*Shabnoor*



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 10120 OF 2019**

M/S. VTP Homee Landmark (LLP) Through Designated Partner … Petitioner

**V/s.**

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

Ms. Manjiri Parasnis, for the Petitioner.

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

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

**JUDGMENT:**

**1.** By filing the present Petition, the Petitioner challenges the validity, legality and propriety of the Order dated 26 August 2019 passed by Respondent No. 2 in Appeal No. 42 of 2018. The Petitioner challenges the Order dated 4 November 2015 passed by Respondent No. 1 in Case No. JK/SJL/PS/MLP/ S-9/PR /No. 08_13/Instrument No.3986_13 /1784 /2016.

**2.** The facts which have led to the filing of the present Petition are as follows. The dispute relates to land bearing Survey No.10/3A, admeasuring 0 H 89.5 R, that is, about 8,950 sq. metres, and land bearing Survey No.26/2/1+2/3, admeasuring 0

H 3.7174 R, that is, about 392 sq. metres. Both the properties are situated at Village Kharadi, Taluka Haveli, District Pune. On 2 November 2012, Articles of Agreement were executed in favour of VTP Home Landmark and Girdhar Creations in respect of the above properties. Under the said Agreement, the parties agreed to share the revenue in the ratio of 50% : 50% in respect of the residential area. In respect of the commercial area, the agreed ratio was 55% : 45%. Subsequently, on 16 January 2017, a Supplementary Agreement was executed. By this Supplementary Agreement, the earlier arrangement was changed, and it was agreed that the revenue sharing would be only in respect of the residential area.

**3.** On 9 November 2015, Respondent No. 3 issued a notice to the Petitioner demanding balance stamp duty of Rs.43,84,100/-. The Petitioner, by its letter dated 3 December 2015, disputed this demand. The Petitioner stated that it did not accept the amount of stamp duty demanded from it. Thereafter, another notice was issued on 1 May 2016. The Petitioner submitted its reply in Appeal No.42 of 2018 on 3 July 2018.

**4.** The Petitioner thereafter approached this Court by filing Writ Petition No. (ST) 18484 of 2018. In that Petition, this Court directed that the matter be decided within a period of six weeks. Respondent No. 1, by the impugned Order dated 4 November 2015, valued the property at Rs.15,51,41,600/- by applying Clause 5(g-a) of Schedule I. Stamp duty at the rate of 5% was accordingly calculated at Rs.77,57,100/-. On that basis, a deficit of Rs.43,84,100/- was held to be payable by the Petitioner. Apart from this amount, penalty at the rate of 2% was imposed.The Petitioner was aggrieved by this determination of stamp duty and therefore filed Appeal No.42 of 2018 before Respondent No. 2. Respondent No. 2 thereafter passed the impugned Order dated 26 August 2019. The Petitioner has challenged the said Order, along with the earlier Order dated 4 November 2015, by filing the present Petition.

**5.** Ms. Parasnis, learned Advocate for the Petitioner, submits that the Respondent Authorities have wrongly applied Article 5(g)(a) of Schedule I while calculating the stamp duty payable on the instrument. According to the learned Advocate, in respect of Survey No.10/3A, admeasuring 8,950 sq. metres, the calculation made under Article 5(g)(a) is in different slabs. For the first 0 to 500 sq. metres, 100% of the Government rate of Rs.8,970/- has been taken, resulting in a valuation of Rs.44,85,000/-. For the area from 501 to 2,000 sq. metres, 90% of the Government rate of Rs.8,970/- has been taken, resulting in a valuation of Rs.1,21,09,500/-. For the area from 2,001 to 4,000 sq. metres, 80% of the Government rate of Rs.7,149/- has been taken, resulting in a valuation of Rs.1,43,52,000/-. For the area from 4,001 to 10,000 sq. metres, 70% of the Government rate of Rs.6,279/- has been taken, resulting in a valuation of Rs.3,10,81,050/-. Thus, according to the Petitioner, the total valuation of Survey No.10/3A comes to Rs.6,20,27,550/-.

