

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4682 OF 2021

Om Shivam Builders Private Limited

... Petitioner

Vs.

1. Joint District Registrar & Collector
of Stamps, Raigad

2. Chief Controlling Revenue Authority

... Respondents

ATUL
GANESH
KULKARNI

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Mr. Rajesh S. Datar i/by Mr. Akshay J. Kandarkar for
the Petitioner.

Mr. Ketan V. Joshi, 'B' Panel Counsel with Mr. Hamid D.
Mulla, AGP for Respondent Nos.1 and 2 – State.

CORAM : AMIT BORKAR, J.

RESERVED ON : OCTOBER 5, 2026

PRONOUNCED ON : OCTOBER 6, 2026

JUDGMENT:

1. By the present Writ Petition, the Petitioner has challenged the legality, validity and correctness of the order dated 28 July 2021 passed by Respondent No.2 in Appeal No.227 of 2019. By the said order, Respondent No.2 confirmed the order dated 6 April 2017 passed by Respondent No.1 under Sections 32A and 32B of the Maharashtra Stamp Act, 1958.

2. According to the Petitioner, the following facts are relevant for deciding the present Petition. Ram Hiraji Govari and others, hereinafter referred to as the “owners”, were granted lease of Plot No.8A + 9, admeasuring 1899.72 square metres, situated in Sector 17 of village Kamothe-I, under the GES Scheme. The terms and conditions of the lease were recorded in an Agreement to Lease dated 18 August 2009. The said Agreement was registered with the Sub-Registrar of Assurances, Panvel, under Serial No.PVL-3/05417-2009. Thereafter, by a tripartite Agreement dated 6 November 2009, the owners transferred and assigned the said property in favour of the Petitioner. Subsequently, on 31 December 2009, a formal Deed of Assignment was executed between the owners, on the one hand, and the Petitioner, on the other hand. The purpose of this Deed was, amongst other things, to specify and quantify the consideration payable to the owners. The said Deed of Assignment dated 31 December 2009 was registered on 13 January 2010 with the Sub-Registrar of Assurances, Panvel-1, under Serial No.PVL-1/00471-2010. Pursuant to the demand made by the concerned Sub-Registrar of Assurances, the Petitioner paid an amount of Rs.3,42,000/-, being 1% of the market value, towards Zilla Parishad Tax/Cess/Nagar Palika Cess on the said Deed of Assignment. Thereafter, on 30 November 2013, a Supplementary Deed of Assignment was executed in relation to the earlier Deed of Assignment and the tripartite Agreement. The said Supplementary Deed was registered with the Sub-Registrar of Assurances, Panvel-2. On 21 January 2014, the Sub-Registrar of Assurances-2, Panvel, by his letter, called upon the Petitioner to

pay a deficit Stamp Duty of Rs.17,57,094/- on the Supplementary Deed of Assignment dated 30 November 2013. The Petitioner replied to the said letter on the same day. It was pointed out that the Supplementary Deed was not the principal document of the transaction. According to the Petitioner, it was only a secondary or ancillary document executed for completing the transaction which had been covered by the earlier documents.

3. The Sub-Registrar of Assurances-2, Panvel, thereafter took action under Section 33A of the Act and impounded the Supplementary Deed of Assignment dated 30 November 2013. The matter was thereafter referred to Respondent No.1 for action. By order dated 6 April 2017, passed under Section 32A of the Act, Respondent No.1 held that the Supplementary Deed of Assignment dated 30 November 2013 was liable to Stamp Duty under Article 25(b) of Schedule I to the Act. The Petitioner thereafter filed Appeal No.227 of 2019 before Respondent No.2 under Section 53A of the Act. Respondent No.2 by order dated 28 July 2021, dismissed the said Appeal. The Petitioner was directed to pay an amount of Rs.21,08,512/- towards Stamp Duty and a penalty of Rs.51,18,652/- within 15 days from the date of receipt of the order. It is against these orders that the Petitioner has approached this Court by filing the present Writ Petition.

