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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment pronounced on: 01.07.2026***

\+ **W.P.(C) 9751/2021 and CM APPL.30061/2021**

SH HARISH CHANDER BHARDWAJ .....Petitioner

Through: Mr. Gurpreet Singh Sethi, Mr. Pawan Dhoot, Advs.

versus

GOVT OF NCT OF DELHI .....Respondent

Through: Mr. Raghvendra Upadhyay (PC) along with Ms. Purnima Jain, Mr. Madhur, Advs.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. The present petition under Article 226 of the Constitution of India assails the order dated 02.07.2021 ("Impugned Order") passed by the Collector of Stamps/Sub-Divisional Magistrate, Hauz Khas, New Delhi ("the Collector"). By the Impugned Order, a Collaboration Agreement dated 17.05.2016 ("Collaboration Agreement") entered into between the petitioner (in his capacity as builder), and the co-owners of plot bearing No. R-39, South Extension Part–II, New Delhi–110049 ("the subject property") was impounded, and stamp duty together with penalty aggregating to Rs. 59,66,052/- was sought to be levied upon the petitioner. The petitioner further seeks a direction for return of the original Collaboration Agreement.

2. The Impugned Order proceeds on the premise that the Collaboration Agreement is a contract of the nature referred to in Section 53-A of the

Transfer of Property Act, 1882 ("TP Act"), chargeable to stamp duty as an agreement to sell under Article 23A of Schedule I-A of the Indian Stamp Act, 1899 ("Stamp Act"), as applicable to the National Capital Territory of Delhi.

FACTUAL MATRIX

3. The factual matrix, as set forth by the petitioner, is that the Collaboration Agreement dated 17.05.2016 was entered into for the redevelopment and reconstruction of the subject property. Under the said Agreement, the petitioner, in the capacity of a builder, undertook to demolish the existing structure and to construct, entirely at his own cost, a new building comprising a basement, stilt, ground floor, first floor, second floor and third floor with terrace.

4. In consideration of undertaking the said construction, the petitioner was to receive a defined share in the redeveloped property comprising the entire ground floor, Space for one utility with common W.C. in stilt along with 25% of the stilt area for car parkings, and a 22.5% undivided and impartible ownership right in the said plot of land. The co-owners were to retain the balance, including the basement, entire first floor, entire second floor, and the entire third floor of the subject property.

5. Pursuant to the Collaboration Agreement, the petitioner demolished the existing structure on the subject property and, after obtaining the requisite sanctions and approvals from the concerned authorities, commenced reconstruction at his own cost.

6. Disputes arose with the owner of an adjacent property, i.e., one Mr. Sanjiv Zutshi, who raised various grievances with the authorities concerning

the redevelopment and the alleged damage caused to his property. On 17.02.2021, Mr. Zutshi filed a complaint before the Collector, seeking the impounding of the Collaboration Agreement. Pursuant thereto, notices dated 17.02.2021 and 02.03.2021 were issued to the petitioner and the co-owners, calling upon them to produce the original Collaboration Agreement and to submit their written responses thereto. The said notices read as under:

GOVERNMENT OF NCT OF DELHI
OFFICE OF THE SUB DIVISIONAL MAGISTRATE (HAUZ KHAS)
DISRICT MAGISTRATE (SOUTH) OFFICE M.B. ROAD, SAKET,
NEW DELHI-110068
Tel No. 011-29536904: Email-hauzkhazsdm@nic.in

F. No. 3/SDM/Hk/COS/2021 1970-72 Dated:17.02.2021

NOTICE

Whereas, an application has been received Sh. Sajiv Zutshi R/o R-38A, South Extn, Part-2, New Delhi-110049 seeking impounding of the copy of Collaboration Agreement dated 17.06.2016 and praying to determine the amount of stamp duty payable on the said Collaboration Agreement dated 17.05.016.

And whereas, the said document/instrument is compulsorily registrable under the Registration Act, prima facie the documents/ instrument does not appear to have been registered and due stamp duty does not appear to have been paid under the Indian Stamp Act making the said document/instrument legally not valid.

In view of above, you are hereby required to appear before the undersigned on 26/2/2021 at — 3:00 PM alongwith original Colloboration Agreement dated 17.05.2016 for further process adjudication of stamp duty.

17/02/2021

(KAPIL CHOUDHARY)
SDM/COS (HAUZ KHAS)

GOVERNMENT OF NCT OF DELHI
OFFICE OF THE SUB DIVISIONAL MAGISTRATE (HAUZ KHAS)
DISRICT MAGISTRATE (SOUTH) OFFICE M.B. ROAD, SAKET,
NEW DELHI-110068
Tel No. 011-29536904: Email-hauzkhazsdm@nic.in

F. No. 3/SDM/Hk/COS/2021/1174-76 Dated:02.03.2021

NOTICE

Whereas, an application has been received Sh. Sajiv Zutshi R/o R-38A, South Extn, Part-2, New Delhi-110049 seeking impounding of the copy of Collaboration Agreement dated 17.06.2016 and praying to determine the amount of stamp duty payable on the said Collaboration Agreement dated 17.05.016.

And whereas, the said document/instrument is compulsorily registrable under the Registration Act, prima facie the documents/ instrument does not appear to have been registered and due stamp duty does not appear to have been paid under the Indian Stamp Act making the said document/instrument legally not valid.

