behind incorporating period of limitation in a particular statute, which is to encourage timely filing of such an application. There is difference in between the power of respondent No.2 in refusing the prayer for refund for the reason, it is not claimed within the prescribed period and the power of High Court to entertain the petition. The power of the High Court under Article 226 of the Constitution is very wide. So even though the application for refund was not filed within 6 months, prayer cannot be refused in view of onerous responsibility of State to act as a responsible litigant. The petitioner is entitled for refund of a stamp duty. Hence, the petition needs to be allowed. Hence the order:-

ORDER

- (i) The petition is allowed.
 - (ii) The order dated 27th October 2021 passed by the respondent No.2 is quashed and set aside.
 - (iii) The respondents are directed to refund an amount of 20,49,000/- (Rupees Twenty Lakh Forty Nine Thousand) paid towards the stamp duty on a "*Redevelopment Rights Agreement*".
 - (iv) The amount be refunded by following the procedure prescribed as per the Maharashtra Stamp Act.
 - (v) The amount be refunded within a period of 2 months from today and if it is not paid within that period, the respondents are directed to pay interest at the rate of 6% till the realization to the petitioner.
19. With these observations, the petition stands disposed of.
20. Pending applications, if any, also stand disposed of.

(S. M. MODAK, J.)

(M. S. KARNIK, J.)