Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11128 OF 2018

M/S Suyog City AOP Through
Signatory/Member … Petitioner

V/s.

State of Maharashtra Through
Ministry Of Revenue And Ors. … Respondents

WITH
CIVIL APPLICATION NO. 2129 OF 2018
IN
WRIT PETITION NO. 11128 OF 2018

Ms. Manjiri Parasnis for the Petitioner.
Ms. Mamta S. Srivastava, AGP, for the State – Respondent.

CORAM	:	**AMIT BORKAR, J.**
RESERVED ON	:	**AUGUST 24, 2026**
PRONOUNCED ON	:	**AUGUST 28, 2026**

<u>JUDGMENT</u>:

1. The present Petition has been filed to challenge the Judgment and Order dated 03.11.2017 passed by Respondent No. 2 in Appeal No. 29 of 2016. The Petitioner has challenged the Order dated 07.05.2016 passed by Respondent No. 1 in Case No. JK/SJL/PS/MLP/S-9/PR/No.10/13/Instrument No.3984/1790 / 2016.

2. The property involved in the present matter is land bearing Survey Nos. 101/2, 2H 49 R, admeasuring 3949.08 sq. metres, situated at Village Bavdhan (B.K.), Taluka Haveli, District Pune. On 27.05.2005, a Development Agreement was executed in favour of David Koli Pillai in respect of the said property. Thereafter, on 29.04.2013, the Petitioner and David Koli Pillai entered into a Joint Venture Agreement, which was registered at Sr. No. 3984/2013. Under this Agreement, the parties agreed to develop a residential/commercial project on the said property and to sell the constructed tenements to prospective purchasers. As per the terms of the Joint Venture Agreement, the Petitioner was required to obtain sanction to the building plans, obtain the N.A. order and carry out the demarcation of the property. Clause No. 9 of the Joint Venture Agreement provides for sharing of the revenue between the parties. Under this clause, David Koli Pillai was entitled to 42% and the Petitioner was entitled to 58%. Clause No. 12(ii) explains what would be treated as the gross sale proceeds. Clause No. 22 provides for the tentative calculation of stamp duty on the basis of the market value prevailing at that time and the Ready Reckoner of the Government of Maharashtra. The calculation was made under Section (Vibhag) 27.9, at page No. 153 of the Ready Reckoner, 2003. At the relevant time, the rate of the land was Rs.7,900/- per sq. metre. On that basis, the value of the area covered by the Agreement was calculated slab-wise at Rs.2,69,39,000/-. Accordingly, as provided under Clause 5(g)(a), stamp duty of Rs.13,47,000/- was paid.

3. On 16.07.2015, Respondent No. 3 issued a notice to the Petitioner demanding additional stamp duty of Rs.16,58,410/-. Another notice was thereafter issued on 30.07.2015. The Petitioner submitted its reply to the said notice on 20.08.2015. Thereafter, the Petitioner approached this Court by filing Writ Petition No. 5084 of 2016. The said Petition was decided on 04.05.2016. This Court directed the concerned authority to decide the matter within a period of six weeks. After the said direction, Respondent No. 1 passed the impugned Order dated 07.05.2016. By that Order, the value of the property was calculated at Rs.6,38,65,000/- under Clause 5(g-a) of Schedule I. Stamp duty at the rate of 4% was calculated at Rs.25,54,600/-. Respondent No. 1 thereafter determined the deficit stamp duty payable by the Petitioner and imposed penalty at the rate of 2%. The Petitioner, being dissatisfied with the said Order, preferred Appeal No. 29 of 2016 before Respondent No. 2. Respondent No. 2 thereafter passed the Judgment and Order dated 03.11.2017 in the said Appeal. The Petitioner, being aggrieved by both the aforesaid Orders, has filed the present Petition before this Court.