**6.** In respect of Survey No.26/2/1+2/3, admeasuring 371.74 sq. metres, the Government rate for open land is Rs.14,600/- per sq. metre. On that basis, the valuation is calculated as 371.74 ×

Rs.14,600/-, which comes to Rs.54,27,404/-. Therefore, according to the Petitioner, the total valuation of both the lands is Rs.6,74,54,954/-. The learned Advocate for the Petitioner submits that under Article 47 relating to Partnership, the words "Joint Venture" were introduced by amendment with effect from 24.04.2015. According to the Petitioner, before this amendment, an instrument of this nature could not have been treated as an instrument falling under Article 5(g-a). It is submitted that under Article 25, the valuation has to be made in the same manner as in the case of a Conveyance. The Petitioner relies upon Article 5(h)(b), under which an instrument for which no specific provision is made in Schedule I was chargeable with stamp duty of Rs.100/-. Therefore, according to the learned Advocate, Respondent Nos. 2 and 3 were required to give proper reasons for treating the instrument as one falling under Article 5(g-a). According to the Petitioner, such reasons have not been properly given. The learned Advocate for the Petitioner submits that, while calculating the land cost and the revenue sharing, the impugned Orders have taken the total valuation of both the lands at Rs.6,74,54,954/-. However, the stamp duty has been calculated at 5% on a valuation of Rs.15,51,41,600/-, resulting in stamp duty of Rs.77,57,100/- and an alleged deficit of Rs.43,84,100/-.

**7.** It is submitted that the consideration determined in the impugned Order is baseless, without proper authority, hypothetical and illogical. According to the learned Advocate, the consideration payable under the instrument cannot be worked out on the basis of an imaginary future calculation. The future revenue sharing cannot be treated as the present consideration for the purpose of determining stamp duty. It is therefore submitted that the market value should be determined on the basis of the land cost existing on the date of the instrument. The value of construction which may take place in future cannot, according to the Petitioner, be taken into account for calculating the stamp duty. It is submitted that the Authorities have wrongly calculated the share of the Petitioner by notionally dividing the land according to the profit-sharing ratio and thereafter multiplying such share by the new rate of purchase of flats. According to the learned Advocate, there is no basis for assuming that the same percentage of flats would be sold in the market as the share of the Petitioner. Such an assumption, according to the Petitioner, is only hypothetical and cannot form the basis for determining stamp duty.

**8.** The learned Advocate for the Petitioner submits that several factors which would affect the actual market value of the property have not been considered. According to the Petitioner, the Ready Reckoner is only a reference for arriving at a tentative market value of property in a particular area. It is only a guiding factor and cannot by determine the actual market value in every case. It is submitted that the property was landlocked and was the subject matter of a dispute. A suit and appeal concerning the property were pending at the relevant time. According to the learned Advocate, these circumstances had a direct bearing on the market value of the property, but they were not properly considered while determining the value.The learned Advocate for the Petitioner raises a question regarding the powers of the CAG. It is submitted that the powers of the CAG are limited by the Constitution in relation to the affairs of the Union and the States. According to the learned Advocate a question arises as to whether the CAG could examine the correctness or otherwise of an order passed by an authority constituted under the Maharashtra Stamp Act for determining the stamp duty. It is submitted that the CAG has no authority to determine or decide the correctness of the computation of stamp duty. According to the Petitioner, the determination of stamp duty is required to be made by the competent authority in accordance with the provisions of the Maharashtra Stamp Act.