4. Mr. Datar, learned Advocate appearing for the Petitioner, submits that the Authorities below have failed to consider the nature and purpose of the Supplementary Deed of Assignment dated 30 November 2013. According to him, the said document was only an ancillary or secondary document connected with the

tripartite Agreement dated 6 November 2009 and the Deed of Assignment dated 31 December 2009. He submits that the principal document was the tripartite Agreement and the Petitioner had paid the requisite Stamp Duty thereon. The said Agreement was duly registered with the Sub-Registrar of Assurances, Panvel. Therefore, according to the Petitioner, the Supplementary Deed of Assignment did not attract Stamp Duty.

5. Learned Advocate for the Petitioner submits that the tripartite Agreement dated 6 November 2009 was executed in the format prescribed by CIDCO. The said format did not contain any provision for mentioning the amount of consideration payable under the transaction. For this reason, the Petitioner subsequently executed the Deed of Assignment dated 31 December 2009. On that document, the Petitioner paid Stamp Duty of Rs.100/- and paid Rs.3,42,000/-, being 1% of the market value, towards Zilla Parishad Tax/Cess/Nagar Palika Cess, as demanded by the concerned Sub-Registrar.

6. It is submitted that the Petitioner had paid Rs.60,00,000/- towards part consideration. Thereafter, the owners agreed to accept the remaining consideration of Rs.2,40,00,000/- in the form of constructed premises consisting of six shops and twenty flats in the building to be constructed on the said property. It was for recording this subsequent arrangement regarding the manner in which the balance consideration was to be given that the parties executed the Supplementary Deed of Assignment dated 30 November 2013. According to the Petitioner, this document was only ancillary or secondary to the earlier tripartite Agreement and

the Deed of Assignment. It did not materially change the terms and conditions of the principal documents. Since the Petitioner had paid the requisite Stamp Duty on the tripartite Agreement and the Deed of Assignment dated 31 December 2009, no Stamp Duty was payable on the Supplementary Deed merely because it recorded the manner in which the balance consideration was to be satisfied.

7. Learned Advocate for the Petitioner submits that the Supplementary Deed of Assignment did not create any independent right in favour of the owners. According to him, there was no fresh transfer of any immovable property by that document so as to attract Stamp Duty applicable to a conveyance. The original Licensees were the owners of the land which had been acquired by CIDCO for a public purpose. In lieu of the acquired land, they were allotted land under the GE Scheme. The Petitioner thereafter entered into the tripartite Agreement with the owners and CIDCO. Pursuant to the tripartite Agreement and the subsequent Deed of Assignment and Supplementary Deed of Assignment, the Petitioner developed the property and agreed to hand over certain constructed premises to the owners towards the balance consideration. According to the Petitioner, handing over such constructed premises in satisfaction of the agreed consideration cannot be treated as a conveyance of immovable property within the meaning of Article 25(b) of Schedule I to the Act. Therefore, the demand of Stamp Duty on the basis that the Supplementary Deed amounted to a conveyance is unsustainable.

8. Learned Advocate for the Petitioner relies upon the Circular dated 24 June 2016 issued by the Inspector General of Registration

and Comptroller of Stamps, Maharashtra State, Pune. According to him, the said Circular makes it clear that Stamp Duty under Article 60 is payable on the tripartite Agreement and that the final Lease Deed is chargeable to Stamp Duty of Rs.100/- under Section 4 of the Act. He submits that the Circular recognises the tripartite Agreement executed between the original Licensee, CIDCO and the new Licensee as an Assignment Deed chargeable under Article 60 of Schedule I to the Act. According to the Petitioner, the Authorities below failed to consider this Circular. Instead, they treated the Supplementary Deed of Assignment dated 30 November 2013 as an independent instrument and held that it was liable to Stamp Duty.

9. Mr. Joshi, learned Special Counsel appearing for the Respondents-State, submits that Section 5 of the Bombay Stamp Act, 1958 provides that where one instrument contains or relates to several separate matters, the instrument is chargeable with the total Stamp Duty which would have been payable if separate instruments had been executed for each of those matters. He submits that under Article 5(g-a) of Schedule I to the Bombay Stamp Act, 1958, a development agreement is chargeable with the same Stamp Duty as a conveyance, calculated on the market value of the property. He relies upon Order No.684 of the Maharashtra Registration Manual, Part-II (Mumbai), under which, where the developer agrees to give residential or non-residential premises to the owner in return for development rights, the value of those premises has to be calculated at the rates prevailing on the date of execution. According to him, Stamp Duty and Registration Fee are

required to be calculated on the higher of the two values, namely, the value of the property or the value of the residential and non-residential premises to be given to the owner. He submits that Section 14A of the Bombay Stamp Act, 1958 applies where material changes are made in an instrument by any party, whether with or without the consent of the other parties, and because of such changes the nature or character of the instrument is materially or substantially changed. In such a case, the instrument is required to be executed on fresh Stamp Paper appropriate to its changed character.