4. Ms. Parasnis, learned Advocate for the Petitioner, submitted that the basic principles of natural justice were not followed by the Respondent Authorities. According to her, no proper hearing was given to the Petitioner, even though this Court had passed an order in Writ Petition No. 5079 of 2016. The learned Advocate for the Petitioner submitted that the Respondent Authorities had wrongly applied Article 5(g)(a) of Schedule I for calculating the stamp duty. According to her, the calculation under the said provision had to be made slab-wise. For the area from 0 to 500, the total amount was Rs.39,50,000/- and the stamp duty payable was Rs.1,97,500/-. For the area from 501 to 2000, the total amount was Rs.1,06,65,000/- and the stamp duty payable was Rs.5,33,250/-. For the area from 2001 to 4000, the total amount was Rs.1,23,24,000/- and the stamp duty payable was Rs.6,16,200/-. Thus, according to the Petitioner, the total stamps duty payable was Rs.13,46,950/-.

5. It was submitted that, under Article 47 relating to Partnership, the words "Joint Venture" were introduced by an amendment which came into force from 24.04.2015. According to the Petitioner, before this amendment, an instrument of this nature was never treated as an instrument falling under Article 5(g-a). It was submitted that under Article 25, the valuation was required to be made in the same manner as a Conveyance. It was submitted that under Article 5(h)(b), an instrument which was not otherwise covered by Schedule I was chargeable with stamp duty of Rs.100/-. Therefore, Respondent Nos. 2 and 3 were required to give proper reasons as to why the Joint Venture Agreement was treated as an instrument falling under Article 5(g-a).

6. The learned Advocate for the Petitioner submitted that the calculation made in the impugned Orders regarding the cost of the land and the revenue sharing was incorrect. The Respondent Authorities had applied the formula, 3949.08 × 0.42 × 45,300 = Rs.7,51,35,196/-. On this basis, stamp duty at the rate of 4% was calculated at Rs.30,05,410/-. The deficit stamp duty was accordingly determined at Rs.16,58,410/-. According to the learned Advocate for the Petitioner, this calculation was wrong. The Joint Venture Agreement provided only for sharing of profit or revenue between the parties in the ratio of 42% and 58%. It was not a Development Agreement. Both parties were to act as developers of the proposed project. Therefore, according to the Petitioner, the share of 42% could not be treated as though the Petitioner had received 42% of the land or had acquired a separate interest in the land to that extent.

7. In support of this submission, the learned Advocate for the Petitioner relied upon Paragraph No. 16(ii) at Page No. 11 of the Joint Venture Agreement. The said clause states: "All the brochures and other publicity materials shall show the names of both the parties as co-ventures thereof." According to the learned Advocate, this clause showed that both parties were co-venturers in the proposed project. Therefore, treating the Joint Venture Agreement as a Development Agreement was, according to the Petitioner, incorrect.

8. The learned Advocate for the Petitioner submitted that the value of consideration determined in the impugned Order had no proper basis. It was described as baseless, without authority, hypothetical and illogical. According to the Petitioner, the consideration mentioned in an instrument could not be determined by taking an imaginary future value. The future revenue which may or may not be received by the parties could not be treated as the present consideration for the purpose of calculating stamp duty. It was submitted that the market value of the property had to be determined with reference to the existing value of the land. The value of the construction which was proposed to be made in future could not be added while determining the stamp duty payable on the Joint Venture

Agreement. The learned Advocate for the Petitioner challenged the method by which the 42% share was calculated. According to her, the Respondent Authorities had wrongly assumed that the land could be notionally divided between the parties in the ratio of their profit sharing and that the assumed 42% share could then be multiplied by the new flat purchase rate of Rs.45,300/- per sq. metre. There was, according to the Petitioner, no material to show that 42% of the flats proposed to be constructed wouldly belong to or be sold for the benefit of the Petitioner. The calculation was therefore based only on an assumption.

9. The learned Advocate for the Petitioner submitted that several circumstances which could reduce the market value of the property had not been considered by the Respondent Authorities. According to her, the Ready Reckoner does not determine the market value in every case. It is only a reference or guiding factor for arriving at the tentative market value of a property in a particular area. Therefore, the circumstances affecting the property were required to be considered. It was submitted that the subject property was landlocked and was involved in a dispute. A suit and appeal concerning the property were pending. According to the Petitioner, these circumstances had a direct bearing on the market value of the property. The Respondent Authorities, therefore, ought to have taken these factors into consideration while determining the market value for the purpose of stamp duty.