**9.** The learned Advocate for the Petitioner submits that, as stated at Page No. 6, the Petitioner had already paid stamp duty of Rs.33,73,000/- and registration fees of Rs.30,000/-. It is submitted that, according to the Order dated 4 November 2015, at Page No. 176, the Authorities valued Survey No.10 at Rs.6,35,97,300/- and Survey No.26 at Rs.6,93,20,500/-. The total consideration was therefore taken at Rs.13,70,31,000/-. On that amount, stamp duty at 5% was calculated at Rs.68,51,550/-, leaving a balance stamp duty of Rs.34,78,550/- after giving credit for the amount already paid. It is submitted that, as recorded at Page No.178 under the heading “50:50%”, the Authorities subsequently calculated the total market value and consideration at Rs.15,51,41,600/-. On this amount, stamp duty at 5% was calculated at Rs.77,57,100/-. After giving credit for the stamp duty already paid, the balance amount was determined at Rs.43,84,100/-.

**10.** Per contra, Ms. Srivasatva, learned AGP appearing for the Respondents, submits that the instrument which is the subject matter of the present Petition is a Development Agreement concerning land admeasuring 9,592 sq. metres, bearing Survey Nos.10 and 26 at Kharadi, Pune. The Agreement was executed on 2 November 2012. Clause 5.1 of the Agreement provides for collective revenue sharing between the parties. According to the learned AGP, this clause was required to be taken into account while determining the stamp duty payable on the instrument. It is submitted that the Petitioner did not submit the instrument to the Collector of Stamps for adjudication of stamp duty. It is submitted that, when the instrument was presented for registration, the fourth Respondent valued the market value of the immovable property at Rs.6,74,55,100/-. On that basis, the Petitioner paid stamp duty of Rs.33,73,000/-. The learned Advocate for the Respondents submits that, during the normal inspection of registered instruments, the Audit General noticed that, in several cases including the case of the Petitioner, the stamp duty had been determined without taking into account the clause relating to revenue sharing. According to the Respondents, this resulted in short payment of stamp duty and corresponding loss to the public exchequer. Therefore, directions were issued to the concerned Authorities to take corrective steps and recover the amount found to be payable.

**11.** The learned Advocate for the Respondents submits that the Petitioner has argued that the gross sale proceeds could not be determined on the date of execution or registration of the

Development Agreement because the revenue sharing and the gross sale proceeds would depend upon the future market value of the property. It is submitted that the future market value could not be known on the date of registration. According to the Respondents, this argument is "totally misplaced and misconceived". It is submitted that stamp duty can be calculated on the basis of the consideration which would become receivable in future. According to the Respondents, for this purpose, the rates of flats prevailing on the date of execution of the instrument can be taken into account. It is submitted that there is no requirement to apply any deferment factor for reducing the future consideration to its present value. The learned Advocate for the Respondents submits that, according to the accepted principles of valuation, the present value of consideration which is to be received in future should ordinarily be determined by taking into account the average period of the project and applying the appropriate deferment factor. This factor is to be considered having regard to the interest rates prevailing at the relevant time. It is submitted that the Collector of Stamps, in the present case, applied a deferment factor of 0.85. On that basis, the Collector determined the present value of the consideration which the Petitioner was to receive in the form of its agreed percentage of revenue. The calculation was made by taking the rates of flats prevailing on the date on which the instrument was executed. According to the Respondents, the calculation was therefore not based upon the future rates of flats, which could in fact be higher.

**12.** The learned AGP placed reliance on 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*. According to the learned AGP, the said judgment supports the stand taken by the Respondents in the present matter.

**13.** The learned Advocate for the Petitioner distinguished the judgment in *Kolte Patil Developers Ltd.*. It is submitted that the facts of the said case are different from those of the present case. According to the learned Advocate, in *Kolte Patil Developers Ltd.*, the Petitioner was the developer of the property. In the present case the Petitioner is the owner of the land in question and is not the developer. It is therefore submitted that the ratio of the said judgment cannot be directly applied to the present case without considering this material difference in the nature and role of the parties.