10. Learned Special Counsel submits that, on examination of Document No.7843/13 executed on 30 November 2013, it was found that the Supplementary Deed of Assignment had been executed between Shri Ram Hiraji Govari and seven others, who were the owners and residents of Kamothe Gaon, Taluka Panvel, and the Director of M/s Om Shivam Builders, who was the developer and was residing at Nerul, Navi Mumbai. The document related to Plot Nos.8A and 9, admeasuring about 1900 square metres, situated at Sector No.17, Mouze Kamothe. The Supplementary Deed was registered with the Sub-Registrar-II, Panvel, on 30 November 2013. At the time of registration, Stamp Duty of Rs.500/- and Registration Fee of Rs.100/- were paid. The document recorded that the earlier Deed of Assignment had been registered with the Sub-Registrar-II, Panvel. Under that earlier Deed, an amount of Rs.2.40 crores was payable within a period of two years, out of which Rs.60 lakhs had been paid by the developer.

11. Learned Special Counsel submits that, at the time of execution of the earlier document, the market value of the property was taken at Rs.3.42 crores as against the consideration of Rs.3 crores for the purpose of payment of Stamp Duty and Registration Fee. Stamp Duty at the rate of 6%, amounting to Rs.20,52,000/-, and Registration Fee of Rs.100/- were paid by the developer. It was recorded that, under registered Document No.7463 of 2009 relating to assignment of plot rights, Stamp Duty of Rs.17,10,000/- and Registration Fee of Rs.30,000/- had been paid by the developer. Thus, Stamp Duty at 6%, amounting to Rs.20,52,000/-, and Registration Fee of Rs.30,000/- were levied on the earlier document. According to the Respondents, the position was different in the case of the Supplementary Deed. Under the Supplementary Deed, instead of paying the balance amount of Rs.2.40 crores, it was agreed that the owners would receive six shops and twenty flats from the developer, as specified in the schedule to the document. Therefore, the six shops and twenty flats constituted a separate matter which was required to be valued for determining the consideration being received by the owners. On that basis, the Authorities calculated the value of the said premises in the following manner.

12. The valuation was made on the basis of Location No.15/A, appearing at page 140 of the Ready Reckoner for the year 2013. The rate adopted was Rs.59,500/- per square metre for flats and Rs.75,000/- per square metre for shops.

- (i) In respect of the twenty flats, the carpet area of each flat, as mentioned in the schedule to the document, was 448

square feet. After applying the factor of 1.2, the built-up area of each flat was taken as 537.6 square feet. The total built-up area of twenty flats was accordingly calculated at 10,752 square feet. This was converted into approximately 999.25 square metres. At the rate of Rs.59,500/- per square metre, the value of the twenty flats was calculated at Rs.5,94,55,375/-.

(ii) In respect of the six shops, the carpet area of each shop was 197 square feet. After applying the factor of 1.2, the built-up area was calculated at 236.4 square feet for each shop. For six shops, the total built-up area was taken at 1,418.4 square feet, equivalent to approximately 131.82 square metres. At the rate of Rs.75,000/- per square metre, the value of the six shops was calculated at Rs.98,86,500/-.

13. The total value of the twenty flats and six shops was thus calculated at Rs.6,93,41,875/-. From this amount, the value of Rs.3,42,00,000/- considered was deducted. The balance amount was taken at Rs.3,51,41,875/-. On this amount, Stamp Duty at 5% was calculated at Rs.17,57,094/-. It is on this basis that the A.G. (II), Nagpur raised an objection regarding short levy of Stamp Duty of Rs.17,57,094/-.

