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

WRIT PETITION NO.7229 OF 2018

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Thakkar Investment & Finance Company

... Petitioner

Vs.

**1. Chief Controller (Revenue Authority
and Inspector General of Registration
and Collector of Stamp**

**2. The Deputy Inspector General of
Registration and Deputy Controller
of Stamp**

**3. The Deputy Registrar-1,
Collector of Stamps, Pune Rural, Pune**

**4. The Sub-Registrar, Class-I,
Lonawala**

... Respondents

Mr. Prasad Dani, Senior Advocate i/by Mr. Prasad B. Kulkarni with Ms. Aastha Dadhich for the Petitioner.

Mr. Y.S. Khochare, 'B' Panel Advocate for Respondent Nos.1 to 4.

CORAM : AMIT BORKAR, J.

RESERVED ON : OCTOBER 26, 2026.

PRONOUNCED ON : OCTOBER 28, 2026

JUDGMENT:

1. Rule. Rule is made returnable forthwith.

2. The Petitioner has filed this Writ Petition challenging the order dated 20 September 2017 passed by Respondent No. 2 and

the demand notice dated 12 October 2017 issued by the Sub-Registrar and Collector of Stamps, Pune Rural, Pune. By the said notice, the Petitioner was asked to pay additional stamp duty and penalty in respect of the Deed of Conveyance executed on 16 January 2012.

3. The Petitioner is a partnership firm carrying on business of investment and finance. Hermes Mirage Co-operative Housing Society Limited (hereinafter referred to as “the Society”) agreed to sell its lands situated at Village Katvi, Taluka Maval, District Pune, bearing Survey Nos. 174, 176, 177 and 178, to the Petitioner. For this purpose, an Agreement for Sale was executed between the parties on 9 July 1998. The said agreement was registered and it contained the terms about the price of the lands and giving possession of the lands to the Petitioner. In the year 2010, the Petitioner came to know that the Respondent Authorities had taken the Agreement for Sale in their custody under Section 33 of the Maharashtra Stamp Act, 1958, for examining the stamp duty payable on it. Thereafter, the Petitioner approached the Collector of Stamps, Pune Rural, Pune, and paid the deficit stamp duty of Rs. 80,150/- through Stamp Challan No. 867. The Petitioner paid penalty of Rs. 1,60,300/- through Stamp Challan No. 868 on 24 October 2011. These amounts were paid after the concerned authority had taken up the question of proper stamp duty payable on the Agreement for Sale. Thereafter, on 16 January 2012, the Petitioner and the Society executed a Deed of Conveyance in respect of the same lands. The said deed was registered in the office of the Sub-Registrar, Lonavala, at Serial No. 215 of 2012. It

referred to the earlier Agreement for Sale dated 9 July 1998. It was stated in the deed that the Collector of Stamps, Pune, had decided the stamp duty payable on the earlier agreement and that the Petitioner had paid the duty and penalty. The subsequent Deed of Conveyance was registered on payment of stamp duty of Rs. 100/-.

4. The dispute started when the audit team from the office of the Chief Controller of Revenue Authority and Inspector General of Registration and Controller of Stamps, Maharashtra State, Pune, checked the records of the office of the Joint District Registrar, Class-I and Collector of Stamps, Pune Rural, Pune. During this checking, the audit team raised objections regarding the calculation of stamp duty on the Agreement for Sale and the subsequent Deed of Conveyance. According to the Respondents, the stamp paper of Rs. 50/- dated 13 February 1998, on which the Agreement for Sale was executed on 9 July 1998, was not purchased in the name of any party to the agreement. The audit team considered this to be against Section 34 of the Maharashtra Stamp Act, 1958. The audit team raised objection to applying Section 4 of the Act and to adjusting the stamp duty paid on the Agreement for Sale against the stamp duty payable on the later Deed of Conveyance. The audit team took the view that the market value of the property had to be calculated according to the Annual Statement of Rates for the year 2011. On this basis, the deficit stamp duty was calculated at Rs. 9,27,490/-. Accordingly, the Collector of Stamps, Pune Rural, Pune, issued a demand notice dated 14 March 2016, asking the Petitioner to pay the said amount

along with penalty within 30 days from receipt of the notice. The Petitioner did not pay the amount demanded under the notice dated 14 March 2016. Thereafter, proceedings took place before the concerned Authorities and Respondent No. 3 passed an order dated 13 April 2017. The Petitioner challenged this order by filing Appeal No. 25 of 2017. However, by order dated 20 September 2017, the Appeal was dismissed and the earlier order was confirmed.