**<u>Reasons and Analysis</u>:**

**14.** I have considered the Petition, the submissions of Ms.Parasnis, learned Advocate for the Petitioner, and the submissions of Ms. Srivasatva, learned AGP for the Respondents. I have considered the impugned orders, the Development Agreement dated 2 November 2012 and the judgment of this Court in *Kolte Patil Developers Ltd.* The relevant clauses of the Development Agreement are required to be considered. The matter has to be examined from the document as it is written and from the provisions of the Maharashtra Stamp Act, 1958.

**15.** At the first stage, it is necessary to find out the real nature of the document executed between the parties. The Petitioner says that it is the owner of the property and is not the developer. To this limited extent, the submission is correct because the Petitioner is the First Party and is the owner of the land. But merely because the Petitioner is the owner, it cannot be said that Article 5(g-a)(i) will not apply. The provision does not say that the person who presents the document must himself be the developer. It applies to an instrument "if 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 (in any manner whatsoever) of, any immovable property." Therefore, the question is whether under the document any such authority or power has been given to the developer.

**16.** On reading the Development Agreement as a whole, the position is reasonably clear. The document describes the Second Party as a "Promoter / Builder" having experience in development and marketing of immovable properties. It is stated that the parties wanted to develop the property by constructing multistoried buildings containing flats, units and commercial premises and by selling such premises. The document shows that the First Party was to attend to matters relating to title, whereas the Second Party was to undertake the construction and development work. The document does not stop with saying that the parties would cooperate at some future stage. Under the implementation clause, the parties agreed to develop the property and its full potential by construction of buildings and sale or alienation of flats, units and commercial premises to prospective purchasers. The Second Party was permitted to enter upon the property and to implement and construct the Project. This right was to continue during the Project and until its completion and sale. Thus, the document gives actual rights to the Second Party. The Second Party could enter upon the property, develop it, construct the buildings, market the Project and sell the units. It was required to take decisions relating to the Project, arrange funds, obtain permissions and approvals, construct the residential and commercial project and meet the development expenses from its own funds and from the amounts available under the agreed revenue arrangement. The other clauses show the extent of authority given to the Second Party. The Second Party was entitled to market the Project and was responsible for sale of the units. The First Party was required to execute a Power of Attorney in favour of the Second Party so that the Second Party and its nominees could carry out the acts connected with the development. The agreements for sale were to be executed through the Second Party, subject to the confirmation mechanism agreed between the parties. Therefore, only because the Petitioner is the owner and is not the developer, Article 5(g-a)(i) cannot be said to be inapplicable. The provision covers an instrument by which authority or power is given to a promoter or developer for construction, development, sale or transfer of immovable property. In the present case, the owner has given such authority to the Second Party. Therefore, the distinction made by the learned Advocate for the Petitioner does not take the document outside Article 5(g-a)(i).

**17.** The next question is regarding the consideration under the Development Agreement. Here, the document gives the answer. Clause 5.1 states that, "as consideration for jointly developing the said Property", the parties agreed to share the "Gross Sale Proceeds" received from sale of units and saleable or allotted areas. In respect of residential units, the First Party was to receive 45% and the Second Party 55%. In respect of commercial units, the share was 50% each. Clause 5.2 shows that this revenue sharing was intended to compensate the parties for their respective contribution and expenses. This clause is important for the present purpose. The parties have described the revenue sharing as consideration for the arrangement. Therefore, merely because no fixed amount was payable on the date of execution, it cannot be said that there was no consideration. The consideration was agreed in another form. It was linked with the Gross Sale Proceeds and was to become payable as the Project progressed, and the units were sold. The same arrangement can be seen from the financial clauses. The Gross Sale Proceeds are the amounts received from sale of units and other premises in the buildings to be constructed on the property, including the property component of the First Party. The parties agreed that these Gross Sale Proceeds would be deposited in the collection account. From that amount, the agreed 45% residential share and the agreed commercial share were to be paid to the First Party, while the remaining amount was to go to the Second Party. The monthly statement clause makes the position clear. The Second Party was required to maintain the account of the Gross Sale Proceeds and give the First Party statements showing the sales of flats, units and premises and the amounts received from purchasers. Thereafter, the agreed percentages were to be transferred to the respective accounts. Therefore, the revenue sharing cannot be treated as some uncertain or accidental term. It forms an important part of the financial arrangement between the parties.