In view of above, you are hereby required to appear before the undersigned on **24.03.2021 at 3:00 PM** alongwith written submission in the matter.

The date has been extended.
Next date shall be given in next notice.

(KAPIL CHOUDHARY)
SDM/COS (HAUZ KHAS)

7. The petitioner appeared before the Collector, produced the original Collaboration Agreement and filed detailed replies. Thereafter, upon conclusion of proceedings, the Impugned Order came to be passed on 02.07.2021.

8. By the Impugned Order, the Collector held that the Collaboration Agreement resulted in a part performance of transfer of a portion of the subject property from the co-owners of the subject property to the builder

(i.e. the petitioner). The Collector also applied the Circular bearing No. F.1(92)/RB/DivCom/HQ/2012/311-320 dated 12.11.2014 issued by the Department of Revenue, GNCTD ("Circular"), which proceeds on the footing that collaboration/development agreements involving delivery of possession attracts Article 23A of the Stamp Act.

9. Accordingly, the Impugned Order held that the Collaboration Agreement attracted stamp duty "as applicable to an agreement to sell under Section 53-A of the Transfer of Property Act, 1882". The stamp duty on the Collaboration Agreement in the Impugned Order was computed in terms of Article 23A of Schedule I-A of the Stamp Act (as applicable to Delhi). The operative portion of the Impugned Order reads as under:

(5) From the above referred paras of said agreement, it is clear that there is a part performance of transfer of a portion of the said property from the owners to the builder. The said agreement also gives a right to the builder "to sell, transfer, convey his assigned portion to any prospective buyer" which clearly shows that there is agreement and part performance transfer of the said portion of the property to the builder.

(6) In view of above, the said collaboration document is not just a "service agreement" as contended by the builder but is also a part performance which is compulsorily registerable u/s 17(1-A) of the Registration Act and is subject to the payment of stamp duty as applicable to the Agreement "to sell under section 53A of the Transfer of Property Act,1882.

Therefore, the total stamp duty on the instrument is as follows:-

Category	: B
Area of Land	: 311 Sq. yard (259.996 sq. meter).
Portion of the area under transferred	: 22.5% of land share
Portion of the area under transferred Sq. Mtr	: 58.49 Sq. Meters
Use Factor	: Residential
Structure Type (Pucca)	: I
Minimum Rate of Land	: Rs. 2,45,520/- per square meter.
Rate of Construction	: Rs. 17,400/- per square meter.
Calculation of Property	
Cost of Land	: 2,45,520 x 58.49 Sq. Meters
	: Rs. 1,43,60,465 /- (A)

Contd.-3:

Covered area of ground floor	: 233 Sq. Meter (as reported by Field Kanoongo)
Cost of Construction	: 17,400 x 233 Sq. Meters : Rs.40,54,200 (B)
Total cost of property (A+B) (1,43,60,465 +40,54,200)	: Rs. 1,84,14,665/- (Rupees One Crore Eighty Four Lakh Fourteen Thousand Six Hundred Sixty Five Only).

(7) The stamp duty plus transaction fee on Collaboration Agreement in this case comes to Rs. 9,94,392/-@ 90% of 6% of Rs. 1,84,14,665/- i.e. Rs. 9,94,392/- stamp duty paid Rs. 50/-, deficient duty is (Rs. 9,94,392 - Rs. 50/-)= **Rs.9,94,342/- (Rupees Nine Lakh Ninety Four Thousand Three Hundred Forty Two Only).** (As per Article 23A of Schedule 1A of Indian Stamp Act, 1899 as applicable to Delhi)

(8) Considering the case in its entirety and submissions by both the parties and it has been observed that the possession has been handed over to builder in lieu of construction and there is evasion of stamp duty in this case leading to loss of revenue to the exchequer and as the matter pertains to year 2016, in which they failed to get the instrument registered and further, the instrument came to the notice of undersigned through a complaint, which indicate the intent of evasion of stamp duty payable.

(9) Therefore, I hereby impose five times penalty i.e. **Rs. 49,71,710/-** on deficient amount of stamp duty i.e. **Rs.9,94,342/-** . Hence, total amount payable comes to **Rs. 59,66,052/- (Rupees Fifty Nine Lakh Sixty Six Thousand Fifty Two Only)**

The amount as reckoned above is to be deposited by e-Stamp paper in the office immediately. In case of default, the above amount will be recovered as a Land Revenue Recovery from the purchaser.

(DR. NIDHI SAROHE)
SDM/COS (HAUZ KHAS)

10. Aggrieved thereby, the present petition has been instituted, *inter alia*, seeking the following prayers:

a. Issue a writ of certiorari, or a writ, order or direction in the nature of a certiorari calling for the records of and quashing the Impugned Order dated 02.07.2021 passed by of the Respondent i.e. Collector of Stamps / SDM, Haus Khas, New Delhi whereby it has impounded the Collaboration Agreement dated 17.05.2016 and has assessed the stamp duty of Rs. 9,94,342/- and penalty of Rs. 49,71,710/- on the petitioner.

b. Issue a writ of mandamus, or a writ, order or direction in the nature of a mandamus calling upon the respondent to handover the original Collaboration Agreement dated 17.05.2016 to the petitioner which has been illegally impounded.

11. Certain subsequent developments may be noticed. In this regard, it is pertinent to note that an impleadment application filed by Mr. Zutshi on 18.02.2022 was pending before this Court. By order dated 04.12.2025 passed by this Court, the parties were referred to mediation.

