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

**WRIT PETITION NO.1856 OF 2017**

**Kalpataru Properties Private Limited** … **Petitioner**

**Vs.**

1. **The State of Maharashtra**
2. **Chief Controlling Revenue Authority and Inspector General of Registration and Collector of Stamps**
3. **The Collector Stamps, Mumbai** … **Respondents**



Mr. Mayur Khandeparkar with Mr. Sarthak Utangale, and Mr. Dinesh Parmar i/by M/s. Utangale & Co., for the Petitioner.

Smt. Mamta S. Shrivastava, AGP for Respondent Nos.1 to 3.

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| **CORAM** | **: AMIT BORKAR, J.** |
| **RESERVED ON** | **: AUGUST 17, 2026.** |
| **PRONOUNCED ON** | **: AUGUST 19, 2026** |

**JUDGMENT:**

**1.** By the present writ petition filed under Articles 226 and 227 of the Constitution of India, the Petitioner has challenged the legality, validity, and propriety of the impugned order dated 18 June 2016 passed by Respondent No.2.

**2.** The facts and circumstances leading to the filing of the present writ petition, as stated by the Petitioner, are as follows. On 16 January 2004, a Development Agreement was entered into between Precious Finance and Investment Private Limited, being the Owner, and Kalpataru Construction Overseas Private Limited, referred to as Kalpataru or the Developer. Under the said Development Agreement, the Developer was granted exclusive rights, authority and powers to develop or redevelop the property admeasuring about 1075.35 sq. mts., bearing Cadastral Survey Nos. 3/590 and 4/590 of Malabar and Cumballa Hill Division, Mumbai City, situated at 24-24A, L. Jagmohandas Marg, Mumbai 400036, hereinafter referred to as the said Property. The agreed consideration was Rs.10,31,00,000/-, and the Development Agreement contained a covenant for ultimate transfer of the said Property in favour of the Developer or its nominees. The Owner executed a Power of Attorney in favour of the Developer. Before execution of the Development Agreement, Kalpataru had filed an Application for Adjudication under Section 31 of the Bombay Stamp Act, 1958, being Adjudication Case No. ADJ/360/2003, before the Collector of Stamps, Mumbai. By the said application, Kalpataru had sought determination of the proper stamp duty payable on the Development Agreement.

**3.** According to the determination made by the Office of the Collector of Stamps, Mumbai, and the Demand Notice issued in the said Adjudication Case, Kalpataru paid stamp duty of Rs.10,31,000/- at the rate of 1% under the then prevailing Article 5(g-a) of Schedule I to the Stamp Act. The amount was paid on 1

January 2004 by Challan No.155455. An endorsement dated 3 January 2004 to that effect was made by the Collector of Stamps., on 4 February 2004, the Development Agreement was presented before the Office of the Joint Sub-Registrar of Assurances, Mumbai City No.1 for admission of execution and was duly registered under Serial No. BBE-1-00856/2004., the name of Kalpataru Overseas Private Limited was changed to Kalpataru Properties Private Limited. In May 2007, Kalpataru and the Owner proposed to execute a Conveyance Deed in respect of the said Property. For determining the proper stamp duty payable on the proposed Conveyance Deed, they filed an application being Adjudication Case No. ADJ/816/M/2007 before the Collector of Stamps, Mumbai. On 16 May 2007, on the basis of the market value of Rs.10,31,00,000/- of the said Property as stated in the proposed Conveyance Deed, which according to the Petitioner was the value determined at the time of entering into the Development Agreement, the Collector of Stamps issued a Demand Notice in Adjudication Case No.816/M/2007. By the said Demand Notice, Kalpataru was called upon to deposit Rs.51,55,000/- as proper stamp duty, calculated at the rate of 5% under Article 25(b) of Schedule I to the Stamp Act.

**4.** On 18 May 2007, the Developer deposited Rs.51,55,000/- towards payment of stamp duty by Challan No.6, and an endorsement of the same date was made by the Collector of Stamps on the Conveyance Deed. On 11 June 2007, Kalpataru and the Owner executed the Deed of Conveyance, by which the said Property was conveyed for a total consideration of

Rs.10,31,00,000/-. The Conveyance Deed was duly registered with the Sub-Registrar of Assurances, Mumbai City No.1 under Serial No.6461 of 2007.