10. As regards the powers of the CAG, the learned Advocate for the Petitioner submitted that the powers of the Comptroller and Auditor General were limited and were provided under the

Constitution in relation to the affairs of the Union and the States. According to her, the CAG could not examine the correctness of an order passed by an authority constituted under the Maharashtra Stamp Act for determining stamp duty. The CAG could not undertake the exercise of determining or recomputing the stamp duty payable on the instrument. The learned Advocate submitted that, under the Agreement dated 29.04.2013, the consideration was Rs.2,69,39,000/-. Stamp duty at the rate of 5% amounting to Rs.13,47,000/- had been paid. Registration fees of Rs.30,000/- had been paid.

11. It was submitted that, under the impugned Order dated 07.05.2016, the consideration was taken as Rs.6,38,65,000/-. Stamp duty at the rate of 4% was accordingly calculated at Rs.25,54,600/-, and the balance stamp duty was determined at Rs.12,07,600/-. However, according to the calculation referred to as “Mahanagarpalika Nagpur”, the consideration was taken as Rs.7,51,35,196/-. Stamp duty at the rate of 4% was then calculated at Rs.30,05,410/-, resulting in a balance stamp duty of Rs.16,58,410/-. According to the learned Advocate for the Petitioner, these different calculations themselves showed that there was no consistent or proper basis for determining the consideration and the alleged deficit stamp duty.

12. Ms. Srivastava, learned AGP appearing for the Respondents, submitted that the instrument involved in the present Petition is a Development Agreement relating to land admeasuring 3949.08 sq. metres, bearing Survey No. 101/2, situated at Bavdhan Budruk, Pune. The said instrument was executed on 29 April 2013.

According to the learned AGP, Clause 12(i) and (ii) of the instrument provides for sharing of the revenue amongst the parties. Therefore, while determining the stamp duty, the said clause was required to be taken into consideration. It was submitted that the Petitioner had not submitted the instrument before the Collector of Stamps for proper adjudication of stamp duty. It appears that, at the time of registration of the instrument, the fourth Respondent valued the market value of the immovable property at Rs.2,69,39,000/-. On that basis, the Petitioner paid stamp duty of Rs.13,47,000/-.

13. The learned Advocate for the Respondents submitted that, during the regular inspection of registered instruments, the Chief Auditor noticed that, in the cases in question, including the case of the Petitioner, the stamp duty had been determined without taking into consideration the clause relating to revenue sharing. According to the Respondents, this had resulted in payment of lesser stamp duty and consequent loss to the public exchequer. Therefore, directions were issued to the concerned authorities to take necessary corrective steps.

14. The learned Advocate for the Respondents submitted that the Petitioner had contended that the amount of gross sale proceeds could not be determined on the date on which the instrument was executed. According to the Petitioner, the gross sale proceeds and the revenue sharing depended upon the future market value of the property, which could not be known on the date of registration of the Development Agreement. The Respondents submitted that this contention of the Petitioner was incorrect and was based on a misunderstanding of the manner in which the consideration was required to be valued.

15. It was submitted that the stamp duty could be calculated by taking into consideration the amount of consideration which would become receivable in future. For this purpose, the rates of flats prevailing on the date of execution of the instrument could be taken into consideration. According to the Respondents, it was not necessary to apply any deferment factor to reduce the present value of such future consideration while making the calculation.

16. The learned Advocate for the Respondents, however, submitted that, according to the principles of valuation, the present value of the consideration which would be received in future was required to be determined for the average period of the project. For this purpose, the deferment factor was required to be applied after considering the interest rates prevailing at the relevant time.

17. It was submitted that the Collector of Stamps had accordingly applied a deferment factor of 0.85. On that basis, the present value of the consideration represented by the agreed percentage of revenue was determined. The calculation was made by taking the rates of flats prevailing on the date of execution of the instrument and not the rates which might prevail in future. According to the Respondents, the future rates could in fact be higher. Therefore, the valuation made by the Collector of Stamps was based on the rates existing on the date of the instrument and after applying the deferment factor of 0.85.