12. Pursuant thereto, on 19.03.2026, the petitioner and Mr. Zutshi entered into a settlement under which the petitioner agreed to pay Rs. 17,00,000/- towards alleged damage caused to Mr. Zutshi's property, in return for withdrawal of all pending proceedings by Mr. Zutshi. The impleadment application was, accordingly, withdrawn.

13. Further, on 21.10.2025, the petitioner and the co-owners executed a registered Sale Deed in favour of the petitioner in respect of defined portions of the subject property, comprising the entire ground floor, space for one

utility with common W.C. in the stilt, a 25% share in the stilt area, two car parkings, and a 22.5% undivided and impartible ownership interest, for a sale consideration of Rs. 1,90,00,000/-, on which stamp duty of Rs. 13,30,000/- was duly paid.

SUBMISSIONS ON BEHALF OF THE PETITIONER

14. Learned counsel for the petitioner contends that the Impugned Order is wholly without jurisdiction and has been passed in excess of the powers vested in the respondent/ Collector under the Indian Stamp Act, 1899. It is submitted that the proceedings were initiated at the instance of a third party who was neither a party to the Collaboration Agreement nor authorized by any of its executants to seek adjudication in respect thereof.

15. It is further contended that the respondent/ Collector could not have invoked powers under Section 33 of the Act in the facts of the present case. According to the petitioner, the scheme of the Act clearly distinguishes between adjudication proceedings under Chapter III and impounding proceedings under Chapter IV. It is submitted that once the instrument is brought before the Collector for adjudication, its jurisdiction is confined to rendering an opinion as to the duty chargeable thereon and does not extend to impounding the instrument and imposing penalty.

16. It is further submitted that the Collaboration Agreement was merely a redevelopment arrangement whereby possession of the property was granted to the petitioner for the limited purpose of carrying out construction and redevelopment activities. According to the petitioner, the agreement neither effected a transfer of ownership nor constituted an agreement for sale.

17. Learned counsel further submits that the Impugned Order proceeds on an erroneous assumption that the collaboration agreement is compulsorily registrable and chargeable to stamp duty as a conveyancing instrument. It is contended that the true nature of the instrument has not been examined and that the respondent has mechanically proceeded without appreciating the terms of the agreement in question.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

18. Learned counsel for the respondent submits that the proceedings before the respondent/ Collector of Stamps were validly initiated upon complaints received from one Mr. Sanjiv Zutshi alleging deficiency of stamp duty in respect of the Collaboration Agreement. It is submitted that upon receipt of the said complaints, notices were issued to the executants of the instrument and due opportunity of hearing was afforded before the Impugned Order came to be passed.

19. It is submitted that, upon examination of the Collaboration Agreement and the nature of rights created thereunder, the Collector of Stamps concluded that the instrument was not merely a construction or service agreement but was in the nature of a document attracting the provisions of Section 53A of the Transfer of Property Act, 1882. It is submitted that the instrument was, therefore, compulsorily registrable and chargeable to stamp duty in accordance with law.

20. Learned counsel lastly submits that the present petition is liable to be rejected on the ground of availability of an efficacious statutory remedy. It is contended that the petitioner ought to have availed the remedy of revision

under Section 56 of the Indian Stamp Act, 1899 before approaching this Court under Article 226 of the Constitution of India

REASONING AND CONCLUSION

21. It is well settled that the exigibility of an instrument to stamp duty is determined not by the label the parties choose to attach to it, or by any characterization ascribed to it by a revenue authority, but by its true nature and legal effect, as gathered from a reading of the instrument as a whole. The title or nomenclature of a document is not determinative of its character; rather, its true nature and purpose must be ascertained from its terms, which reflect the intention of the parties.

22. It follows that the Collector was obliged, before proceeding to levy stamp duty under Article 23A of the Stamp Act, to examine the Collaboration Agreement in order to determine whether, on its true construction, it was a contract of the kind falling within the sweep of Section 53-A of the TP Act. A reading of the Impugned Order reveals that this foundational inquiry was not undertaken in the light of the extant legal position. The conclusion arrived at in the Impugned Order, was based on a cursory and selective reading of the Collaboration Agreement.

23. Section 53-A of the TP Act, which is the statutory gateway to Article 23A of the Stamp Act, reads as follows:

> *"53-A. Part performance.—Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee,*

being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that … the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract: Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof."

24. The conditions necessary for the applicability of Section 53-A of the TP Act were authoritatively laid down by the Supreme Court in ***Shrimant Shamrao Suryavanshi & Anr. v. Pralhad Bhairoba Suryavanshi (D) by LRs. & Ors.***, (2002) 3 SCC 676. The issue before the Supreme Court was whether a transferee in possession pursuant to an agreement to sell could defend such possession under Section 53-A of TP Act in a suit for recovery instituted by the vendor, notwithstanding the expiry of the limitation period for seeking specific performance. While answering the said issue, the Supreme Court authoritatively set out the conditions that must be satisfied for Section 53-A of the TP Act to afford protection. The same are reproduced as under:

"16. But there are certain conditions which are required to be fulfilled if a transferee wants to defend or protect his possession under Section 53-A of the Act. These are: (1) there must be a contract to transfer for consideration of any immovable property; (2) the contract must be in writing, signed by the transferor, or by someone on his behalf; (3) the writing must be in such words from which the terms necessary to construe the transfer can be ascertained; (4) the transferee must in part-performance of the

contract take possession of the property, or of any part thereof; (5) the transferee must have done some act in furtherance of the contract; and (6) the transferee must have performed or be willing to perform his part of the contract."