**5.** In the year 2007, the accounts of the Collector of Stamps were inspected by the Audit Team of the Accountant General (II), Nagpur. During the said inspection, an audit objection was raised regarding what was considered to be an incorrect determination of stamp duty payable on the Conveyance Deed. An Audit Report was accordingly prepared. The relevant observations recorded therein were that, as per Recital V of the Conveyance Deed, the Owner had granted development rights to Kalpataru under the Development Agreement together with a covenant for transfer of the said Property in its favour. It was noted that the Owner had simultaneously executed a Power of Attorney authorizing Kalpataru to execute the deed of transfer of the said Property in its own favour. The Audit Report referred to Recital No.(vii), according to which Kalpataru was put in possession of the said Property after execution of the Development Agreement. It referred to Recital D(i), which recorded that Kalpataru had paid the Owner the entire agreed lump-sum consideration of Rs.10,31,00,000/- in full and consideration for transfer of the said Property. Recital D(ii) was understood by the Audit Team as stating that the transaction had, in every respect, already stood completed under the Development Agreement dated 16 January 2004, and that the subsequent Conveyance Deed was executed only for confirming the nominal title of the Owner at the request of Kalpataru. On this basis, the Audit Team took the view that the

Conveyance Deed was merely a confirmation of a conveyance which had already taken place on 16 January 2004. According to the Audit objection, stamp duty at the rate of 10%, being the rate prevailing in 2004, was payable on the consideration of Rs.10,31,00,000/-, which came to Rs.1,03,10,000/-. Since Rs.10,31,000/- had been paid on the Development Agreement and Rs.51,55,000/- had been paid on the Conveyance Deed, the Audit Report concluded that there was a short levy of stamp duty of Rs.41,24,000/-. The calculation recorded in the Audit Report was as follows. Consideration was Rs.10,31,00,000/-. Stamp duty at 10%, according to the rate prevailing in 2004, was Rs.1,03,10,000/-. Stamp duty paid on the Development Agreement was Rs.10,31,000/- and stamp duty paid on the Conveyance Deed was Rs.51,55,000/-. According to the Audit objection, the resulting short levy was therefore Rs.41,24,000/-.

**6.** On 1 July 2011, the Inspector General of Registration and Controller of Stamps, Maharashtra, referred to hereinafter as the said Authority, issued a notice to Kalpataru under Section 53A of the Stamp Act regarding alleged short payment of stamp duty on the Conveyance Deed, which had earlier been adjudicated in Adjudication Case No. ADJ/M/816/2007. The notice stated that stamp duty of Rs.41,24,000/- was short paid on the Conveyance Deed. Kalpataru was accordingly called upon either to deposit the said amount or to appear before the said Authority with necessary documents on 18 July 2011 for hearing on the said issue. On 14 July 2011, Kalpataru submitted an interim reply to the notice dated 1 July 2011. It was stated that Adjudication Case

No.816/2007 related to the Conveyance Deed, whereas the nature of the document referred to in the notice was described as "Agreement or its Records or Memorandum of an Agreement". Kalpataru stated that it had already paid Rs.51,55,000/- as proper stamp duty on the Conveyance Deed, in accordance with the adjudication made by the Collector of Stamps, Mumbai in the Demand Notice dated 16 May 2007. It was pointed out that, under the heading 'Required Stamp Duty', the notice mentioned Rs.1,03,10,000/- as the stamp duty payable on the Conveyance Deed, but did not disclose any reason or basis for arriving at that amount. On 28 July 2011, Kalpataru submitted a detailed reply to the said Authority in response to the notice dated 1 July 2011. Kalpataru stated that, under the Development Agreement, the Owner had granted it exclusive development rights in respect of the said Property together with a covenant for ultimate transfer thereof, for a lump-sum consideration of Rs.10,31,00,000/-. It was stated that the proper stamp duty on the Development Agreement had already been adjudicated by the Collector of Stamps, Mumbai in Adjudication Case No. ADJ/360/2003 at Rs.10,31,000/-. The said amount was paid at the then prevailing rate of 1% of the consideration or market value under Article 5(g-a) of Schedule I to the Stamp Act, and the document was certified under Section 41 of the Stamp Act as having paid proper stamp duty. Kalpataru stated that the Conveyance Deed had separately been adjudicated in Case No.ADJ/M/816/2007 and was stamped with duty of Rs.51,55,000/-, calculated at the then prevailing rate of 5% of the consideration or market value under Article 25(b) of Schedule I to the Stamp Act. According to Kalpataru, the endorsement made by the Collector of Stamps on the Conveyance Deed under Section 32(1)(b) certified that the proper stamp duty payable thereon had been paid. Kalpataru contended that title in the said Property was conveyed and transferred in its favour only upon execution of the Conveyance Deed. It was contended that the said Authority was relying upon certain recitals in the Conveyance Deed to treat the earlier Development Agreement as a "conveyance" and was thereby seeking to levy stamp duty of Rs.1,03,10,000/- at the rate of 10% under Article 25(b) of Schedule I to the Stamp Act, as applicable at the relevant time. According to Kalpataru, the alleged short levy of Rs.41,24,000/- was therefore wrongly calculated. Kalpataru contended that Article 5(g-a) of Schedule I to the Stamp Act created a separate category for development agreements and prescribed stamp duty at the rate of 1%. It was contended that although the notice was formally issued in respect of the Conveyance Deed, the reasons, and explanations appearing in the Inspection Report showed that the said Authority was indirectly seeking to reassess the stamp duty payable on the Development Agreement, even though that document was not the subject matter of the notice. Lastly, Kalpataru contended that the demand was barred by limitation. According to it, Section 53A(1) of the Stamp Act permitted the CCRA to exercise the power under the said provision only within six years from the date of the certificate issued by the Collector under Sections 32, 39 or 41. Kalpataru pointed out that the Collector had endorsed the certificate under Section 41 regarding payment of proper stamp duty on the