18. The learned AGP placed reliance upon the judgment of this Court in *Kolte Patil Developers Ltd. v. Chief Controller (Revenue Authority) and Inspector General of Registration and Controller of Stamp & Ors., Writ Petition No.10675 of 2019, decided on 11 November 2024.*

19. The learned Advocate for the Petitioner sought to distinguish the said judgment. It was submitted that, in *Kolte Patil Developers Ltd.*, the Petitioner therein was a developer. According to the learned Advocate, the facts of the present case are different. In the present case, the Petitioner claims to be the owner of the land in question and not a developer. Therefore, according to the Petitioner, the judgment in *Kolte Patil Developers Ltd.* cannot be applied to the present case without considering this basic difference in the nature and position of the parties.

Reasons and Analysis

20. I have considered the Petition, the submissions of Ms. Parasnis, learned Advocate for the Petitioner, the submissions of Ms. Srivastava, learned AGP for the Respondents, the Joint Venture Agreement, the order passed by the Collector of Stamps, the material which was placed before the authorities and the judgment of this Court in *Kolte Patil Developers Ltd.* On considering all this material, I find that the dispute can be decided from the record which is before the Court. Therefore, there is no necessity to send the matter back to the authority for considering it again.

21. First, it is necessary to see the real nature of the document. The parties have described it as a Joint Venture Agreement.

However, merely because this name is given to the document, the stamp duty cannot be decided only from its title. It is necessary to see what rights are created under the document and what transaction has really taken place between the parties. For this purpose, the document provides sufficient material. The property in question is Survey No.101/2, admeasuring 3949.08 sq. metres. The First Party had obtained development rights from the original owners. The document records that the property was "rightfully held and/or possessed/occupied by First Party". It is recorded that the original owners had given development rights to the First Party, including the right to develop the property, construct buildings and sell the units. More importantly, the document shows the position of the two parties. In the recital, it is recorded that "According to the Maharashtra Ownership Fiats Act 1963 the First Party is the "owner" of the land and the Second Party is "Developer means Promoter of the Scheme. Each one to perform its duties." Therefore, this clause does not support the submission that both parties were developers in the same manner. The First Party brought the land and development rights into the arrangement. The Second Party is described as the Developer and was required to carry out the development work.

22. The document makes clear what work was to be done by the Second Party. The responsibility of obtaining sanctions, the N.A. order and other necessary permissions was placed upon the Developer. The proposed buildings were to be constructed by the Developer and the cost of construction was to be borne by the Developer. The document states that the Second Party would bring all the funds required for development and would be responsible for arranging such funds. At the same time, the First Party was having some role in the development. The First Party was required to make the property available to the Joint Venture. It was responsible for maintaining clear and marketable title and for dealing with objections relating to the title. Thus, from the whole arrangement, it appears that the First Party brought the property and development rights, whereas the Second Party brought the money, management, development activity and construction work.

23. This brings me to the important clause of the Agreement. Clause 12 is the revenue sharing clause. It provides that the consideration for jointly developing the property would be by sharing the gross sale proceeds. Under this clause, 42% was to be given to the First Party and 58% to the Second Party. The clause says that the First Party's outlay was the property and the Second Party was to invest the required capital and efforts. Therefore, it is difficult to accept the submission that the 42% share was merely an internal arrangement of profit and had no connection with the rights obtained from the First Party. Clause 9 makes the position more clear. It provides: "the First Party shall be entitled to receive the 42% of the Gross sale proceeds and the Second Party i.e. Developer shall be entitled to receive the 58% of the Gross Sale Proceeds." This is an agreed right given to the First Party. It is not merely an uncertain or general reference. The amount which the First Party was to receive was connected with the sale of the constructed premises. Clause 12(ii) explains the meaning of gross sale proceeds. It includes the money received from sale of flats, shops, tenements, units and other premises, terraces and parking spaces. Therefore, the amount which the First Party was to receive was connected with development of the property and sale of the constructed property. Clause 16 is relevant for this purpose. It states that the parties "have agreed to jointly develop the said property and construct the ownership scheme". It provides that the Second Party would sell the units, enter into agreements for sale and receive the sale proceeds. It states: "All the brochures and other publicity materials shall show the names of both the parties as co-ventures thereof." The Agreement has been made as a Joint Venture because both parties agreed to work together for one common project and the document uses the words "Joint Venture". The First Party had a role in the project. It was entitled to receive a share in the gross sale proceeds and was shown as a co-venture in the publicity material.