25. Article 23A of Schedule I-A of the Stamp Act, as applicable to Delhi, levies stamp duty on "*Contracts for the transfer of immovable property in the nature of part performance in any Union territory under Section 53A of the Transfer of Property Act, 1882*." The said provision directly tracks the language of Section 53-A of the Transfer of Property Act, 1882.

26. A Coordinate Bench of this Court, in ***Sharad Bhansali & Anr. v. Mukesh Aggarwal & Anr.***, 2024 SCC OnLine Del 4999, held that Article 23A of the Stamp Act clearly applies to contracts for the transfer of immovable property, covered by Section 53-A of the TP Act, and that all the conditions of Section 53-A must be satisfied before Article 23A of the Stamp Act can be invoked. The said Article 23A is not attracted merely by the delivery of possession. Its applicability is predicated, first and foremost, upon the existence of an instrument embodying a "contract to transfer immovable property for consideration", of which the delivery of possession is only a consequential element. The relevant extracts of the said judgement are as under:

"16. <u>Article 23A of Schedule I-A to the Stamp Act, as applicable to Delhi, clearly applies to contracts for the transfer of immovable property, covered by Section 53A of the TPA</u>. Mr. Paul is correct in his submission that the applicable clause of the Schedule to the Stamp Act in Delhi is different from the clause which applies in Andhra Pradesh or Punjab and Haryana. Explanation I in the Schedule, as applicable to Andhra Pradesh clearly deems an agreement to sell followed by or evidencing delivery of possession of the property to be chargeable as a "sale" and, therefore, liable to stamp duty under Article 47A. Similarly, Article 5(cc) of Schedule

I-A of the Stamp Act, as applicable to the State of Punjab refers to an "agreement to sell followed by or evidencing delivery of possession of the immovable property agreed to be sold". These clauses, therefore, do not incorporate, by reference, the provisions of Section 53-A of the TPA, as thus Article 23A of Schedule I-A to the Stamp Act, as applicable in Delhi.

17. Mr. Sahni also sought to contend that Article 23A applies only way they contract itself actually conveys the property and would not, therefore, apply to an ATS. This submission is directly contrary to Article 23A itself, as Article 23A is expressly made applicable to Section 53A of the TPA. Incidentally, a learned Single Judge of this Court, in Vinod Kumar, adopted the view which Mr. Sahni seeks to canvass and the Division Bench, in its judgment in appeal in Ajit Singh, expressed his prima facie disagreement with this point of view. Paras 8 to 10 of the judgment of the Division Bench may, in this context, be reproduced, to the extent relevant:

> *"8. A plain reading of article 23A shows that it refers to contracts for the transfer of immoveable property in the nature of part performance in any union territory under Section 53A of the Transfer of Property Act, 1882. In the present case the agreement dated 05.08.2011 purports to be on stamp paper of Rs. 10/- only. The learned Single Judge while considering this aspect of the matter has dealt with it as under:—*
>
> *"11. Now, with regard to the submissions that the agreement was not properly stamped, as per Article 23A of Schedule 1A of ISTA, I may state without hesitation that Article 23A also was not attracted inasmuch as it applies to the contracts for transfer of properties under Section 53A of the Transfer of Property Act. As noted, the plaintiffs suit is not based on the part performance under Section 53A of the T.P. Act and the agreement to sell could not be said to be conveyance in the nature of part performance as envisaged in Article 23A. As per Section 2(10) of ISTA, "conveyance" includes conveyance of sale and other instruments by which property, whether movable or immovable, is transferred intra-vivous and which is not otherwise specifically provided for by Schedule-I. By any interpretation, such an agreement to sell cannot be termed as conveyance as defined in Section 2(10) of ISTA. <u>That being so, and the agreement to sell in question not creating any right, title or interest over the suit property, except that of the cause of action asking for the execution of the sale deed, Article 23A was not attracted and thus, the provisions of Sections 33 of ISTA is not attracted. As there is no Article in Schedule-I specifically providing for agreement to sell of immovable property, it would come within the ambit of residuary clause (c) of Article 5 of Schedule 1 of ISTA, which is extended to union territory of Delhi by Delhi Amendment Act of</u>*

2001. The stamp duty as per residuary clause (c) of Article 5 thereof is Rs. 50/-. The agreement to sell in question being on stamp paper of Rs. 10/-, is seen to be deficient of Rs. 40/- only and as per Section 35 proviso (a), the same would become admissible in evidence on payment of penalty equivalent to 10 times of the deficient portion of the stamp duty. The deficiency being of Rs. 40/- only, the penalty payable comes to Rs. 400/- and thus, this penalty and the deficiency of Rs. 40/- i.e. Rs. 440/- would be payable by the plaintiff for seeking admissibility of this agreement. The plaintiff would be required to do the needful in this regard."