Development Agreement on 3 January 2004, whereas the notice was issued only on 1 July 2011, after expiry of more than six years.

**7.** On 17 August 2011, the Advocate for Kalpataru addressed another letter in response to the notice dated 1 July 2011., on 4 October 2011, a second notice was issued by the IGR and Controller of Stamps, Maharashtra under Section 53A of the Stamp Act, again calling upon Kalpataru to pay the alleged short stamp duty of Rs.41,24,000/-., on 1 November 2014, a third notice was issued under Section 53A, calling upon Kalpataru either to pay the alleged short stamp duty of Rs.41,24,000/- or to appear before the said Authority with necessary documents on 19 November 2014 for hearing., on 13 October 2015, a fourth notice was issued by the IGR and Controller of Stamps, Maharashtra under Section 53A, again calling upon Kalpataru to pay Rs.41,24,000/- as alleged short payment of stamp duty or to appear before the said Authority with necessary documents on 27 October 2015 for hearing. On 30 November 2015, Kalpataru submitted its response to the fourth notice dated 13 October 2015. It was stated that the Office of the IGR and Controller of Stamps had repeatedly issued notices under Section 53A in respect of the same document, namely the Conveyance Deed dated 11 June 2007 by which the said Property was conveyed to Kalpataru. Kalpataru pointed out that the notice dated 13 October 2015 was the fourth such notice issued over a period of four years. It was stated that detailed hearings in the matter had already taken place and had concluded about four years earlier, and detailed replies and submissions had been filed before the said Authority. Kalpataru referred in this regard to its letter dated 14 July 2011, filed on 18 July 2011, its letter dated 28 July 2011, filed on 1 August 2011, and its letter dated 17 August 2011, filed on the same date. By the said response, Kalpataru called upon the said Authority to pass a speaking order on the notice. It was stated that the notice was only a repetition of the earlier notices which had already been contested and heard. Kalpataru requested that its earlier communications and submissions filed in the proceedings should be treated as its reply to the notice then under consideration.

**8.** On 30 June 2016, the Office of the IGR and Controller of Stamps addressed a letter to KPPL bearing Ref. No. D.O.14/Rev.25/2011/767-70116, by which the order dated 18 June 2016 passed by the IGR and Controller of Stamps, Maharashtra in Revision Case No.25 of 2011 was forwarded. By the said order, it was held that there was a short levy of stamp duty of Rs.41,24,000/- payable by Kalpataru in respect of the Conveyance Deed.

**9.** Mr. Khandeparkar, learned Advocate for the Petitioner, submits that the Respondents are in fact seeking to demand stamp duty on the Development Agreement dated 16 January 2004. However, according to him, this demand is being made in the form of a demand for stamp duty on the Deed of Conveyance, by issuing the first demand notice dated 1 July 2011. He submits that it is for this reason that the Petitioner has raised the bar of limitation under Section 53A of the Stamp Act.

**10.** He submits that the Petitioner had applied for adjudication in Adjudication Case No.1360 of 2003. Pursuant to the said application, the proper stamp duty payable on the Development Agreement was determined by the Office of the Deputy Inspector General of Registration and Deputy Controller of Stamps, Bombay, which was the predecessor of Respondent No.3. The stamp duty so determined was paid by the Petitioner. By a Certificate dated 3 January 2004 endorsed on the Development Agreement, the Office of the Deputy Inspector General of Registration and Deputy Controller of Stamps, Bombay certified that the proper stamp duty of Rs.10,31,000/- payable under Article 5(g-a) of the Stamp Act had been duly paid. According to the Petitioner, the entire procedure for adjudication and payment of proper stamp duty on the Development Agreement, as provided under the Stamp Act, was properly followed and completed. Therefore, according to the Petitioner, there was no deficit in stamp duty either on the Development Agreement or on the Deed of Conveyance, as has been wrongly held and demanded by Respondent No.2 under the impugned order.