5. In the meantime, Respondent No. 2, namely, the Inspector General of Registration and Deputy Controller of Stamps, Pune Region, Pune, started revision proceedings on his own under Section 53A of the Maharashtra Stamp Act regarding the earlier decision about stamp duty. The Petitioner filed written submissions in those proceedings on 26 September 2017. The matter was kept for orders on 10 October 2017. According to the Petitioner, no final order was passed in those proceedings. However, on 12 October 2017, Respondent No. 3 issued the demand notice which is challenged in this Petition, stating that the Petitioner's Appeal had been dismissed and the amount demanded was still payable.

6. Mr. Dani, learned Senior Advocate appearing for the Petitioner, submitted that the Respondent Authorities had not properly considered the legal effect of the Agreement for Sale dated 9 July 1998. He pointed out that the agreement stated that possession of the lands had been given to the Petitioner. Therefore, under Explanation I to Article 25 of Schedule I to the Maharashtra Stamp Act, the agreement had to be treated as a conveyance for the purpose of stamp duty. He submitted that before the final Deed

of Conveyance was executed, the Petitioner had paid the stamp duty determined by the competent authority along with the penalty.

7. Learned Senior Advocate submitted that once the Agreement for Sale was treated as a deemed conveyance and the required stamp duty was paid on it, the later Deed of Conveyance could not again be treated as a fresh principal instrument for charging stamp duty on the market value prevailing in 2011 or 2012. According to him, the later deed was executed only for completing the same transaction. There was no change in the consideration, the property or the main terms agreed between the parties.

8. Learned Senior Advocate relied upon Section 4 of the Maharashtra Stamp Act and the Second Proviso to Explanation I of Article 25. He submitted that these provisions show that when an Agreement for Sale containing a statement about possession has been treated as a conveyance and the required stamp duty has been paid, the amount paid has to be adjusted when the final conveyance is executed. Therefore, according to him, the later deed was chargeable only with nominal stamp duty of Rs. 100/- under the law applicable to the case.

9. Learned Senior Advocate relied upon the judgment of this Court in *Thakkar Investment and Finance Company Vs Chief Controller (Revenue Authority)* in Writ petition No. 12316 of 2018 dated 15 June 2026. According to him, this judgment supports the Petitioner's case that Section 4 applies where an Agreement for Sale, treated as a deemed conveyance, is followed by a later

conveyance which forms part of the same transaction.

10. On the other hand, Mr. Khochare, learned Advocate appearing for the State, supported the orders passed by the Respondent Authorities. He submitted that the audit team had rightly objected to the stamp paper dated 13 February 1998 because it was not purchased in the name of any party to the Agreement for Sale. He submitted that the market value of the property had to be calculated according to the Annual Statement of Rates applicable when the later Deed of Conveyance was executed. According to him, the benefit of Section 4 had wrongly been given on the basis of an unregistered document. He, therefore, submitted that the demand for deficit stamp duty was proper and justified.

11. After considering the submissions made by both sides and the documents placed on record, the main question which arises for consideration is whether the later Deed of Conveyance executed on 16 January 2012 could be treated as a separate principal instrument for charging stamp duty on the market value prevailing at that time, even though the earlier Agreement for Sale had been treated as a deemed conveyance and stamp duty and penalty had been paid on it. To decide this question, it is necessary to consider the relevant provisions of the Maharashtra Stamp Act, 1958. Section 2(i) provides that the words “executed” and “execution”, when used in relation to an instrument, mean “signed” and “signature”. Section 17 deals with the time within which instruments executed in the State are required to be stamped. Section 4 deals with cases where more than one

instrument is used for completing one transaction of sale, mortgage or settlement.