**18.** I have considered that the parties have used the words that they were acting on a "Principal to Principal" basis and that they did not intend to create a partnership or Association of Persons. Clause 12.3 says that the agreement is not an agreement to share profits or losses. These clauses may have relevance if the question is whether the parties have created a partnership or joint venture. But that is not the question of which is required to be decided here. The question for stamp duty is whether development rights have been given and what consideration is recorded in the document for valuation. The description used by the parties cannot change the actual rights and obligations which are created by the document.

**19.** The Petitioner has submitted that under Article 47 the words "Joint Venture" were introduced only from 24 April 2015 and therefore an agreement executed in 2012 could not be considered under the provisions relating to a Joint Venture. This submission does not take the Petitioner's case because the impugned determination is based on Article 5(g-a)(i). That provision concerns an agreement giving authority or power to a promoter or developer for construction, development, sale or transfer of immovable property. Therefore, it was not necessary for the

Authority to treat the document as a partnership deed only because there was revenue sharing between the parties. The description given by the Authority to the transaction as a Joint Venture or revenue sharing arrangement cannot be treated as the foundation of the order. What is required to be seen is the substance of the Development Agreement. The document gives development rights to the Second Party. It places the responsibility of construction and sale upon the Second Party. It gives the First Party a specified percentage of the Gross Sale Proceeds. These terms are sufficient to consider the document under Article 5(g-a)(i).

**20.** The judgment in *Kolte Patil Developers Ltd.* is therefore relevant on the question of revenue sharing. In paragraph 12, the Court considered whether revenue sharing of gross sale proceeds between the owner and developer could be treated as consideration for determining market value. In paragraph 22, after considering the agreement as a whole, the Court held that monetary consideration can be in the form of revenue sharing and that such consideration can be deferred until the constructed units are sold. The learned Advocate for the Petitioner sought to distinguish *Kolte Patil* by pointing out that in that case the petitioner was the developer, whereas in the present case the Petitioner is the owner. This distinction is factually correct. But it does not change the principle laid down in that judgment. The principle does not depend upon whether the person challenging the stamp duty is the owner or the developer. Where development rights are given and the owner's return is agreed as a percentage of gross sale proceeds, such revenue sharing can constitute consideration under Section 2(na). In the present case, the owner is entitled to 45% of residential Gross Sale Proceeds and 50% of commercial Gross Sale Proceeds. Therefore, the different position of the Petitioner does not make the principle inapplicable.

**21.** There is another reason why this distinction cannot be accepted. In *Kolte Patil,* the Court considered an agreement under which development rights were given to the developer and the consideration was in the form of revenue sharing. Here, the First Party has given development rights to the Second Party. The Second Party is described as a "Promoter / Builder" and is given responsibility for development, construction, marketing and sale. Therefore, the important feature of both transactions is similar, though the party challenging the assessment in the present matter is the owner.

**22.** The Petitioner has argued that future Gross Sale Proceeds cannot be treated as present consideration because the price at which the flats may ultimately be sold is not known. This submission cannot be accepted. The decision in *Kolte Patil* has considered this question. In paragraph 23, the Court held that where consideration is by revenue sharing, it can be computed as on the date of execution by taking into account the available FSI and the ASR applicable to the land and constructed tenements. The reason for this is clear. Stamp duty has to be considered with reference to the date of the instrument. The Authority is not required to wait until the Project is completed, and actual flats are sold. What has to be seen is what consideration was agreed under the document and thereafter its value has to be determined according to the statutory provisions. The fact that the actual sale price in future may be uncertain does not remove the agreed percentage of sale proceeds from the document.