**11.** It is submitted that the revision proceedings are barred by limitation. According to the Petitioner, the case of Respondent No.2, based on the Audit Report, is that the Development Agreement dated 16 January 2004 was in fact the document by which the conveyance had taken place, and that the Deed of Conveyance dated 11 June 2007 was only a confirmation of that earlier transaction. On that basis, Respondent No.2 has treated the Development Agreement as being insufficiently stamped and has taken the view that it ought to have been charged with stamp duty at the rate of 10%. The Petitioner submits that Respondent No.2 has wrongly treated the Development Agreement as an agreement for sale deemed to be a conveyance by virtue of Explanation 1 to Article 25 of the Stamp Act. It is submitted that Section 53A(1) of the Stamp Act permits Respondent No.2 to exercise the power of revision only within six years from the date of the certificate issued by Respondent No.3 under Sections 32, 39 or 41 of the Stamp Act. Admittedly, the certificate was endorsed or issued on the Development Agreement on 3 January 2004 by the Office of the Deputy Inspector General of Registration and Deputy Controller of Stamps, Bombay, which was the predecessor of Respondent No.3. However, the revision proceedings were started by the first notice of demand dated 1 July 2011, which was issued more than six years. According to the Petitioner, the period of six years had expired on 2 January 2010. Therefore, Respondent No.2 could not exercise the power of revision in respect of the Development Agreement.

**12.** Smt. Srivastava, learned AGP appearing for the State, on the other hand, submits that on scrutiny of the document, it was found that Recital V showed that the vendor, under the agreement dated 16 January 2004, which was registered with the Sub-Registrar, Mumbai under No. BBE-1/0856/2004 dated 4 February 2004, had granted rights for redevelopment of the said Property together with a covenant for transfer of the Property in favour of the purchaser. It was found that the vendor had executed a Power of Attorney in favour of the purchaser. According to her, Recital No.

(vii) showed that the vendor had put the purchaser in possession of the Property after execution of the Development Agreement dated 16 January 2004. She submits that Recital D(i) recorded that the purchaser had paid to the vendor the total agreed lump-sum consideration of Rs.10,31,00,000/- in full and consideration for transfer of the said Property by the vendor to the purchaser. Recital D(ii), according to her, showed that the transaction in every respect was *ipso facto* completed under the agreement dated 16 January 2004 and that the subsequent Deed was executed only for the purpose of confirming the nominal title of the vendor at the request of the purchaser. It is, therefore, submitted that the subsequent Deed was only a confirmation of the conveyance which had already taken place on 16 January 2004. On this basis, it is contended that stamp duty at the rate of 10%, which was the prevailing rate in the year 2004, was payable on the consideration of Rs.10,31,00,000/-, amounting to Rs.1,03,10,000/-. However, only Rs.51,55,000/- was charged as stamp duty at the rate of 5% on the subsequent Deed, which according to the State was only a confirmation deed. It is, therefore, submitted that there was a short levy of stamp duty of Rs.41,24,000/-. The calculation relied upon by the State is as follows: Consideration: Rs.10,31,00,000/-; Stamp duty at 10% prevailing in 2004: Rs.1,03,10,000/-; Less stamp duty paid on the Development Agreement: Rs.10,31,000/-; Less stamp duty paid on the subsequent Deed: Rs.51,55,000/-; Short levy of stamp duty: Rs.41,24,000/-

**13.** She states that the Audit had raised an objection regarding short levy of stamp duty of Rs.41,24,000/- on the document. She submits that the question of recovery of the alleged short levy arose upon execution of the Conveyance Deed dated 11 June 2007. According to her, the proceedings are, therefore, in respect of the short levy arising from the Deed of Conveyance and not from the Development Agreement. She submits that Respondent No.3 had made the endorsement or issued the certificate on the Deed of Conveyance on 18 May 2007. The intimation regarding the proceedings was issued to the Petitioner on 1 July 2011, calling upon the Petitioner to remain present for hearing on 18 July 2011. The notice was received by the Petitioner on 5 July 2011. It is, therefore, submitted that the proceedings were initiated within the prescribed period and that the contention of the Petitioner that the proceedings are barred by limitation is not correct.

