

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

WRIT PETITION NO.918 OF 2024

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Shreekrishna Chaitanya Enterprises,

A partnership firm registered under the
Indian Partnership Act, 1932, Having it's
Office at Radhakunj Bungalow, Maryland
Complex, Opposite Corporation Bank,
I. C. Colony, Borivali (West), Mumbai :
400 103, Through one of it's Partners :
Mr.Radhakrishna Sabaji Desai.

...Petitioner

Versus

1. **The State of Maharashtra**

Through its Secretary, Housing Development
Department, Mantralaya, Mumbai : 400 032.

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 9th December 2014*. It was a '*Registered Agreement*'. The present petitioner is described as a *Developer* and one State Bank of India Staff Shiv-Sagar Co-operative Housing Society Limited was described as a *Society*. A stamp duty of Rs.69,82,000/- (Rupees Sixty Nine Lakh Eighty Two Thousand) was paid. This Agreement was cancelled mutually and a "*Deed of Cancellation*" was executed on 6th December 2019 between the same parties.

3. On this background, the petitioner asked for refund of a stamp duty vide their Application dated 6th December 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 13th December 2021 rejected the proposal citing the reason that "*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. This decision is challenged by way of this Writ petition. There is a prayer for refund of Rs.76,05,350/- (Rupees Seventy Six Lakh Five Thousand Three Hundred Fifty). The stamp duty paid on Original Agreement is Rs.69,82,000/- (Rupees Sixty Nine Lakh Eighty Two Thousand). The petitioner contends that the deficient stamp duty of Rs.6,23,350/- (Rupees Six Lakh Twenty Three Thousand Three Hundred Fifty) was paid on 6th December 2019. (This is the date of execution of “*Deed of Cancellation*”). So also, there is reference in the impugned order that there is no evidence produced in the record.

4. Learned Advocate Shri.Raut has invited our attention to the contents of both the Agreements, that is to say, the “*Redevelopment Rights Agreement*” (hereinafter, will be described as “*Original Agreement*”) and the “*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 made 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*

¹ (2025) 2 Supreme Court Cases 201

*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 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 conferring authority to a developer for the purpose of construction). When such a document exists, a stamp duty as laid down in Article 25 has to be paid. According to him, the “*Original Agreement*” is not an “*Agreement for Sale*” but Redevelopment Agreement which falls within the purview of Article 5 (g-a) and not under Article 25.

6. There are two issues involved. One relates to the true nature of the document and the other relates to the correct interpretation of the provisions of Section 47 and Section 48 of the said Act. 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 three clauses

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

mentioned therein. Mr.Raut relied upon the provisions of Section 47 clause (c)(5). For ready reference, they are 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.

Nature of Instrument

8. We have also read the impugned order and both the Agreements. For some reason or other, the redevelopment work could not be commenced and both the executants decided to cancel the “*Redevelopment Agreement*” and cancelled it by executing separate deed. The background is mentioned in the “*Deed of Cancellation*”. There is no dispute raised on behalf of the respondents that the possession was handed over.

9. In this case, the “*Original Agreement*” was executed on 9th December 2014 and the Deed was cancelled on 6th December 2019 in terms of the “*Deed of Cancellation*”, within a period of 6 months.

About correct interpretation of “*Redevelopment Rights Agreement*”

10. The respondent No.2 in the impugned order has given several reasons 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 the “*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. 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. Order further records 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 of 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 the reason, the “*Conveyance Deed*” is executed after the formation of Society, and the Society is formed after construction is completed and after minimum number of persons have purchased the flat.

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 in 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 “*Redevelopment Rights Agreement*” is lodged for registration, it is charged as Conveyance and when refund is sought, the Registering 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 has given development rights to the petitioner. This is expected by Registering Authorities when the “*Original Agreement*” was lodged for registration. That is why, they have charged the stamp duty of Rs.69,82,000/- (Rupees Sixty Nine Lakh Eighty Two Thousand). On 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 has executed the “*Original Agreement*” with the

Society with the understanding that they can develop the property after following due procedure and complying with the rules. For some reason or the other, a dispute arose with the Society and the transaction has not materialized. The petitioner and the Society were under the hope 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 property but there is an agreement to do certain acts and the transfer of ownership takes place in future. However, sub-clause (g-a) has been 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 a building. He is neither the owner of the land nor of the building but he acts as an agent on behalf of the owner. Always, a "*Conveyance Deed*" is 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.

15. The petitioner is entitled for refund of the stamp duty. Hence, the Petition needs to be allowed. Hence the order:-

ORDER

- (i) The petition is allowed.
- (ii) The order dated 13th December 2021 passed by the respondent No.2 is quashed and set aside.
- (iii) The respondents are directed to refund an amount of **Rs.76,05,350/- (Rupees Seventy Six Lakh Five Thousand Three Hundred Fifty)**⁵ 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 **3 months**⁶ from today and if it not paid within that period, the respondents are directed to pay interest at the rate of 6% **from the date of application made for refund of stamp duty**⁷ till the realization to the petitioner.

16. With these observations, the petition stands disposed of.

17. Pending applications, if any, also stand disposed of.

(S. M. MODAK, J.)

(M. S. KARNIK, J.)

⁵ Replaced portion

⁶ Modified portion

⁷ Added portion