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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7566 OF 2016

Sai Innovation, a partnership firm
through Partner Shankar Pandurang Jagtap ... **Petitioner**

Vs.

1. **Joint District Registrar and Collector of Stamps**, Pune City, Pune
2. **Inspector General of Registration and Chief Controller of Stamps**, Pune Division Pune.
4. **The State of Maharashtra**, through Secretary, Revenue & Forest Department, Mantralaya, Mumbai ... **Respondents**

Mr. S.M. Gorwadkar with Mr. Mankirat Singh, Mr. Varun Thanawala and Ms. Sonam S. Lande for the petitioner.

Mrs. Mamta S. Srivastava, AGP for respondent Nos.1 to 3.

CORAM	**: AMIT BORKAR, J.**
RESERVED ON	**: AUGUST 18, 2026.**
PRONOUNCED ON	**: AUGUST 20, 2026**

<u>JUDGMENT</u>:

1. By this writ petition, the Petitioner Partnership Firm is challenging the legality, validity, and correctness of the order dated 6 December 2014 passed by Respondent No.1, namely the Joint

District Registrar and Collector of Stamps, in Case No.118 of 2014. The Petitioner also challenges the earlier order dated 11 August 2014 passed by Respondent No.2, namely the Deputy Controller of Stamps, Pune, under the Maharashtra Stamp Act, 1958. By these orders, the authorities refused to grant refund of stamp duty amounting to Rs.70,12,500/- paid by the Petitioner Firm. The Petitioner Firm has also prayed for a direction to Respondent Nos.1 and 2 to allow its application dated 7 April 2014 seeking refund of the said stamp duty. The Petitioner further claims interest at the rate of 2% per month from 7 April 2014 till the actual payment of the refund amount.

2. The facts which have led to filing of the present writ petition, according to the Petitioner, are as follows. On 15 April 2013, the Petitioner Firm, acting through its partners, entered into a Development Agreement with the owners of the property, namely Balawadkar, for development of approximately 8000 sq. mtrs. of land bearing Survey No.29/4/2, situated at village Mauje Balewadi and falling within the limits of the Pune Municipal Corporation. The said document was registered in the office of the Sub-Registrar, Haveli No.V, at Serial No.3237 of 2013. At the time of registration of the said Development Agreement, the Petitioner Firm paid stamp duty of Rs.70,12,500/-. According to the Petitioner, the stamp duty was paid under Article 25 of Schedule I read with Article 5 of Schedule I of the Stamp Act. However, according to the Petitioner, the owners were not able to obtain sanction of the building plans from the Planning Authority within a reasonable period. Disputes, therefore, arose between the parties concerning the subject matter of the transaction. In view of these circumstances, the parties decided to cancel the Development Agreement dated 15 April 2013. It is also the case of the Petitioner that the owners of the property returned the consideration amount received by them to the Petitioner Firm. Thereafter, for the purpose of cancelling the registered Development Agreement dated 15 April 2013, the Petitioner and the owners, namely Balawadkar, executed a Cancellation Deed on 18 February 2014. The said Cancellation Deed was registered in the office of the Sub-Registrar, Haveli No.V, at Serial No.1455/1/61 of 2014 on 24 February 2014. Since the Development Agreement, which was registered and on which proper stamp duty had been paid, came to be cancelled between the parties on 24 February 2014, the Petitioner Firm submitted an application on 7 April 2014 in the prescribed form seeking refund of the stamp duty paid at the time of registration of the Development Agreement on 15 April 2013. It appears that Respondent No.2, by his letter dated 11 August 2014, did not recommend refund of the stamp duty paid by the Petitioner Firm. The proceedings were thereafter forwarded to Respondent No.1 for taking an appropriate decision. The said proceedings came to be registered as Case No.118 of 2014.

3. The Petitioner further states that Respondent No.1 did not issue any notice or give any opportunity of hearing to the Petitioner Firm in the said proceedings. Thereafter, by an order dated 6 December 2014, Respondent No.1 rejected the application made by the Petitioner seeking refund of the stamp duty. The application was rejected on the ground that "the said Application for refund was not covered by the proviso to Section 48 (i) of the Bombay Stamp Act, 1958."