**REASONS AND ANALYSIS:**

**14.** I have considered the rival submissions and gone through the impugned order passed by the Chief Controlling Revenue Authority. In my view, the main controversy is whether the proceeding commenced under Section 53A of the Maharashtra Stamp Act was, in substance, a proceeding for reopening the stamp duty already adjudicated in respect of the Development Agreement dated 16 January 2004, as submitted by the Petitioner. Or whether it was an independent proceeding concerning the alleged short levy of stamp duty on the Conveyance Deed executed in the year 2007, as contended by the State. The answer to this question is important because the question of limitation under Section 53A will have to be considered with reference to the instrument which was, in fact and in substance, sought to be revised.

**15.** Before considering the rival submission, it is necessary to see what is recorded and held in the impugned order. The impugned order records that the Audit objection was concerning the “document of Conveyance as to short levy of stamp duty of Rs.41,24,000/- due to incorrect determination of stamp duty.” At the same time, the order refers to the contention that the Development Agreement dated 16 January 2004 was being treated as an Agreement to Sale and that, according to the Petitioner, reopening of such determination under Section 53A had become barred after expiry of six years. Thus, even from the impugned order, it appears that the question of limitation was connected with the nature of the transaction and the basis on which the additional stamp duty was sought to be recovered.

**16.** The Development Agreement was executed on 16 January 2004. Before or in connection with its execution, the Petitioner had approached the competent authority for adjudication. Stamp duty of Rs.10,31,000/- was determined and paid under Article 5(g-a), and an endorsement under Section 41 was made on 3 January 2004., the Development Agreement was registered., when the parties intended to execute the Conveyance Deed, a separate adjudication proceeding was undertaken in the year 2007. The Collector of Stamps determined the stamp duty payable on the Conveyance Deed at Rs.51,55,000/-, being 5% of the consideration of Rs.10,31,00,000/-. The said amount was paid and the Conveyance Deed came to be executed and registered.

**17.** It is the submission of the Petitioner that two separate instruments were placed before the competent stamp authority at two different stages and both were separately dealt with. The Development Agreement was adjudicated according to the law applicable at that time. The Conveyance Deed was presented for adjudication and stamp duty was paid according to the determination made in that proceeding. According to the Petitioner, after both these instruments had gone through the procedure, Respondent No.2 could not, under the guise of examining the stamp duty payable on the Conveyance Deed, reopen the character of the Development Agreement after expiry of six years.

**18.** In my view, the submission of the Petitioner cannot be rejected only by looking at the description or title of the notice. The nature of the proceeding has to be seen from the reasons on which the demand is based. A authority may describe a proceeding as relating to one particular instrument. However, if the basis of the demand is that an earlier instrument was wrongly stamped because it was in truth another kind of instrument, the Court will have to see the substance of such exercise and not merely the description given to it.

**19.** This aspect becomes more important because the impugned order proceeds with reference to the Development Agreement dated 16 January 2004. The reasoning records that the Development Agreement was executed on 16 January 2004 and that the Conveyance Deed was executed on the strength of the Power of Attorney. The order takes note of the contention that the principal document was executed in the year 2004 and recovery of the alleged short levy had become time-barred under Section 53A.

**20.** The answer given by Respondent No.2 to this contention is that “it is on the execution of Conveyance on 16 June 2007 the instance of recovery against short levy arises due to a Deed of Conveyance and not the Agreement for Development.” The order states that the endorsement or certificate on the Conveyance Deed was made on 18 May 2007 and the first intimation of the proceeding was issued on 1 July 2011. On this basis, the objection regarding limitation was rejected.

**21.** In my view this reasoning does not answer the objection raised by the Petitioner. Merely because the demand is described as arising from the Conveyance Deed does not conclude the matter. It was necessary for Respondent No.2 to explain why the alleged deficiency of Rs.41,24,000/- was arising from the Conveyance Deed and was not arising from the earlier assessment and stamp duty treatment of the Development Agreement. The calculation made in the impugned order is significant in this respect. The order proceeds on the basis that the total stamp duty chargeable at the rate of 10% in the year 2004 was Rs.1,03,10,000/-. From this amount, credit is given to the stamp duty of Rs.10,31,000/- paid on the Development Agreement and Rs.51,55,000/- paid in connection with the later Conveyance Deed.The alleged short levy of Rs.41,24,000/- is arrived at subsequently. Therefore, the foundation of the demand does not appear to be merely that the Conveyance Deed of 2007 was insufficiently stamped at the rate applicable in the year 2007. The whole calculation starts from the basis that the transaction had attracted stamp duty at the rate of 10% in the year 2004. This becomes clear from the reasoning of Respondent No.2 concerning Explanation I below Article 25. The impugned order records:

> "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:
>
> Provided that, the provisions of section 32A shall apply mutatis mutandis to such agreement which is deemed to be a conveyance as aforesaid, as they apply to a conveyance under that section:
>
> Provided that, where a conveyance is executed in pursuance of such agreement of sale, the stamp duty, if any, already paid and recovered on the agreement of sale which is deemed to be a conveyance, shall be adjusted."