14. Learned Special Counsel submits that the Petitioner has accepted certain facts which, according to the Respondents, support the stand taken by the Authorities. First, the Petitioner has accepted that the Deed of Assignment falls under Article 60 of Schedule I to the Maharashtra Stamp Act. Second, the Stamp Duty

mentioned in Column (2) against Article 60 is linked to Article 36, which in turn refers to Clause (a), (b) or (c) of Article 25, as applicable. Thus, according to the Respondents, the applicable Stamp Duty was 6% of the market value during the relevant period. Third, the Petitioner cannot rely upon Section 4 of the Act in respect of different instruments executed by different parties concerning the same property. According to the Respondents, the document executed between CIDCO and the original owners under the PAP 12.5% Scheme and the subsequent documents of assignment are separate instruments and have to be considered accordingly.

15. Learned Special Counsel has placed reliance upon Section 4 of the Act. Relying upon the above provision, learned Special Counsel submits that Section 4 applies only to instruments relating to a sale, mortgage, settlement, development agreement or lease, where several instruments are used for completing one transaction. According to him, the provision does not cover an Assignment Deed or a Supplementary Deed of Assignment as an ancillary document to a tripartite Agreement. Therefore, the contention of the Petitioner that the Assignment Deed and the Supplementary Deed are merely ancillary or supplementary documents to the tripartite Agreement cannot be accepted on the basis of Section 4 of the Act.

16. Learned Special Counsel submits that, under the provisions of the Transfer of Property Act, every document which creates or records a transaction concerning property is required to be stamped according to the applicable provisions of the Stamp Act.

Therefore, according to him, the fact that the CIDCO format did not require the amount of consideration to be mentioned does not make any difference. Every instrument falling within Articles 1 to 63 of Schedule I to the Act and executed in the State of Maharashtra is required to be duly stamped. He submits that the question whether an instrument is stamped, and what amount of Stamp Duty is payable on it, has to be determined in accordance with Section 31 of the Act. In the present case, according to the Respondents, none of the executants of the four documents had sought prior adjudication of the proper Stamp Duty before executing the documents. They had not placed the documents before Respondent No.1 for verification. Therefore, according to learned Special Counsel, the Petitioner's contention that proper Stamp Duty had been paid on the documents cannot be accepted merely on the basis of the payments made earlier.

REASONS AND FINDINGS:

17. I have considered the submissions made by Mr. Datar, learned Advocate for the Petitioner, the submissions made by Mr. Joshi, learned Special Counsel for the Respondents-State. The matter cannot be decided only from the name or title given to the document. What is necessary is to see what the document provides and what transaction is dealt with by it.

18. The documents on record show the events which took place one after another. Under the Agreement to Lease dated 18 August 2009, the original Licensees were given rights in Plot No.8A and 9, admeasuring about 1899.72 square metres, situated at Sector 17,

Kamothe, under the 12.5% Scheme. Thereafter, the tripartite Agreement dated 6 November 2009 was executed between CIDCO, the original Licensees and the new Licensee, namely, the developer. This Agreement shows that the new Licensee was to come in place of the original Licensee. Clause 2 of the document states: “The New Licensee shall be substituted for the Original Licensee in the said agreement and shall have all the rights, obligation liabilities, benefits and equities accordingly thereunder.” Clause 3 records: “The Original Licensee relinquish and release all his right, titles, benefits, interest, claims or demands whatsoever in the said agreement.” From these clauses, it is seen that the rights of the original Licensees in the plot were dealt with, and the developer was brought in their place. The tripartite Agreement states that “The stamp Duty payable under this Tripartite Agreement shall be borne and paid by the New Licensee wholly and exclusively.” These clauses are important as they show that the transfer and substitution of the leasehold rights had been dealt with in the year 2009.

19. Thereafter, the Deed of Assignment dated 31 December 2009 was executed between the original owners and the Petitioner. From the said document, it is seen that the total consideration agreed between the parties was Rs.3,00,00,000/-. Out of this amount, Rs.60,00,000/- was paid and the balance amount of Rs.2,40,00,000/- was agreed to be paid within two years. The Assignment Deed was registered. Thus, in the year 2009, the transaction under which the original owners gave up their rights in favour of the developer had been recorded in a registered

document and the consideration payable under that transaction was fixed.