**23.** The Petitioner has pointed out that various things may change in the future Project. Construction may not be completed in the same manner. Market rates may change. The actual sale price of the units may be different. These submissions may have some factual basis because future events cannot be known exactly. But the law does not require the future to be known with exactness. The consideration has to be computed according to the statutory method as on the date of the instrument. In paragraph 25 of *Kolte Patil*, this Court has considered such future uncertainty and held that the consideration has to be computed as on the date of the instrument.

**24.** The Petitioner has submitted that such calculation would amount to taxing future profits. This submission cannot be accepted. The amount is not being taken as income tax or as tax on future profits. It is being considered only for determining the market value on which stamp duty is payable. Paragraph 26 of *Kolte Patil* deals with this submission and holds that computation of consideration for determining market value does not amount to taxing profits. The same reasoning applies in the present matter.

**25.** The argument regarding double stamp duty does not make the assessment invalid. The Development Agreement and the subsequent sale of a completed unit are separate instruments and concern different stages of the transaction. Merely because the subsequent sale may attract stamp duty, it does not mean that the development rights given under the earlier document become free from stamp duty. Paragraph 27 of *Kolte Patil* deals with this aspect and rejects such an argument.

**26.** The Petitioner has relied upon the Ready Reckoner value of the land, which according to the Petitioner was about Rs.6.74 crore, and has pointed out that stamp duty of Rs.33,73,000/- was already paid on that basis. There is no dispute regarding this payment. But that payment alone cannot conclude the matter when the consideration mentioned in the Development Agreement is required to be considered. Section 2(na), as considered in paragraph 15 of *Kolte Patil*, requires consideration of the price which the property would have fetched in the open market on the date of execution and the consideration stated in the instrument. The higher of the two is then required to be taken as the market value. Therefore, the submission that the Ready Reckoner is only a guiding factor is not incorrect. It is a reference for determining market value. But this does not mean that the consideration expressly agreed between the parties can be ignored. If the agreed consideration is higher, it has to be taken into consideration while determining the market value.

**27.** The Petitioner has relied upon the fact that the Development Agreement does not mention the exact residential and commercial construction area. This submission requires some consideration because valuation should have a proper basis and should not be based only on an assumed figure. But merely because the exact constructed area is not separately mentioned, the agreed percentage of revenue sharing does not disappear. The document provides for construction of flats, units and commercial premises. The First Party had agreed to make available additional F.A.R., to the extent permissible, and the Second Party was to use such additional F.A.R. in the development. Thus, the development potential of the land was part of the arrangement.

**28.** The more important question is whether the Authority, while making the calculation, adopted a reasonable basis for converting the revenue sharing into present valuation. The impugned order records the valuation at Rs.15,51,41,600/- after considering the land valuation and the applicable residential and commercial rates. The calculation is given in the impugned order. It is not based on an actual future sale price. It is based on the land area, ASR rates, available development potential and the percentages agreed under the Development Agreement. The Respondents have relied upon the deferment factor. Their case is that future consideration has to be brought to its present value and that the Collector applied a deferment factor of 0.85. This does not change the basic issue. The main question is whether revenue sharing can be treated as consideration. The answer is in the affirmative. Once this is decided, the exact mathematical application of the deferment factor is mainly a question of valuation method.

**29.** On the material before me, I do not find that the valuation method adopted by the Authority is so arbitrary that it has no connection with the Development Agreement. The Authority has proceeded on the percentages agreed between the parties and on the rates applicable to the land and proposed use. The available development potential has been considered. Therefore, the figure cannot be said to be an imaginary figure having no relation to the document.

**30.** The Petitioner has pointed out that the property was landlocked and was involved in litigation. These matters may, in an appropriate case, have some effect upon the actual market value. But from the material presently available, it cannot be said that the valuation becomes invalid merely because these factors were not separately calculated. The Development Agreement describes the property as being in possession of the First Party and proceeds on the basis that development rights could be exercised. The First Party gave various assurances regarding title and development rights to the Second Party. Therefore, the material on record does not show that the property had no effective development potential.