(underlining added)

9. It will be evident from the above extract that the learned Single Judge held that the agreement would not fall under article 23A and would fall under residuary provision of article 5(c) of Schedule 1A and would, therefore, require a stamp duty of Rs. 50/. Since, according to the learned Single Judge, the agreement was on a stamp paper of Rs. 10/- only, it was held that it was deficient by Rs. 40/- and, consequently, by virtue of Section 35 the same could only be admissible in evidence on payment of penalty equal to ten times of the deficient portion of the stamp duty. Consequently, the learned Single Judge held that the penalty payable would be Rs. 400/- and the deficient stamp was Rs. 40/- and, therefore, the respondent/plaintiff was required to pay a sum of Rs. 440/- (Rs. 40/- towards deficient stamp duty and Rs. 400/- as penalty) before seeking admissibility of the said agreement.

10. Prima facie, we do not agree with the conclusion arrived at by the learned Single Judge with regard to the quantification and the applicability of article 5(c) and the non-applicability of article 23A of Schedule 1A to the facts of the present case. However, we refrain from making any conclusive pronouncement on this aspect of the matter, inasmuch as we feel that the stage at which the document could be impounded and the penalty could be imposed has not been reached."

(Emphasis supplied)

27. In the present case, the predominant object of the Collaboration Agreement is to record the terms governing the redevelopment of the subject property. Under the Agreement, the co-owners agreed to make the land/property available for redevelopment, while the petitioner undertook to carry out the demolition and construction entirely at its own cost. In

consideration of executing the redevelopment, the petitioner is entitled to a defined share of the developed property as its allocation. The instrument, therefore, cannot be construed as a simplictor agreement for the transfer of ownership in consideration of a sale price. Consequently, the first and foundational requirement for the applicability of Section 53-A of the Transfer of Property Act, namely, the existence of a contract to transfer immovable property for consideration, is not satisfied in the present case.

28. The Collector's reliance on the delivery of possession does not cure this fundamental deficiency. Section 53-A of the TP Act contemplates that the transferee must have taken possession "in part performance of the contract." This expression necessarily postulates the existence of a contract to transfer immovable property for consideration, with possession being delivered in furtherance of such contract. Possession granted solely to enable the petitioner to discharge its obligations of demolition, construction and redevelopment under the Collaboration Agreement cannot be equated with possession taken "in part performance" of a contract to transfer immovable property. In the present case, the possession is not taken in part performance of a contract to transfer immovable property, but solely in performance of the contractual obligation to undertake construction.

29. It is pertinent to note that where the first condition of Section 53-A of the TP Act (i.e., the existence of a contract to transfer for consideration) is not met, delivery of possession cannot independently trigger the said section. The Impugned Order proceeds in the reverse order. It infers the existence of a contract to transfer immovable property from the mere fact of delivery of possession and, on that basis, applies Article 23A of the Stamp

Act. This approach is fundamentally erroneous. The inquiry must begin with the true nature and character of the instrument, and only thereafter consider whether the delivery of possession is referable to a contract to transfer immovable property for consideration, rather than treating possession itself as determinative.

30. The Collaboration Agreement is equally not an agreement to sell in any recognized sense. An agreement to sell requires certainty as to the parties (vendor and vendee); certainty as to the subject matter (the property to be sold); and a sale consideration. None of these elements are present in the present case.

31. As per the Collaboration Agreement, the petitioner is not purchasing the subject property from the co-owners for a sale consideration. Rather, the petitioner has undertaken to construct the building entirely at its own cost and, in consideration of rendering such development services, is entitled to receive a defined share in the developed property. What flows from the petitioner to the co-owners is the redevelopment of the property; correspondingly, what flows to the petitioner is not the transfer of title to the land for a price, but the contractual right to develop the property and retain its agreed share in the completed development.

32. In ***Faqir Chand Gulati v. Uppal Agencies Pvt. Ltd.***, (2008) 10 SCC 345, the Supreme Court was concerned with a situation where the Court was required to examine whether a landowner who had entered into a collaboration agreement for the construction of a building and the sharing of the constructed area was a "consumer" under the Consumer Protection Act, 1986. It was observed that such arrangements, whether described as

"collaboration agreements" or "joint-venture agreements", involve the landowner providing the land; the builder putting up the building; and the two sharing the constructed area, with the builder delivering the owner's share and retaining the builder's share.

33. The Court further held that the title or nomenclature of an instrument is not determinative of its true character. Rather, the nature and purpose of the document must be ascertained from its terms, which reflect the intention of the parties. Accordingly, the mere use of expressions such as "collaboration" or "joint venture" in an agreement does not, by itself, render the transaction a joint venture unless the terms of the instrument disclose the essential attributes of such an arrangement, including shared control and shared liability. The relevant observations of the Supreme Court are as under:

> ***"20.*** *There is no dispute or doubt that a complaint under the Act will be maintainable in the following circumstances:*
>
> *(a) Where the owner/holder of a land who has entrusted the construction of a house to a contractor, has a complaint of deficiency of service with reference to the construction.*
>
> *(b) Where the purchaser or intending purchaser of an apartment/flat/house has a complaint against the builder/developer with reference to construction or delivery or amenities.*
>
> *But we are concerned with a third hybrid category which is popularly called as "joint-venture agreements" or "development agreements" or "collaboration agreements" between a landholder and a builder. In such transactions, the landholder provides the land. The builder puts up a building. Thereafter, the landowner and builder share the constructed area. The builder delivers the "owner's share" to the landholder and retains the "builder's share". The landholder sells/transfers undivided share(s) in the land corresponding to the builder's share of the building to the builder or his nominees. As a result each apartment owner becomes the owner of the apartment with corresponding undivided share in the land and an undivided share in the common areas of the building. In such a contract, the owner's share may be a single apartment or several*