12. Section 4(1), as it stood when the Deed of Conveyance was executed in January 2012, provided that where several instruments were used for completing one transaction of sale, stamp duty prescribed for a conveyance would be charged only on the principal instrument. The other instruments would each be charged stamp duty of Rs. 100/- instead of the duty otherwise prescribed under Schedule I. Section 4(2) allowed the parties to decide which instrument would be treated as the principal instrument. If the parties did not make such a decision, Section 4(3) permitted the concerned officer to decide which instrument should be treated as the principal instrument.

13. Article 25 of Schedule I deals with the stamp duty payable on conveyances. Explanation I to Article 25 contains a special provision for an Agreement for Sale of immovable property where possession is transferred or agreed to be transferred to the purchaser. The relevant part reads as follows:

“Explanation I. - For the purposes of this article, where in the case of agreement to sell an immovable property, the possession of any immovable property is transferred [or agreed to be transferred] to the purchaser before the execution, or at the time of execution, or after the execution of, such agreement then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly.”

14. The Second Proviso to Explanation I provides:

“Provided that, where subsequently a conveyance is executed

in pursuance of such agreement of sale, the stamp duty, if any, paid and recovered on the agreement of sale which is deemed to be a conveyance, shall be adjusted towards the total duty leviable on the conveyance.”

15. These two provisions have to be read together. The first provision treats an Agreement for Sale as a conveyance for stamp duty when it contains the required condition about possession. The Second Proviso says that when the final conveyance is later executed, the stamp duty paid on such agreement has to be adjusted towards the total duty payable on the conveyance.

16. In the present case, the Agreement for Sale dated 9 July 1998 does not only say that the parties intended to sell the property at a later stage. It contains a clear statement about delivery of possession. The Agreement for Sale paragraph 4 records:

“On execution hereof, the Vendor has handed over vacant and peaceful possession of the said Lands to the Purchaser as and by way of part performance of this Contract for Sale.”

17. The later Deed of Conveyance confirms that possession was delivered under the earlier agreement. It records that the Vendor had given vacant and peaceful possession of the lands to the Purchaser when the Agreement for Sale dated 9 July 1998 was executed. It confirms possession in favour of the Purchaser.

18. These statements in both documents are important for deciding the issue. They show that delivery of possession was connected with the Agreement for Sale. The agreement does not say that possession would be given only when the final Deed of

Conveyance was executed. On the contrary, it records that the Vendor had handed over possession to the Purchaser as part performance of the contract. Therefore, the Agreement for Sale comes within Explanation I to Article 25 and was required to be treated as a deemed conveyance for the purpose of stamp duty.

19. The legal position that an Agreement for Sale containing a provision regarding delivery of possession may attract stamp duty as a conveyance is supported by the judgment of the Supreme Court in *Veena Hasmukh Jain v. State of Maharashtra*, (1999) 5 SCC 725. The Supreme Court explained that the law may require stamp duty to be paid at the agreement stage when the agreement provides for delivery of possession, even if a formal conveyance is executed later. The Supreme Court again considered this principle in *Ramesh Mishrimal Jain v. Avinash Vishwanath Patne*, 2025 INSC 213. In each case, the actual terms of the agreement and the provision regarding transfer of possession have to be examined. In the present case, the specific statement about delivery of possession satisfies this requirement.

20. The next question is whether the Petitioner paid the proper stamp duty on the Agreement for Sale before the final Deed of Conveyance was executed. The record shows that the agreement was impounded by the Respondent Authorities. Thereafter, on 24 October 2011, the Petitioner paid deficit stamp duty of Rs. 80,150/- and penalty of Rs. 1,60,300/-. The Deed of Conveyance dated 16 January 2012 records that the Collector of Stamps, Pune, had decided the stamp duty payable on the Agreement for Sale and that the Petitioner had paid the duty and penalty determined

by the authority.