**31.** The submission regarding the powers of the Accountant General or CAG does not provide a ground for setting aside the impugned order. An audit objection by does not determine the stamp duty payable. The final determination was made by the competent stamp authority. The objection of the Accountant General only brought the alleged short payment to the notice of the concerned department. Thereafter, the Collector of Stamps considered the document, the valuation and the applicable provision and passed the order. Therefore, even if it is assumed that the Accountant General could not himself determine the stamp duty, that does not take away the jurisdiction of the

Collector to examine the matter and determine the stamp duty.

**32.** The Petitioner has submitted that Respondent Nos. 2 and 3 have not given sufficient reasons for treating the document as falling under Article 5(g-a). This submission has to be considered from the impugned order. The order refers to the Development Agreement, the nature of the transaction, the development rights, the revenue sharing clause and the valuation made by the Assistant Town Planner. It records that the arrangement involves Joint Venture or revenue sharing and thereafter applies Article 5(g-a)(i). Therefore, in my view, the order contains the basic reasons from which it can be understood why Article 5(g-a)(i) was applied.

**33.** Merely because the Authority has used the expression "Joint Venture", the order does not become defective. Even according to the Petitioner's own case, the parties were not creating a partnership in the technical sense. Clauses 3.1 and 3.2 state that the parties were working on a principal to principal basis and did not intend to create a partnership or association of persons. Therefore, the proper way is to see the actual rights and obligations under the document and not to decide the stamp duty only from the name or label given to the transaction.

**34.** There is one aspect on which a clear finding is necessary. The Development Agreement does not merely say that the parties may share some profit if the Project succeeds. Clause 5.1 states that the Gross Sale Proceeds are shared "as consideration". The Second Party is separately required to provide the entire capital and efforts necessary for implementing the Project at its own cost and responsibility. The First Party contributes the land and title. The Second Party contributes capital, development experience, construction and marketing. Therefore, the agreed percentages of revenue are the agreed return for their respective contributions. The revenue sharing is an important part of the consideration.

**35.** It cannot be ignored that the Second Party was given the necessary control for developing and selling the Project. It was responsible for marketing, sales, construction and obtaining approvals. The First Party was required to execute a Power of Attorney so that these activities could be carried out. These provisions clearly show that authority was given to the developer for development and sale of the immovable property.

**36.** The principle laid down in *Kolte Patil* is not defeated by the wording of the present Development Agreement. Some clauses of the present agreement make the nature of the arrangement clear. The Second Party is described as a "Promoter / Builder". It has to bear the construction expenditure. It is responsible for marketing and sales. The Gross Sale Proceeds are to be collected and divided in fixed percentages. The First Party is to receive its agreed share as consideration for its land contribution and rights. The Petitioner's argument that only the existing land value could be considered and that future construction could not be taken into account therefore cannot be accepted. The reason is that the agreed consideration is connected with the sale of the units which are to be constructed. The valuation cannot be completely separated from the source from which that consideration is to come. Paragraph 23 of *Kolte Patil* recognises this position and holds that available FSI and ASR of land and constructed tenements can be considered for computing such deferred revenue sharing.

**37.** I find that the Petitioner's reliance on the later amendment or later valuation guidelines does not change the result. The stamp liability comes from the Maharashtra Stamp Act. If detailed guidelines regarding revenue sharing were introduced later, that by does not mean that consideration clearly mentioned in an earlier instrument ceases to be consideration. Paragraph 24 of *Kolte Patil* considered the absence of a detailed revenue sharing guideline and held that the statutory definition of market value continues to apply.

**38.** The principle that a taxing statute has to be strictly construed does not take the Petitioner. In paragraph 28 of *Kolte Patil*, while referring to *Shanti Bhushan*, this Court has recorded that the Stamp Act is a taxing statute and has to be understood according to the natural meaning of the words used in it. Nothing can be added to the language of the statute. But in the present case, the words of Article 5(g-a)(i) are clear. The document gives authority to a developer for construction, development and sale of immovable property. Therefore, the provision applies on its plain meaning.