<u>apartments. The landholder who gets some apartments may retain the same or may dispose of his share of apartments with corresponding undivided shares to others</u>. The usual feature of these agreements is that the landholder will have no say or control in the construction. Nor will he have any say as to whom and at what cost the builder's share of apartments are to be dealt with or disposed of. His only right is to demand delivery of his share of constructed area in accordance with the specifications. The builders contend that such agreements are neither contracts for construction, nor contracts for sale of apartments, but are contracts entered for mutual benefit and profit and in such a contract, they are not "service providers" to the landowners, but a co-adventurer with the landholder in a "joint venture", in developing the land by putting up multiple-housing (apartments) and sharing the benefits of the project. The question is whether such agreements are truly joint ventures in the legal sense.

xxx xxx xxx

***28.** <u>The basic underlying purpose of the agreement is the construction of a house or an apartment (ground floor) in accordance with the specifications, by the builder for the owner, the consideration for such construction being the transfer of undivided share in land to the builder and grant of permission to the builder to construct two floors. Such agreement whether called as a "collaboration agreement" or a "joint venture agreement", is not, however, a "joint venture".</u> There is a contract for construction of an apartment or house for the appellant, in accordance with the specifications and in terms of the contract. There is a consideration for such construction, flowing from the landowner to the builder (in the form of sale of an undivided share in the land and permission to construct and own the upper floors). To adjust the value of the extent of land to be transferred, there is also payment of cash consideration by the builder. <u>But the important aspect is the availment of services of the builder by the landowner for a house construction (construction of the owner's share of the building) for a consideration. To that extent, the landowner is a consumer, the builder is a service provider and if there is deficiency in service in regard to construction, the dispute raised by the landowner will be a consumer dispute.</u> We may mention that it makes no difference for this purpose whether the collaboration agreement is for construction and delivery of one apartment or one floor to the owner or whether it is for construction and delivery of multiple apartments or more than one floor to the owner. The principle would be the same and the contract will be considered as one for house construction for consideration. <u>The deciding factor is not the number of apartments deliverable to the landowner, but whether the agreement is in the nature</u>*

<u>of a joint venture or whether the agreement is basically for construction of certain area for the landowner</u>.

xxx xxx xxx

***30.** Learned counsel for the respondent contended that the agreement was titled as "collaboration agreement" which shows an intention to collaborate and, therefore, it is a joint venture. <u>It is now well settled that the title or caption or the nomenclature of the instrument/document is not determinative of the nature and character of the instrument/document, though the name may usually give some indication of the nature of the document. The nature and true purpose of a document has to be determined with reference to the terms of the document, which express the intention of the parties.</u> Therefore, the use of the words "joint venture" or "collaboration" in the title of an agreement or even in the body of the agreement will not make the transaction a joint venture, if there are no provisions for shared control of interest or enterprise and shared liability for losses."*

34. Importantly, it was held by the Supreme Court that an important aspect of of such Collaboration Agreements was the "availment of services of the builder by the landowner for a house construction (construction of the owner's share of the building)". It was, accordingly, held that to that extent, the landowner is a "consumer" and the builder is the "service provider".

35. The determinative tests for distinguishing a development/collaboration agreement from a conveyance, in the context of stamp duty, were also comprehensively articulated by the Bombay High Court in ***Suhas Damodar Sathe v. State of Maharashtra & Ors***., (2025) 1 HCC (Bom) 626. Although the case arose under the Maharashtra Stamp Act, 1958, the Court laid down certain guiding principles for determining whether an instrument is, in substance, a conveyance or a development agreement for the purposes of stamp duty.

36. The principal test laid down in the said judgment is whether the instrument effects an immediate transfer of title or any proprietary interest in favour of the developer. In the case of a conveyance, ownership vests in the transferee upon execution of the instrument; in contrast, under a development arrangement, title continues to remain with the owner until separate conveyance deeds are executed in favour of the end purchasers.

37. The Court further identified certain relevant indicia, including: whether possession is handed over solely to facilitate development, without conferring upon the developer any independent right to alienate the property in its own name; whether the developer's entitlement is founded on the opportunity to develop the property and derive its consideration from the agreed allocation or future sales, rather than from the acquisition of the land for a price; and whether the instrument contemplates that title will ultimately pass to purchasers through separate conveyance deeds executed by the original owner, thereby affirming that the owner retained the underlying title throughout. The relevant portion of the said judgment reads as under:

> ***"28.*** *The following tests, distilled from the above precedents and reasoning, may be regarded as determinative in ascertaining whether a document is an instrument of conveyance or a development agreement for stamp duty purposes :*
>
> ***Test of transfer of title or interest***
>
> *(i) The principal test is to ascertain whether the instrument effects a transfer of title or any proprietary interest in the developer. In an instrument of conveyance, there is either an immediate vesting of ownership or an unequivocal agreement that upon execution, the ownership stands or shall stand transferred.*
>
> *(ii) By contrast, a development agreement ordinarily envisages that the developer will construct and market the project but the title remains with the owner until a separate deed of conveyance is executed with prospective buyers.*
>
> ***Control and possession***

(i) Another crucial indicator is the degree of control exercised by the owner over the land. If possession is handed over merely for the limited purpose of development—without conferring upon the developer the right to alienate or create third-party rights in its own name—this usually points to a mere development agreement.