20. The Supplementary Deed of Assignment was executed thereafter on 30 November 2013. On reading the document, it does not appear that the original owners again transferred the plot to the Petitioner. There is no fresh transfer of Plot No.8A and 9 by the original owners. The earlier transaction continues to be the basis. What was changed was the manner in which the unpaid balance consideration of Rs.2,40,00,000/- was to be given. Instead of receiving the balance amount in money, the original owners agreed to receive certain constructed premises, namely, six shops and twenty flats, in the building being developed by the Petitioner. The schedules to the Supplementary Deed identify those premises and mention their carpet areas. The first schedule shows the premises which were to be given to the original land owners and the other schedules show the flats which were to remain with the developer. Therefore, the 2013 document does not appear to be a document by which the rights in the original plot were again assigned. It deals with the balance consideration under the earlier Assignment and provides the constructed premises in satisfaction of that balance amount.

21. This difference is required to be kept in mind. Merely because the parties, at a later time, changed the manner in which the consideration was to be received, the later document does not for that reason become a conveyance of the original property. It has to be seen whether the later document transfers some separate and identifiable property, or whether it only records or changes the

manner of fulfilling an obligation which had come from the earlier transaction. In the present case, the original transfer of the leasehold rights had taken place in 2009. The Supplementary Deed does not cancel that transfer. It does not bring those rights back to the original owners. It does not again substitute the original owners in place of the developer. The rights created under the tripartite Agreement and the Deed of Assignment continue to remain. The change is only regarding the manner in which the unpaid consideration was to be satisfied.

22. The Respondents submit that the Supplementary Deed contains a “distinct matter” because six shops and twenty flats were agreed to be given to the original owners. They rely upon Section 5 and submit that where one instrument contains several distinct matters, Stamp Duty is required to be calculated in respect of those matters. This submission does not answer the main issue. Before applying the provisions relating to valuation, it is first necessary to find out which document is chargeable and under which charging provision the liability arises. Valuation cannot create liability for Stamp Duty if the document does not come under the charging Article relied upon. Therefore, the first question is not what is the value of the six shops and twenty flats. The first question is whether the Supplementary Deed is a conveyance attracting Stamp Duty under Article 25(b).

23. The Respondents have relied upon the definition of “market value”, which reads:

“(na) “market value” in relation to any property which is the subject matter of an instrument, means the price which such

property would have fetched if sold in open market on the date of execution of such instrument] [or the consideration stated in the instrument, whichever is higher];”

24. This definition can be applied when the property is the subject matter of the instrument. But before applying this definition, it is necessary to first establish that the instrument is chargeable with Stamp Duty. In the present case, the Authority has first valued the six shops and twenty flats and thereafter calculated the alleged deficit Stamp Duty. However, from the reasons given in the order, there is no clear finding that the Supplementary Deed operates as a conveyance of those premises. The Authority has treated the change in the manner of consideration as creating a separate chargeable transaction without considering the effect of the earlier registered documents.

25. The reliance placed by the Petitioner upon Section 4 requires consideration. The said provision states:

“4. Several instruments used in single transaction of development agreement, sale, lease, mortgage or settlement. — (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 five 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 subsection (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.”

26. The language of Section 4 has to be carefully seen. It speaks of several instruments being used for completing one transaction of development agreement, sale, lease, mortgage or settlement. An Assignment Deed is not mentioned in this provision. Therefore, the submission of the Petitioner that Section 4 makes the Supplementary Deed chargeable only as an ancillary document cannot be accepted. An Assignment Deed cannot be brought within Section 4 only by giving another description to the transaction. At the same time, the submission of the Respondents that Section 4 has no relevance at all because the transaction involves an assignment cannot be accepted without looking at the whole transaction. The tripartite Agreement contains the grant of lease and substitution of the new Licensee. It records that CIDCO grants the lease of the plot to the New Licensee and that the Original Licensee gives up his rights. Therefore, the documents have to be read together to understand the actual transaction. Merely because different documents were executed on different dates, it cannot be said that they were separate and independent transactions. In the present case, the documents are part of one continuing arrangement concerning the same plot and the same transfer of rights.

27. There is another aspect which supports the case of the Petitioner. The Deed of Assignment dated 31 December 2009 fixed the total consideration at Rs.3 crores. It recorded payment of Rs.60 lakhs and provided for payment of the balance amount of Rs.2.40 crores. The Supplementary Deed does not increase this agreed consideration. It does not state that the original owners would receive an additional Rs.2.40 crores apart from the six shops and twenty flats. Those premises are given in place of the unpaid amount of Rs.2.40 crores. Therefore, the documents do not show that there was any fresh consideration for making a fresh transfer of the plot. What appears to have been changed is only the manner in which the existing balance consideration was to be satisfied.