**22.** On the basis of the above provision, the impugned order proceeds on the footing that the document described as Development Agreement was, according to the case put forward by the Revenue, in substance an Agreement to Sale. It proceeds on the basis that the stamp duty paid on the earlier document was liable to be adjusted against the total duty payable. The impugned order records that the Petitioner had paid 1% at the time of execution of the document in the year 2004 and, after the amendment to Article 25, paid a 4% at the time of execution of the Conveyance Deed. The order then concludes that "the Lower

Authority has mistaken to apply the percentile properly."

**23.** Therefore, when the reasoning of the impugned order is seen as a whole, it appears that the Development Agreement is being treated differently from the manner in which it was adjudicated. The alleged short levy is worked out by treating the transaction reflected in the Development Agreement as having attracted stamp duty applicable to a conveyance in the year 2004, while giving adjustment for the amounts paid on both the documents. This appears to be the main basis of the demand.

**24.** The Petitioner has relied upon Article 5(g-a), as it stood at the relevant time. The material part of the provision reads as follows:

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| "Article 5 (ga) [i] if relating to giving authority or power to a promoter of a developer, by whatever name called, for construction on, development of or, sale or Transfer (in any manner whatsoever) of, any immoveable property. | Five ruppes for every five hundred rupees or part thereof of the market value of the property.<br><br>Provided that, the provisions of section 32A shall, *mutatis mutandis*, apply to an instrument under that section:<br><br>Provided that, if the proper stamp duty is paid under clause (g) of article 48 on a power of attorney executed between the same parties in respect of the same property then, the stamp duty under this article shall be one hundred rupees." |

**25.** The above provision dealt with an instrument relating to authority or power given to a promoter or developer for construction, development, sale, or transfer of immovable property. The Development Agreement was placed before the competent authority for adjudication under the machinery. The competent authority determined the stamp duty and made the necessary endorsement. It is not the case of the Respondents that the Petitioner had concealed the Development Agreement or avoided the procedure of adjudication. On the contrary, the document was voluntarily placed before the competent authority for determination of proper stamp duty.

**26.** This fact, in my view, has considerable importance. This is not a case where an insufficiently stamped document remained outside the knowledge of the stamp authority and was discovered later. The competent authority adjudicated the document. A certificate was issued under the relevant provision. The document was acted upon and registered. Therefore, if the case of Respondent No.2 is that the competent authority in the year 2004 wrongly understood the legal nature of the Development Agreement and wrongly applied Article 5(g-a), such exercise would concern the earlier adjudication and certificate.

**27.** The Respondents have relied upon the recitals contained in the Conveyance Deed. According to the State, Recital V shows that development rights were granted together with a covenant for transfer of the Property. The Power of Attorney was executed. The purchaser was put in possession after execution of the Development Agreement. Recital D(i) records payment of the full consideration of Rs.10,31,00,000/-. Recital D(ii), according to the Respondents, shows that the transaction was already completed in every respect under the Development Agreement and that the Conveyance Deed was executed only for confirmation of title.

**28.** The recitals are relevant for deciding the nature of the transaction. The title or name given to an instrument is not decisive. A document described as a Development Agreement may, depending upon its terms and legal effect, attract stamp duty applicable to another category of instrument. Therefore, the substance and effect of the transaction will have to be examined. However, this principle does not answer the question of limitation. Even if, for examining the submission of the Respondents, it is assumed that the recitals were capable of supporting the view that the Development Agreement had characteristics of an agreement to sale with possession, the question still remains as to when the authority could exercise the power under Section 53A for revising the earlier determination. The possibility that there was an error in the earlier adjudication cannot,, remove the limitation, if the proceeding is in substance directed against that earlier adjudication.