24. For deciding the stamp duty, the question is not only whether the parties have used the words Joint Venture. It is necessary to see whether the document gives authority or rights to a developer for construction, development and sale of immovable property. From the document, the answer is yes. The Second Party is called the Developer. It is given responsibility for obtaining permissions, constructing the buildings and selling the units. It is given authority to receive the sale proceeds. Therefore, Article 5(g-a) of Schedule I is attracted when the nature of the transaction is considered. In *Kolte Patil Developers Ltd.*, this Court considered Article 5(ga) and in paragraph 13 recorded that it covers an agreement "relating to giving authority or power to a promoter or a developer, by whatever name called, for construction on, development of or, sale or transfer ... of, any immovable property." The words "by whatever name called" are important in this matter. These words show that the stamp duty provision does not depend upon the name or heading which the parties have given to the document. Therefore, merely because the present document is called a Joint Venture Agreement, it cannot be kept outside Article 5(g-a), when the document gives the Second Party the position of Developer and gives it responsibility and rights to construct and sell the units.

25. The submission based upon Article 47 cannot be accepted. It is submitted that the words "Joint Venture" were introduced in Article 47 only from 24.04.2015, whereas the present document was executed in 2013. Even if this submission is considered, the Respondents have not applied Article 47 merely because the document is called a Joint Venture Agreement. The document is considered under Article 5(g-a) because it gives development rights and authority to the Developer. Therefore, whether the words "Joint Venture" were mentioned in Article 47 in the year 2013 does not decide the real issue in the present Petition.

26. For the same reason, the reliance upon the residuary provision under Article 5(h)(b) does not help the Petitioner. Where there is a specific provision dealing with an agreement giving authority for development, that provision cannot be ignored merely because there is another entry for an instrument which is not otherwise provided for. The present document is not without a specific stamp duty provision. Looking at the substance of the document, it comes within Article 5(g-a).

27. I now come to the submission that the revenue share cannot be treated as consideration because the amount was to be received only in future. This issue has been considered by this Court in *Kolte Patil Developers Ltd.* In paragraph 22, this Court observed that where the owners give development rights for consideration on revenue sharing basis, the monetary consideration may not be fixed immediately and may be received after the constructed units are sold. The Court held that merely because the revenue share is to be received later, it does not go outside the meaning of consideration. Paragraph 23 of the said judgment is relevant. This Court held that revenue sharing, though payable in future, is still consideration for transfer of development rights. It was held that where the consideration is on revenue sharing basis, the consideration as on the date of execution is required to be worked out by considering the development potential of the property, available FSI and applicable ASR for the land and constructed tenements. The same reasoning applies to the present case. The First Party brought the property into the Joint Venture. The Second Party agreed to develop the property, construct the buildings and sell the units. In return, the First Party was to receive 42% of the gross sale proceeds. Therefore, this future amount is not some amount having no connection with the document. The right to receive 42% comes from the Agreement. It therefore forms part of the consideration agreed between the parties.

28. The submission that this amounts to valuing future construction on an imaginary basis cannot be accepted. The authorities have not taken some unknown future selling price without any material. They have used the rates applicable for the relevant year. The material before the authority shows the 2013 rate of Rs.7,900/- per sq. metre for open land and Rs.45,300/- per sq. metre for residential flats. The Assistant Town Planner assessed the land value on the basis of the 2013 rates and calculated the consideration by using the 42% share and the rate applicable to residential flats.The Petitioner's own Agreement shows that the parties had contemplated construction and sale of units. The Second Party was required to construct the buildings. It was to sell the units and receive the sale proceeds. The First Party's 42% share was to come from those sale proceeds. Therefore, it cannot be said that the authorities have brought into consideration some transaction which was not there in the Agreement. They have only given a value, as on the date of the instrument, to the consideration which the parties themselves had agreed upon.