**39.** The reliance upon the decision in *Prabha Laxman Ghate* does not help the Petitioner. Kolte Patil, in paragraph 31, has already distinguished that decision because it was decided before Article 5(g-a) was introduced in Schedule I. Therefore, the position applicable after insertion of Article 5(g-a) has to be considered in the present matter.

**40.** On considering the entire matter, I find that the Petitioner's challenge has some substance only to the extent that the Petitioner is the owner and not the developer and that the Development Agreement contains clauses saying that the parties are acting independently and are not partners. But these facts do not change the real nature of the transaction for stamp duty. The owner has given development authority to the developer. The developer has undertaken construction, development and sale. The owner's consideration is an agreed percentage of the Gross Sale Proceeds.

**41.** The final conclusion therefore follows from the Development Agreement. Article 5(g-a)(i) applies because the instrument relates to giving authority or power to a promoter or developer for construction on, development of and sale or transfer of immovable property. The consideration is not confined to the refundable security deposit of Rs.4.20 crore. The security deposit is described as refundable, whereas the revenue sharing is stated to be consideration. Therefore, the Development Agreement contains deferred consideration in the form of the agreed share of Gross Sale Proceeds. The stamp authority was entitled to take this consideration into account while determining the market value.

**42.** The Petitioner cannot succeed merely because the final sale price was not known on 2 November 2012. The statute requires the market value to be determined as on the date of the instrument. Therefore, the Authority was required to compute the consideration as on that date by considering the development potential and applicable rates. This is the approach approved in paragraph 32 of *Kolte Patil*, where the Court held that the owner's share of Gross Sale Proceeds is consideration and that it is to be computed on the date of execution by considering the available FSI and ASR. At the same time, the finding and the exact mathematical calculation have to be kept separately. The power to determine market value does not permit the Authority to take any figure without proper basis. In the present case the impugned order shows the land areas, applicable rates, residential and commercial components and the resulting valuation. The figure of Rs.15,51,41,600/- therefore has a visible basis in the valuation exercise. There is no sufficient material before me to hold that this figure is arbitrary or has no support from the record.

**43.** Therefore, the demand of deficit stamp duty cannot be interfered with merely because the Petitioner wants the valuation to be made only on the land component. The determination made by the Authority is based on a permissible approach and is consistent with the principle laid down by this Court in *Kolte Patil Developers Ltd.*, particularly paragraphs 22 to 25 and paragraph 32. The fact that the Petitioner is the landowner does not make that principle inapplicable.

**44.** I therefore hold that the Development Agreement dated 2 November 2012 was correctly treated as an instrument falling under Article 5(g-a)(i) of Schedule I to the Maharashtra Stamp Act, 1958. The revenue sharing arrangement constitutes consideration for the development rights given under the document. For determining the market value, the agreed share of the Gross Sale Proceeds could be computed as on the date of execution by considering the development potential, applicable ASR and the rates of the constructed tenements. The Respondent Authorities were therefore justified in taking the higher valuation resulting from such consideration. The finding of deficit stamps duty of Rs.43,84,100/- therefore does not require interference.

**45.** For these reasons, the challenge to the orders dated 4 November 2015 and 26 August 2019 fails. The Petition is dismissed. The interim relief, if any, stands vacated. The Respondents shall be entitled to recover the deficit stamp duty of Rs.43,84,100/- together with such statutory penalty or other amount as may be payable under the Maharashtra Stamp Act, 1958.

**46.** 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 4 November 2015 passed by Respondent No.1 in Case No. JK/SJL/PS/MLP/S-9/PR /No.08_13/ Instrument No.3986_13/1784/2016 and the impugned Order dated 26 August 2019 passed by Respondent No.2 in Appeal No.42 of 2018 are upheld.

**iii.** Rule is discharged.

**iv.** There shall be no order as to costs.

**(AMIT BORKAR, J.)**