**29.** The Respondents seek to meet this difficulty by submitting that the recovery proceeding commenced from the certificate or endorsement on the Conveyance Deed dated 18 May 2007 and, therefore, the notice dated 1 July 2011 was within six years. This submission would have considerable force if the alleged short levy had arisen from the adjudication of the Conveyance Deed. For example, if the authority had found that the Conveyance Deed, on its own contents and having regard to the applicable rate at the relevant time, was wrongly charged with 5% instead of some other rate, limitation could possibly be considered with reference to the certificate concerning that document. However, this is not what the impugned order does. It does not say that the Conveyance Deed, as a Conveyance Deed executed in the year 2007, attracted stamp duty at 10% under the law applicable to that instrument at that stage. Instead, the order proceeds on the basis that the transaction was already substantially completed in the year 2004, that the Development Agreement was in substance an Agreement to Sale deemed to be a Conveyance, and that stamp duty at the rate of 10% was payable with reference to the year 2004. The later Conveyance Deed is then treated as a document in respect of which the earlier stamp duty could be adjusted.

**30.** This reasoning brings the case within the objection raised by the Petitioner. If the alleged short levy was arrived at by reopening the legal character and stamp duty chargeability of the Development Agreement of 2004, the starting point cannot be shifted to the year 2007 only because a subsequent Conveyance Deed was executed, and the demand was made with reference to that deed.

**31.** There is one more difficulty in the reasoning of the impugned order. The order records that the Audit objection was "limited to the chargeability of stamp duty to the present document whether it is 10% or 5%." However, while deciding this issue, the authority goes back to the Development Agreement of 2004 and treats it as an Agreement to Sale deemed to be a Conveyance. Thus, the reasoning appears to move between two different propositions. On one hand, the proceeding is said to concern only the Conveyance Deed. On the other hand, the alleged deficiency is calculated by saying that the earlier Development Agreement should have attracted stamp duty at 10% in the year 2004.

**32.** A quasi judicial order which creates a demand of stamp duty against a party must identify the instrument in respect of which the revisional power is being exercised, the earlier certificate which is sought to be revised or reconsidered, the legal provision under which such exercise is permissible, and the date from which limitation is required to be calculated. The impugned order does not appear to undertake this exercise in a clear manner. The provisions of Section 4, which were relied upon during the course of arguments, are relevant in this background. Section 4 provides:

> "Section 4. Several instruments used in single transaction of [development agreement,] sale, [lease,] mortgage or settlement.—
>
> (1) Where, in the case of any [development agreement,] sale, [lease,] mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule I for the conveyance, [development agreement,] [lease,] mortgage or settlement, and each of the other instruments shall be chargeable with a duty of [five hundred rupees] instead of the duty (if any) prescribed for it in that Schedule.
>
> (2) The parties may determine for themselves which of the instruments so employed shall, for the purposes of sub-section (1), be deemed to be the principal instrument.

> (3) If the parties fail to determine the principal instrument between themselves, then the officer before whom the instrument is produced may, for the purposes of this section, determine the principal instrument:
>
> Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed."

**33.** Section 4 permits that sometimes several instruments may be used for completing one transaction. In such a case, identification of the principal instrument becomes important. Sub section (2) permits the parties to determine which instrument is to be treated as the principal instrument. Sub section (3) provides that where the parties fail to do so, the officer before whom the instrument is produced may determine the principal instrument. Therefore, if the case of the Revenue is that the Development Agreement and the subsequent Conveyance Deed were parts of one transaction, the scheme required a proper examination of both instruments and their respective place in the transaction.

**34.** The impugned order does not determine the matter on the basis of Section 4. It does not record that the parties had selected one instrument as the principal instrument and the other as a subsidiary instrument. It does not exercise the power under Section 4(3) for determining which instrument was the principal instrument. Instead, the order proceeds under Explanation I to Article 25 and concludes that the Development Agreement was an Agreement to Sale deemed to be a Conveyance. The difficulty is that the order seeks to impose the consequence of treating the

Development Agreement as a deemed Conveyance without dealing with the earlier adjudication of that instrument within the period applicable for such exercise. The later Conveyance Deed cannot give a fresh starting point of limitation for revising the stamp duty treatment of an earlier document, when the basis of the demand is that the earlier document was wrongly stamped.

**35.** The contention of the Petitioner that the Development Agreement and the Conveyance Deed were separately adjudicated cannot be brushed aside. The sequence of events supports this submission. The Development Agreement was adjudicated under Article 5(g-a). The Conveyance Deed was separately presented for adjudication under Article 25(b). The competent authority treated the two instruments separately at the relevant time. The impugned order does not explain why the certificate under Section 41 in respect of the Development Agreement could be reopened after expiry of six years merely because the Revenue came to a different view after considering the recitals in the later Conveyance Deed.