28. The reliance placed by the Respondents upon Section 14A does not take the matter further. Section 14A, as relied upon by the Respondents, deals with a material alteration in an instrument which changes its character. The present case is not one where the original Deed of Assignment dated 31 December 2009 was altered by making changes in that very document. A separate Supplementary Deed was executed in the year 2013. Therefore, Section 14A cannot become the source of the Stamp Duty demanded by the Respondents. If any liability is to arise, it must arise from the nature of the 2013 document under the charging provisions of the Act. The order under challenge has not established such connection.

29. The Respondents have relied upon the fact that the Supplementary Deed was registered on payment of Rs.500/- as Stamp Duty and Rs.100/- as Registration Fee. It is true that

registration of a document does not prevent the Stamp Authority from examining whether proper Stamp Duty was paid. Registration and Stamp Duty are different matters. But this principle does not decide the present dispute. The Authority is still required to correctly find out the nature of the document and the statutory Article applicable to it. Merely because a document is registered, an instrument which only changes the manner of payment of earlier consideration cannot for that reason become a conveyance of the original property.

30. The submission of the Petitioner regarding valuation requires separate consideration. Mr. Datar submits that the constructed portion which was to be given to the original owners was required to be valued at the construction rate prevailing in 2013 and that the total carpet area agreed to be given was 7,579 square feet. According to him, its value would be Rs.1,36,07,175/-, which is below the balance consideration of Rs.2.40 crores. This submission, cannot result in complete exemption from Stamp Duty. The statutory definition of “market value” provides that the relevant value would be the open market price or the consideration stated in the instrument, whichever is higher. Therefore, even if the valuation of Rs.1,36,07,175/- suggested by the Petitioner is accepted, it would not mean that no Stamp Duty is payable merely because that amount is less than Rs.2.40 crores. The statutory comparison would still require the amount stated in the instrument to be considered.

31. The Respondents have proceeded on another basis. They have valued the twenty flats at Rs.5,94,55,375/- and the six shops

at Rs.98,86,500/-, taking the total value at Rs.6,93,41,875/-. From this amount, Rs.3,42,00,000/- was deducted, and the alleged short amount was calculated at Rs.3,51,41,875/-. Thereafter, Stamp Duty at 5% was calculated at Rs.17,57,094/-. Thus, the order does not merely proceed on the basis that the unpaid balance consideration of Rs.2.40 crores is chargeable. The Authority has treated the constructed premises as a fresh and chargeable subject matter and thereafter arrived at the alleged deficit by comparing the later valuation with the earlier value. Such an approach could have been justified only if there was a clear finding that the Supplementary Deed conveyed the six shops and twenty flats in law. That basic reasoning is not sufficiently found in the order.

32. The manner in which the Authority has made the calculation shows that the whole amount of Rs.6,93,41,875/- was not treated as the consideration of a completely fresh transaction. The Authority deducted Rs.3,42,00,000/-, which had been considered earlier. This shows that the 2013 document was being considered in connection with the earlier transaction. Once the Authority treated the earlier and later documents as connected for giving credit for the earlier valuation, it was necessary to examine whether the later document only completed the earlier transaction or whether it created a fresh transfer which could be charged with Stamp Duty. This examination is not found in the impugned order.

33. The Circular dated 24 June 2016 relied upon by the Petitioner requires consideration. According to the Petitioner, the Circular treats the tripartite Agreement between the Original Licensee, CIDCO and the New Licensee as an Assignment Deed

chargeable under Article 60 and states that the final Lease Deed would attract Stamp Duty of Rs.100/- under Section 4. In my view, this Circular supports one important part of the Petitioner's case, namely, that the tripartite Agreement was treated by the Registration Authorities as the operative document for assignment of the leasehold rights. This is consistent with the express terms of the tripartite Agreement, under which the New Licensee was substituted for the Original Licensee and the Original Licensee relinquished his rights. However, the Circular cannot be understood as giving automatic protection to every later document relating to the same property. The Circular, on the material placed before the Court, does not decide the Stamp Duty payable on a Supplementary Deed by which the manner of payment of the balance consideration is changed from money to identified constructed premises. Therefore, the reliance placed by the Petitioner upon the Circular is correct to that limited extent, but the Circular does not decide the whole dispute.