21. One fact needs to be made clear. The stamp duty was not paid in 1998 when the Agreement for Sale was executed. It was paid later, after the agreement was impounded and the competent authority decided the amount payable. However, this payment was made before the final Deed of Conveyance was executed in January 2012. The important point is that the competent authority had examined the stamp duty payable on the Agreement for Sale, the Petitioner paid the amount demanded along with penalty, and an endorsement was made on the instrument recording such payment.

22. The Respondents have separately objected that the stamp paper of Rs. 50/- dated 13 February 1998 was not purchased in the name of one of the parties to the Agreement for Sale. The provision regarding the name in which impressed stamp paper is purchased is Section 34 of the Maharashtra Stamp Act. The reference made by the Respondents to Article 34 in their submissions appears to relate to this requirement under Section 34.

23. The objection raised by the audit team has to be considered, even though the Petitioner had paid stamp duty and penalty. Section 34 deals with the requirement that an instrument must be properly stamped before it can be acted upon, registered or authenticated. However, the Act provides a procedure for dealing with an instrument which is not properly stamped. Under Section 41, when the duty and penalty, if any, have been paid under

Section 34, Section 39 or Section 40, the instrument is required to carry an endorsement recording the payment. Section 41(2) provides that, subject to Section 53A, an instrument bearing such endorsement may be registered and acted upon as if it had been duly stamped.

24. In the present case, the Agreement for Sale was impounded and the amount decided by the Collector was paid by the Petitioner. The record contains the Collector's endorsement regarding payment of duty and penalty. Therefore, the Petitioner is not relying only upon its own statement that the earlier agreement was properly stamped. The payment was made through challans and the instrument was dealt with by the competent authority according to the procedure provided under the Act.

25. The Respondents have relied upon the audit objection regarding the stamp paper. However, an audit objection cannot cancel the endorsement made by the Collector after receiving the duty and penalty. If the Respondents considered that the earlier decision was incorrect or that the endorsement required reconsideration, they had to follow the procedure provided under the Act. Revision proceedings under Section 53A were, in fact, pending before Respondent No. 2. However, as on 12 October 2017, no final order setting aside the earlier endorsement or decision had been passed in those proceedings. The revision has to be decided according to law. Merely because the revision was pending, it could not be assumed that the earlier order and endorsement had been cancelled.

26. The Respondents have submitted that the subsequent conveyance was executed on the basis of an unregistered document. This submission is not supported by the material available on record. The Agreement for Sale dated 9 July 1998 bears registration endorsements. The Deed of Conveyance refers to the earlier agreement, records that it was examined for stamp duty and acknowledges payment of the duty and penalty determined on it. These documents support the Petitioner's case that the earlier agreement was registered and was treated as a deemed conveyance for the purpose of stamp duty.

27. The Respondents have submitted that the market value of the property had to be decided with reference to the Annual Statement of Rates for the year 2011. It is true that where a sale deed is the principal instrument chargeable as a conveyance, the market value at the relevant time may be important for calculating stamp duty. However, this principle alone does not decide the present dispute. The question is whether the final Deed of Conveyance was the principal instrument for stamp duty purposes or whether it was executed only for completing a transaction covered by an Agreement for Sale which had been treated as a deemed conveyance and properly stamped.

28. Section 4 was in force when the final Deed of Conveyance was executed in January 2012. Under this provision, where several instruments were used to complete the same transaction of sale, the principal instrument alone was chargeable with the duty prescribed for a conveyance. Every other instrument was chargeable with duty of Rs. 100/-. Therefore, the application of

Section 4 does not depend only upon the later insertion of the Third Proviso to Explanation I of Article 25 in 2013. The present dispute can be decided by applying Section 4 as it stood in January 2012, read with Explanation I and the Second Proviso to Article 25. The Third Proviso inserted in 2013 provides that where proper stamp duty has been paid on a registered Agreement for Sale, treating it as a deemed conveyance, and a later Deed of Conveyance is executed without any change, the later deed is to be treated as another instrument under Section 4 and charged with duty of Rs. 100/-. Since the final Deed of Conveyance in the present case was executed in January 2012, the decision does not depend upon applying that later provision retrospectively. The question is whether the transaction satisfied Section 4 as it stood on the date of execution. On the facts of the present case, it did. The later provision shows that the law recognises a difference between the principal instrument and a later conveyance which only completes the earlier transaction.