**36.** The submission of the State that the notice dated 1 July 2011 was issued within six years from the endorsement on the Conveyance Deed dated 18 May 2007 is only partly relevant. It would establish that, if the proceeding was against the adjudication of the Conveyance Deed, the notice was within the period calculated from that certificate. However, it does not answer the question whether the demand was based upon reassessment of the stamp duty payable on the Development Agreement of 2004.

**37.** On an overall reading of the impugned order, I find that the latter appears to be the position. The authority has not recorded any independent reason for holding that a Conveyance Deed executed in 2007, after payment of duty at the rate then applied by the competent authority, was chargeable at the rate of 10%. The rate of 10% has been brought into the calculation because the authority considered the transaction as having already amounted to a conveyance in the year 2004. Therefore, the alleged short levy of Rs.41,24,000/- appears to be the result of revisiting the stampability of the Development Agreement.

**38.** Once this conclusion is reached, the objection of the Petitioner regarding limitation becomes important. The Development Agreement had been certified on 3 January 2004. The first notice starting the proceeding was issued on 1 July 2011. According to the case of the Petitioner, the period of six years had expired on 2 January 2010. The impugned order does not give any satisfactory reason why this limitation should not apply when the basis of the demand is the alleged incorrect assessment of the Development Agreement. The impugned order rejects this objection by stating that the cause for recovery arose on execution of the Conveyance Deed and not the Development Agreement. In my view, this conclusion does not properly follow from its own reasoning. The authority cannot, for the purpose of limitation, say that the proceeding concerns only the Conveyance Deed and for calculating the stamp duty, go back and hold that the Development Agreement was a deemed Conveyance chargeable at the rate applicable in the year 2004.

**39.** The findings recorded by the authority regarding the recitals in the documents may justify examination of the true nature of the transaction. However, I do not find it necessary to decide in this petition whether the Development Agreement was an Agreement to Sale deemed to be a Conveyance. That question would require consideration of the complete terms of the Development Agreement, the nature of possession, the rights reserved by the Owner, the effect of the covenant for ultimate transfer and other provisions governing the transaction. The impugned order notes the grievance of the Petitioner that the Audit had relied upon selected recitals and had not considered the entire document.

**40.** Even assuming, for the purpose of argument, that the interpretation of the recitals as made by the Respondents is accepted, the demand cannot survive unless the power to reopen the earlier adjudication was exercised within the period prescribed by Section 53A. The question of limitation does not depend upon whether the earlier decision was right or wrong. Where the statute gives a revisional power for a specified period, such power has to be exercised within that period.

**41.** I am unable to accept the reasoning that execution of the Conveyance Deed in the year 2007 created a fresh period for revising the stamp duty already adjudicated and certified in respect of the Development Agreement in the year 2004. The later document may be relevant for understanding the earlier transaction. It may provide some material for considering the nature of the transaction. However, such material,, cannot change the date of the earlier certificate or extend the period for reopening it.

**42.** The impugned order directs that the Conveyance Deed submitted in Adjudication Case No. ADJ/816/M/07 was short levied with stamp duty of Rs.41,24,000/- and directs the Petitioner to pay the said amount within thirty days. For the reasons recorded above, the finding regarding short levy is inseparably based upon the conclusion that the Development Agreement dated 16 January 2004 should have been treated as a transaction attracting stamp duty applicable to a conveyance in that year. Since the proceeding for taking such a view was initiated after expiry of the period of six years from the certificate dated 3 January 2004, Respondent No.2 could not indirectly achieve, through a proceeding described as relating to the Conveyance Deed, what could no longer be done in respect of the Development Agreement.

**43.** Consequently, the contention of the Petitioner regarding limitation deserves to be accepted. The finding of Respondent No.2 that there was a short levy of Rs.41,24,000/- cannot, therefore, be sustained. The impugned order dated 18 June 2016 is liable to be quashed and set aside.

**44.** In view of the above discussion, the following order is passed:

(i) The Writ Petition is allowed;

(ii) The impugned order dated 18 June 2016 passed by Respondent No.2, the Chief Controlling Revenue Authority, insofar as it holds that the Conveyance Deed in Adjudication Case No. ADJ/816/M/07 was short levied by an amount of

Rs.41,24,000/-, and directs the Petitioner to pay the said amount, is quashed and set aside;

(iii) Consequently, the demand for recovery of stamp duty of Rs.41,24,000/- pursuant to the impugned order shall not survive;

(iv) Rule is made absolute in the aforesaid terms.

(v) There shall be no order as to costs.

**(AMIT BORKAR, J.)**