29. The calculation requires to be considered. The Agreement records the area as 3949.08 sq. metres. The rate for residential flats is Rs.45,300/- per sq. metre. The First Party was entitled to 42% of the gross sale proceeds. Therefore, the calculation starts with 3949.08 × 0.42 × 45,300. The same formula is found in the original order. The Collector thereafter applied the deferment factor of 0.85 and recorded the calculation as 3949.08 × 0.42 × 45,300 × 0.85. The amount mentioned in the impugned order, namely Rs.6,38,65,000/-, corresponds with the said formula after applying the factor of 0.85 and rounding. Therefore, it cannot be said that there is no calculation or that the calculation cannot be understood or checked.

30. The submission that the 2015 notification cannot be applied to the Agreement of 2013 does not give any reason for interference. The liability to pay proper stamp duty does not arise only because of the 2015 notification. It arises from the Stamp Act. The question whether the consideration stated in the instrument is to be included in the market value is governed by Section 2(na). In the first order, the provision is quoted as follows: "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." *Kolte Patil Developers Ltd.* has considered this objection. In paragraph 24, this Court held that merely because there was no specific valuation guideline in 2013, the authority was not prevented from applying the statutory test under Section 2(na). In paragraph 25, the Court held that the consideration has to be worked out as on the date of the instrument and revenue sharing cannot be ignored merely because the amount is to be received in future. I find that this reasoning applies to the present case. There is no question of creating a new stamp duty liability retrospectively. The statutory liability was there when the Agreement was executed. The later guideline may assist in showing the method of valuation, but it is not the source of the liability. The source is the Stamp Act and the consideration agreed in the document.

31. The submission that the Ready Reckoner is only a guiding factor is correct. The Ready Reckoner cannot change the statutory requirement. But in the present case, the authorities have not considered only the land rate. They have considered the 2013 land rate, the residential flat rate, the area of the property, the agreed 42% share and the deferment factor. Therefore, the valuation cannot be said to be based only on some arbitrary assumption.

32. The submission that future construction cannot be considered cannot be accepted in the manner in which it is made. If the consideration under a document is a fixed amount payable at present, the position may be different. Here, the consideration is connected with the sale of the constructed units. Therefore, the constructed units form part of the method for finding the value of the consideration. *Kolte Patil Developers Ltd.*, paragraph 23, has held that in such a situation the development potential, FSI, land ASR and constructed tenement rates can be considered. The argument of the Petitioner that there was no basis to assume that 42% of the flats would be sold for its benefit overlooks the Agreement. There is no need for the authority to make such an assumption. The Agreement provides that 42% of the gross sale proceeds would go to the First Party. It provides that the sale proceeds would be received by the Second Party and the First Party's share would be transferred to its bank account.

33. There is one more important feature in the Agreement. The Second Party alone was to manage the business of the Joint Venture and the First Party was not to interfere in the day to day management. The First Party was mainly concerned with the title of the property, whereas the Second Party was responsible for development and construction. This division of duties shows that identifiable development rights were given to the Second Party.

34. The submission of the Petitioner regarding the CAG or Accountant General does not make out any ground for interference. In the present Petition, it is not necessary to decide the constitutional limits of the CAG. What is important is to see what happened. The Accountant General's inspection raised an objection. Thereafter, the statutory authority issued notices, called for the document and proceeded under Section 32A. The first order records that the inspection objection was raised by the Accountant General and thereafter the matter was taken under Section 32A. Therefore, even if it is assumed that the Accountant General could not decide the stamp duty, the record does not show that the Accountant General finally decided the liability. The final decision was made by the Collector of Stamps. The Collector exercised the statutory power and passed the order. The audit objection only gave information for examining the document. It was not the final decision regarding the stamp duty.

35. The submission regarding double stamp duty cannot be accepted. The stamp duty in the present matter relates to the instrument by which the development arrangement was created and the consideration for the rights given under that arrangement was fixed. If stamp duty is payable on a later sale of an individual flat or unit, that would be because another document and another transfer are involved. This position has been explained by this Court in paragraph 27 of *Kolte Patil Developers Ltd*. Merely because another document may later require stamp duty, the stamp duty payable on the present document does not disappear.