(ii) However, if the developer obtains the right to dispose of the property in its own capacity, collect the sale consideration for itself and thereby stands in the shoes of an owner, it suggests a conveyance under the Stamp Act.

Recitals concerning consideration

(i) The recitals regarding the nature of consideration can be telling. If the agreement reflects that the developer has paid a lump sum to the owner in exchange for all development and sale rights, the instrument may be seen as transferring beneficial interest.

(ii) Conversely, if the developer's only "consideration" is the opportunity to construct and earn profit from prospective purchasers, with no immediate purchase of title from the owner, it points more towards a licence to develop rather than a conveyance.

Requirement of separate conveyance or sale deeds

(i) If the instrument itself contemplates that ownership will be conveyed to end purchasers solely by the original owner (or by the owner and developer jointly) in separate sale deeds, it indicates that the original owner retains the fundamental title.

(ii) In cases where the developer unilaterally executes sale deeds with no further recourse to the owner, collecting the entire purchase price, that instrument is more likely to be classified as a conveyance.

Intention of the parties

(i) While intention is to be gleaned from the terms of the document, extrinsic evidence of the surrounding circumstances can also assist in interpretation. The Court must examine if the arrangement is essentially one of development (where the developer acts as a contractor with a right to share in revenue from the sale of flats/units) or if the developer acquires the property rights with the freedom to deal with the property independently."

38. Applying the aforesaid tests to the Collaboration Agreement in the present case, it is evident that the instrument is a development/collaboration arrangement and not a conveyance. The Agreement does not, by itself, effect any transfer of title or proprietary interest in favour of the petitioner. The

petitioner's entitlement to a defined share in the developed property arises solely from the obligation undertaken by it to carry out the demolition, construction and redevelopment of the subject property, and not from any sale transaction.

39. The Collaboration Agreement expressly contemplates the execution of separate conveyance deeds in respect of the petitioner's allocated portions, thereby unequivocally demonstrating that title to the land was not intended to pass under the Agreement itself. Further, the consideration under the Agreement is the petitioner's obligation to undertake construction and redevelopment, and not the payment of a price for the land. Likewise, possession was handed over solely to enable the petitioner to perform its contractual obligations of demolition, construction and redevelopment, and not as an incident of any transfer of ownership.

40. The express terms of the Collaboration Agreement reinforce the aforesaid position. In this regard, two clauses merit consideration. The first, relating to possession, provides as follows:

> *"That the OWNERS in accordance with the terms and conditions herein recorded, has placed at the complete disposal of the BUILDER, the vacant physical possession of the said property to the BUILDER, from the date of getting the sanction plans, the possession of the said property shall irrevocably, vest in the BUILDER, with all the powers and authorities of the OWNERS as may be considered necessary by the BUILDER for obtaining the requisite permissions/sanctions of the concerned authorities for demolition/reconstruction of the proposed building and for the sale of the BUILDER'S share (fully described below). However, the BUILDER shall hand over the possession of the OWNERS allocation to the OWNERS upon completion of the building."*

41. The second clause, relating to the execution of conveyance documents, provides as follows:

"That the OWNERS shall on or before the completion of the building execute or join in the execution of all documents necessary for giving the flat(s)/portion(s) buyers of BUILDER's portion legal title to their respective flats/portions including their undivided share in the land underneath, without asking for any further payment, except as herein agreed."

42. A conjoint reading of the aforesaid clauses unequivocally demonstrates that the possession handed over to the petitioner is co-extensive with its contractual obligations of obtaining the requisite sanctions, carrying out the demolition and undertaking the reconstruction of the property. The Agreement further provides that possession of the owners' allocated portion is to be restored to them upon completion of the building.

43. Equally significant is the express stipulation requiring the owners to execute, or join in the execution of, separate conveyance deeds in favour of the purchasers of the petitioner's allocated portions. This conclusively establishes that neither title to the land nor any proprietary interest therein was transferred to the petitioner under the Collaboration Agreement itself. The Collector's failure to examine these express terms of the Agreement constitutes a fundamental flaw in the Impugned Order

44. In ***M/s Grovy India Ltd. v. Balbir Singh***, 2021 SCC OnLine Del 4783, the dispute arose out of a Property Development Agreement ("PDA") executed between the owner of a property in New Delhi and a developer for its demolition and reconstruction. One of the objections raised by the owner was that the suit was not maintainable as the PDA was insufficiently stamped under Article 23A of the Stamp Act. Upon examining the terms of the PDA, this Court noted that the agreement contemplated the execution of

separate sale documents, including an agreement to sell, general power of attorney, will and affidavits, upon completion of construction.

45. The Court, therefore, held, *prima facie*, that "it cannot, therefore, be said that transfer of right or ownership in the suit property was conveyed by the PDA itself." Consequently, the Court held that Article 23A of the Stamp Act was inapplicable, as the PDA was merely a contract contemplating the future sale of property and not an instrument effecting the transfer of the property itself.