29. The nature of the transaction has to be seen from the documents themselves. The Agreement for Sale dated 9 July 1998 and the Deed of Conveyance dated 16 January 2012 relate to the same lands. The consideration mentioned in the earlier agreement is Rs. 11,19,877/-. The later deed refers to the same agreement and records that it was executed to complete the earlier transaction. The material placed before this Court does not show that the parties changed the agreed consideration, substituted the property or made any other change in the main terms of the transaction when the final deed was executed.

30. The fact that the final deed was executed in 2012, several years after the Agreement for Sale, does not mean that a new sale transaction came into existence. The real question is whether the later document changed the earlier transaction or only completed the conveyance of the property according to the original agreement. On the material available, the later deed was executed in furtherance of the same agreement. No change in the main terms of the transaction has been shown.

31. The Respondents' case is based on the increase in the market value of the property by the time the final deed was registered. Such increase could have been relevant if the final Deed of Conveyance was the principal instrument attracting stamp duty on the market value prevailing in 2012. However, the Respondents could not reach this conclusion without first considering the effect of the earlier Agreement for Sale, the clause regarding possession, the stamp duty and penalty paid on it and the provisions of Section 4.

32. Once the Agreement for Sale is treated as a deemed conveyance and the competent authority has accepted the stamp duty and penalty determined on it, the later conveyance cannot be treated as a fresh principal instrument only because the market value of the property has increased. Such an approach would not give proper effect to Section 4. It would ignore the legal treatment given to the earlier agreement under Article 25.

33. The audit team may have raised a question by bringing to the notice of the authorities the issue about the stamp paper being

purchased in the name of a party and whether the proper stamp duty had been paid. However, the audit objection alone could not decide that the final conveyance must be charged as a new principal conveyance. The legal effect of the earlier agreement had to be examined under the Act. The endorsement recording payment of stamp duty and the revision proceedings pending under Section 53A were relevant to this examination. Both these aspects had to be considered.

34. The Petitioner has relied upon the fact that the revision proceedings under Section 53A were kept for orders on 10 October 2017, whereas the impugned demand notice was issued on 12 October 2017. Merely because revision proceedings were pending, every other action of the stamp authorities would not become invalid. However, in the present case, the demand notice proceeds on the ground that the Petitioner was liable to pay additional stamp duty because its Appeal had been dismissed. The notice does not show that the earlier endorsement had been set aside in the revision proceedings. Therefore, the pending revision could not be treated as if a decision had been passed against the Petitioner.

35. After considering the submissions made by both sides, the relevant provisions of the Act and the documents placed on record, I find that the Agreement for Sale dated 9 July 1998 contained a clear statement regarding delivery of possession. Therefore, it was required to be treated as a deemed conveyance under Explanation I to Article 25. The Petitioner thereafter paid the deficit stamp duty and penalty decided by the competent authority. The later Deed of Conveyance dated 16 January 2012 was executed to complete the

same transaction. The record does not show any change in the main terms of the earlier agreement which would justify treating the final deed as a fresh principal instrument.

36. I am, therefore, unable to accept the submission of the Respondents that the market value prevailing at the time of registration of the final deed justified a fresh demand for additional stamp duty. The authorities were required to apply Section 4, as it stood on the date when the final deed was executed, along with the relevant provisions of Article 25. On the facts of this case, the demand raised by treating the later conveyance as an independent instrument chargeable on the market value prevailing in 2011 or 2012 cannot be sustained.

37. For the reasons stated above, the orders dated 8 June 2017 and 20 September 2017 are set aside to the extent that they uphold the demand additional stamp duty on the later Deed of Conveyance by treating it as a fresh principal instrument on the basis of the market value prevailing at the time of registration. The demand notice dated 12 October 2017 is also quashed and set aside.

38. Rule is made absolute in the above terms. The Writ Petition is disposed of accordingly.

(AMIT BORKAR, J.)