36. The submission of the Petitioner that the valuation amounts to taxation of profit cannot be accepted. The authority is not charging income tax upon the Petitioner. The authority is only finding the consideration for deciding the stamp duty payable on the document. Paragraph 26 of *Kolte Patil Developers Ltd.* has rejected the argument that treating deferred gross sale proceeds as consideration amounts to taxing profits.

37. As regards the submission that the property was landlocked and was involved in litigation, I do not find sufficient material in the record before me to grant any reduction on that ground. In fact, the Agreement contains the representation of the First Party regarding clear and marketable title and places responsibility upon the First Party to deal with title related claims and litigation. Therefore, without supporting material, it cannot be assumed that the valuation based upon the Ready Reckoner became unreliable only because there was some pending dispute. The same reasoning applies to the alleged bad physical condition of the property. There is no independent valuation report in the record showing that the market rate used by the authority could not be applied to this property. A mere statement that the property had some disadvantage is not enough to change the statutory method of valuation. If there was any special physical defect which reduced the value, the party making such submission was required to place some material to show the same. Such material is not shown from the record before this Court.

38. I have to consider the submission regarding natural justice. The Petitioner says that no hearing was given despite the order of this Court. But the record does not support such a broad statement. The order under Section 32A records that notices were issued, written statements were submitted on 20.08.2015 and thereafter notices were issued. It records that a hearing was requested on 16.03.2016 and during the hearing the parties made their oral submissions. The first order records written submissions dated 20.08.2015, 14.03.2016 and 28.01.2016. Therefore, it cannot be said that the Petitioner was denied an opportunity to place its case before the authority. A complaint of violation of natural justice cannot be accepted merely because the decision has gone against the party. There has to be denial of opportunity to place the case. Here, the record shows that the Petitioner's case was placed before the authority and written as well as oral submissions were made. Therefore, the submission regarding violation of natural justice cannot be accepted.

39. The reliance of the Petitioner upon Clause 16(ii), which says "All the brochures and other publicity materials shall show the names of both the parties as co-ventures thereof", does not change the conclusion. This clause shows that the parties wanted to show themselves as co-ventures in the project. But it does not say that the Second Party was not the Developer. In fact, the same Agreement calls the Second Party the Developer and gives it responsibility for construction, financing, permissions and sale of units.

40. Similarly, the submission that the Petitioner is the owner of the land and not the developer does not help the Petitioner. The document says that the First Party is the owner and the Second Party is the Developer. The 42% share is the benefit which the owner was to receive from the development arrangement. Therefore, the difference between owner and developer helps in understanding the consideration. The owner brings the property and development rights. The Developer brings the capital, carries out construction and sells the units. The agreed return to the owner is 42% of the gross sale proceeds.

41. The reliance of the learned AGP upon *Kolte Patil Developers Ltd.* is therefore justified to this extent. I have considered the distinction pointed out by the learned Advocate for the Petitioner. In *Kolte Patil Developers Ltd.*, the owners had given development rights to a developer under a document described as a Development Agreement. In the present case, the parties have used the words Joint Venture and have described themselves as co-ventures. This difference is there and has been considered. But it does not change the important feature for stamp duty. In both situations, development rights are given, construction is to be carried out, units are to be sold, and the owner is to receive a fixed percentage of gross sale proceeds as consideration. In *Kolte Patil Developers Ltd.,* paragraph 22 described that transaction as a "typical Development Agreement" because the owners had transferred development rights for consideration on revenue sharing basis. Thereafter, in paragraph 25, the Court held that merely because the consideration is to be received later, it does not become incapable of being valued under Section 2(na). In the present matter, the name "Joint Venture" cannot provide protection from Article 5(g-a). Stamp duty cannot be decided only from the title of the document when the rights and obligations show that one party is acting as Developer and the other party is receiving 42% of the gross sale proceeds for bringing the property and development rights into the project.