46. Section 17(1-A) of the Registration Act, 1908, mandates the compulsory registration of "documents containing contracts to transfer for consideration, any immovable property for the purposes of Section 53-A of the Transfer of Property Act, 1882." The qualifying words "for the purposes of Section 53-A" are of critical significance, as they confine the requirement of compulsory registration to those instruments that constitute contracts to transfer immovable property for consideration, within the meaning of Section 53-A of the Transfer of Property Act. Consequently, an instrument (such as the present collaboration agreement) that does not answer that description does not attract the mandate of registration under Section 17(1-A) of the Registration Act, 1908.

47. In the present case, the subsequent conduct of the parties further supports this conclusion. Had the Collaboration Agreement itself been intended to operate as a conveyance or agreement to sell (transferring title to the petitioner upon delivery of possession), the parties would have had no occasion to execute a separate registered Sale Deed for the express purpose of transferring defined portions of the subject property to the petitioner for a

sale consideration of Rs. 1,90,00,000/-, with stamp duty of Rs. 13,30,000/- separately paid.

48. The execution of the Sale Deed on 21.10.2025, is wholly inconsistent with any suggestion that the Collaboration Agreement had itself served as a transfer instrument. It is also pertinent to note that the Sale Deed makes no reference to the Collaboration Agreement as the antecedent or foundational transaction. Incidentally, the Sale Deed was executed before the very same authority (Collector of Stamps, Hauz Khas), who had itself characterized the Collaboration Agreement as an agreement to sell.

49. Since the Collaboration Agreement in the present case does not satisfy the ingredients of Section 53-A of the TP Act, it was not compulsorily registrable under Section 17(1-A) of the Registration Act, 1908, and the Circular, which treats collaboration/development agreements as falling within Article 23A on the basis that they are compulsorily registrable under Section 17(1-A), cannot be applied to it. The Circular proceeds on the premise that the conditions for the applicability of Section 53-A of the TP Act are satisfied. However, that premise does not hold good in the context of the nature and character of the Collaboration Agreement in the present case. The Collector erred in mechanically applying the Circular without first undertaking the threshold inquiry into the true nature and legal character of the instrument, as though the Circular could substitute such an inquiry.

50. In view of the foregoing, it is held that the Collaboration Agreement dated 17.05.2016 does not satisfy the conditions for the applicability of Section 53-A of the TP Act and, consequently, does not attract Article 23A of the Stamp Act. By erroneously treating the Collaboration Agreement as a

contract of the nature contemplated under Section 53-A of the TP Act and levying stamp duty and penalty under Article 23A on that basis, the Collector assumed a jurisdiction not vested in him under the statute. In view of this jurisdictional transgression, this Court also rejects the objection that the petition ought not to be entertained on account of the availability of an alternate statutory remedy by way of revision under Section 56 of the Stamp Act.

51. The Supreme Court in ***Radha Krishan Industries v. State of Himachal Pradesh***[1], (2021) 6 SCC 771, has affirmed that although the availability of an alternative statutory remedy is a relevant consideration in the exercise of writ jurisdiction, it does not operate as an absolute bar. The rule is subject to well-recognised exceptions, one of which arises where the Impugned Order/proceedings are wholly without jurisdiction.

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[1] "27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

52. The petitioner has also raised two further contentions challenging the Collector's jurisdiction to impound the instrument and impose penalty. The first contention is that the Stamp Act draws a clear distinction between the power of adjudication under Chapter III (Sections 31–32), which is voluntarily invoked by the instrument holder and is confined to determining the duty chargeable, and the power of impounding under Chapter IV (Section 33 onwards), which is exercisable when an instrument chargeable with duty "is produced or comes in the performance of his functions" before the Collector and is found not to be duly stamped.

53. The Supreme Court, in ***Government of Uttar Pradesh v. Raja Mohammad Amir Ahmad Khan***, AIR 1961 SC 787, considered a case in which a stamped instrument had been voluntarily presented before the Collector under Section 31 of the Stamp Act for his opinion as to the proper stamp duty payable. The Supreme Court held that the powers under Sections 31 and 33 of the Stamp Act are distinct and mutually exclusive. It further held that an instrument voluntarily presented under Section 31 is not one that is produced or comes before the Collector in the performance of his functions, within the meaning of Section 33. Consequently, once the Collector has rendered his determination under Section 31, he becomes *functus officio* and lacks the jurisdiction thereafter to impound the instrument or demand deficit stamp duty and penalty. As such, the petitioner contends that the Section 33 power could not, in any event, have been set in motion by Mr. Zutshi, a stranger to the Collaboration Agreement who was neither an executant nor authorised by the executants.

54. Once it is held that the Collaboration Agreement does not attract stamp duty under Article 23A, the very foundation for its impounding is absent, as the instrument cannot be regarded as one "chargeable with duty" but "not duly stamped." Consequently, the jurisdiction to determine and recover deficit stamp duty and impose penalty under Section 40 also falls. In these circumstances, the further question whether the power under Section 33 could at all have been invoked at the instance of a third party becomes moot.

55. In view of the foregoing, the petition is allowed.

56. The Impugned Order dated 02.07.2021 passed by the Collector of Stamps/SDM (Hauz Khas), New Delhi is hereby quashed and set aside. The consequential demands towards deficient stamp duty and penalty aggregating to Rs. 59,66,052/- are quashed. The respondent is directed to release and return the original Collaboration Agreement dated 17.05.2016 to the petitioner forthwith.

57. The present petition stands disposed of in the above terms. Pending application (CM APPL. 30061/2021) also stands disposed of.

SACHIN DATTA, J

JULY 1, 2026/ka