34. The submission of the Respondents that “every document” covered by Articles 1 to 63 must be duly stamped is correct as a general proposition. But that is not the real question in the present matter. The question is whether this particular document was liable to the particular Stamp Duty demanded by the Authority. For deciding this, the substance of the Supplementary Deed has to be considered. A later document does not become chargeable with conveyance duty merely because it refers to immovable property or because valuable premises are mentioned in it. The Supplementary Deed has to be read along with the earlier two documents. When

this is done, it appears that the original owners had relinquished their rights in the plot in favour of the New Licensee. The consideration for that transaction had been fixed at Rs.3 crores and Rs.60 lakhs had been paid. The Supplementary Deed only provides that the unpaid amount of Rs.2.40 crores would be satisfied by giving six shops and twenty flats to the original owners. The schedules identify those premises and their areas. Thus, the document gives a particular form to the manner in which the balance consideration was to be satisfied. The material on record does not establish that, by the Supplementary Deed alone, the original owners conveyed any fresh interest in Plot No.8A and 9 or that the Petitioner obtained any new right in the said plot which it did not possess under the documents executed in the year 2009.

35. I find substance in the submission of Mr. Datar that the Authorities below did not keep in view the basic nature of the 2013 document. Merely because six shops and twenty flats are mentioned in the Supplementary Deed, it does not become a second conveyance of the land. The Authority was first required to consider the effect of the earlier registered documents and thereafter decide whether the 2013 document fell within Article 25(b). That exercise does not appear to have been undertaken. The finding of the Authority that the six shops and twenty flats constituted a “distinct matter” is not sufficient to sustain the demand. A distinct matter for the purpose of valuation does not become a separate conveyance for the purpose of a charging Article. There must first be a transaction which is chargeable. In

the present case, the Authority appears to have proceeded in the reverse manner. It first valued the premises and thereafter treated the difference as short Stamp Duty. Such an approach cannot be sustained when there is no proper finding regarding the nature of the Supplementary Deed.

36. I find that the impugned order dated 6 April 2017 proceeds on an incorrect understanding of the nature of the Supplementary Deed of Assignment dated 30 November 2013. The subsequent order dated 28 July 2021, by which the said order was confirmed, does not correct this basic defect. It cannot be sustained. The demand of Rs.17,57,094/- towards alleged deficit Stamp Duty and the consequential penalty based upon such demand cannot be upheld on the reasons recorded by the Authorities.

37. For the reasons stated above, the Petition succeeds on merits. On the material placed before the Court, the Supplementary Deed cannot be treated as a fresh conveyance of the plot or as an independent transfer of the original leasehold rights merely because the manner of payment of the balance consideration was changed from money to six shops and twenty flats. The valuation made by the Authority on that basis and the consequential penalty are liable to be set aside. The payments made under the earlier registered documents cannot be ignored while considering the later document. The 2013 Supplementary Deed cannot be subjected to the alleged deficit Stamp Duty merely by treating the constructed premises as a fresh conveyance, without first establishing from the document that it has such character.

38. In view of the foregoing discussion, and upon overall assessment of the material record, the following order is passed:

- i) The Writ Petition is allowed;
- ii) The order dated 28 July 2021 passed by Respondent No.2 in Appeal No.227 of 2019 is quashed and set aside;
- iii) Consequently, the order dated 6 April 2017 passed by Respondent No.1 under Sections 32A and 32B of the Maharashtra Stamp Act, 1958, in respect of the Supplementary Deed of Assignment dated 30 November 2013, is quashed and set aside;
- iv) The demand of Rs.21,08,512/- towards Stamp Duty and the penalty of Rs.51,18,652/- imposed upon the Petitioner pursuant to the aforesaid orders are set aside;
- v) If any amount has been recovered from the Petitioner pursuant to the impugned orders, the same shall be dealt with in accordance with law and refunded to the Petitioner within a period of eight weeks from today;
- vi) The Petition is disposed of in the above terms.
- vii) There shall be no order as to costs.

(AMIT BORKAR, J.)