42. The original stamp duty calculation requires to be noticed. Clause 23 of the Agreement records the area as 3949.08 sq. metres, the 2013 land rate as Rs.7,900/- per sq. metre and the slab-wise value of the property as Rs.2,69,39,000/-. It records payment of stamp duty of Rs.13,47,000/-. Therefore, the original stamp duty was calculated on the land value. In the later proceedings, the amount paid was not ignored. Credit was given for the stamp duty paid. The Collector calculated the deficit by taking the consideration arising from the agreed revenue share, with reference to the development potential and applicable rates, and thereafter deducted the amount paid. The impugned order records the balance stamp duty as Rs.12,07,600/- and imposes penalty under Section 39. Therefore, the criticism of the Petitioner that the calculation has no basis cannot be accepted. It is true that the calculation involves an estimate because the consideration is to be received in future. But merely because it is an estimate, it does not become imaginary. It is based upon the area of the property, the agreed 42% share, the 2013 rate of constructed tenements and the nature of the project stated in the Agreement.

43. The principles applicable to a fiscal statute do not help the Petitioner. In paragraph 28 of *Kolte Patil Developers Ltd.,* this Court referred to the settled position that the Stamp Act has to be understood according to the words used in the statute. The decision records that something which is not contained in the statute cannot be added. The Court applied this principle in paragraph 30 and found that there was no ambiguity which could benefit the Petitioner. Applying the same approach in the present case, the statutory words show that the consideration agreed by the parties cannot be ignored. Section 2(na) requires the market value to be considered by comparing the price which the property would have fetched in the open market with the consideration stated in the instrument and taking whichever is higher. Article 5(g-a) then provides for stamp duty where the agreement gives authority to a promoter or developer for construction, development or sale of immovable property. The present document comes within that description.

44. I therefore hold that the 42% share of gross sale proceeds payable to the First Party is consideration arising from the Joint Venture Agreement. I hold that merely calling the document a Joint Venture Agreement does not prevent application of Article 5(g-a), because the Second Party is made the Developer and is given rights and duties regarding development and sale of the project. I hold that the consideration could be valued as on the date of execution by considering the development potential and applicable rates, instead of waiting for the future sales. I hold that merely because there was no special revenue sharing guideline in

2013, the valuation does not become without authority. The statutory basis was there in Section 2(na). The 2015 guideline cannot be treated as creating the substantive liability. It was used as a part of the method for working out the statutory concept of consideration. The deferment factor was applied, which reduced the amount of consideration compared with a calculation without such factor. There is no material shown to hold that the use of the factor caused prejudice to the Petitioner. The audit objection does not invalidate the proceedings. The objection only resulted in examination of the document. Thereafter, the Collector of Stamps exercised the statutory power under Section 32A. Notices were given to the Petitioner. Written submissions were filed, and oral submissions were made. Therefore, the order came to be passed after giving an opportunity of hearing.

45. Therefore, I find no perversity, jurisdictional error or failure to consider the important terms of the Agreement in the determination of deficit stamp duty. The challenge to the valuation therefore fails. The challenge to applicability of Article 5(g-a) fails. The challenge on the ground of natural justice fails. The challenge based upon the 2015 valuation guideline fails. The submissions regarding future construction, future revenue, alleged taxation of profits and double stamp duty fail for the reasons stated above.

46. The impugned Order dated 07.05.2016 passed by Respondent No.1 and the Judgment and Order dated 03.11.2017 passed by Respondent No.2 in Appeal No.29 of 2016 therefore do not require interference.

47. In view of the foregoing discussion and for the reasons recorded hereinabove, the following order is passed:

i. The Writ Petition is dismissed.

ii. The impugned Order dated 07.05.2016 passed by Respondent No.1 in Case No. JK/SJL/PS/MLP/S-9/PR/No.10/13/Instrument No.3984/1790/2016 is upheld.

iii. The Judgment and Order dated 03.11.2017 passed by Respondent No.2 in Appeal No.29 of 2016 is upheld.

iv. Rule is discharged.

v. There shall be no order as to costs.

48. In view of the dismissal of the Writ Petition, all pending interlocutory application(s), if any, stand disposed of as having become infructuous.

(AMIT BORKAR, J.)