4. Mr. Gorwadkar, learned Advocate appearing for the Petitioner, submits that the only objection taken by the Respondents in the impugned order while rejecting the claim for refund is that the Development Agreement does not fall within the meaning of “conveyance” under the proviso to Section 48(1) of the Maharashtra Stamp Act. He submits that when this contention was answered by relying upon the decision in Writ Petition No.241 of 2015, dated 3 September 2025, in the case of M/s. Satyam Construction, the Respondents, in their Affidavit-in-Reply, raised another ground. According to him, such additional ground was not part of the impugned order and, therefore, cannot be introduced later for supporting the rejection. It is further submitted that the Respondents are now relying upon Clause 13 of the Development Agreement and contending that the developer was given possession of the subject property. On this basis, it is argued that the Petitioners are not entitled to refund of stamp duty under Section 47 of the Maharashtra Stamp Act, 1958. Mr. Gorwadkar submits that this objection is based upon reading Clause 13 separately and without considering Clause 11 of the same Development Agreement. According to him, the entire Development Agreement has to be read together and all its clauses have to be understood in a manner which gives effect to the intention of the parties. He submits that Clause 11 is important for understanding the nature of possession which was given to the developer. It specifically records that the Petitioners granted “प्रत्यक्ष

व खुला ताबा विकासनाकरिता लायसेन्सी म्हणुन” to the developer. According to the learned Advocate, the words “विकासनाकरिता लायसेन्सी म्हणून" are important. The parties had agreed that the developer was only permitted to enter the property as a licensee and only for the purpose of carrying out development. Therefore, according to him, what was given was not possession in the legal sense, but only permission or licence to enter upon the property for development and sale.

5. He submits that Clause 13 cannot be read separately from Clause 11. According to him, the words “प्रत्यक्ष व खुला ताबा” appearing in the beginning of Clause 13 have to be understood in the light of Clause 11. Once Clause 11 describes such possession as being “लायसेन्सी म्हणुन”, the word “ताबा” appearing in Clause 13 must also be understood in the same manner. He submits that if Clause 13 is read without considering Clause 11, the qualifying words “विकासनाकरिता लायसेन्सी म्हणुन” would become meaningless. Such interpretation, according to him, is not permissible while interpreting a contractual document. He further submits that the remaining part of Clause 13 only permits the developer to carry out acts necessary for the proposed development. This includes entering the property, carrying out levelling work, obtaining surveys, securing sanctioned building plans, making applications before statutory authorities, using FSI and TDR, carrying out construction according to law and marketing the constructed premises. According to him, these rights are connected with a development arrangement and were given only to enable the proposed development. They do not show that legal or exclusive possession of the property was transferred to the developer. In support of this submission, reliance is placed on the decisions in *Ravindra C. Khirsara v. State,* (2020) 14 SCC 774 and another decision in *Darshana Anand Damle vs Deputy Commissioner of Income Tax*, (2023) SCC OnLine Bom 1909.

6. He further submits that Clause 11 records that there was no need to execute a separate possession receipt, namely, ("वेगळी ताबा पावती लिहून देण्याची गरज नाही"). According to him, this cannot be treated as proof that actual legal possession of the property had already been transferred. On the contrary, it only shows that the permission or licence given for development was already incorporated in the Development Agreement and, therefore, no separate document was necessary for recording such permission. He submits that no separate possession receipt was in fact executed. There was also no separate act or document showing that legal or exclusive possession of the property was handed over to the developer.

7. The learned Advocate further submits that the conduct of the parties after execution of the Development Agreement also shows that the licence contemplated under the Agreement was never acted upon by the developer. The proposed development did not commence, and no construction activity was carried out. According to him, no developmental permission was acted upon under the Agreement and the developer did not create any third-party rights in respect of the property., the parties mutually executed a registered Deed of Cancellation, by which the Development Agreement came to be cancelled before the proposed development could take place. Thus, according to the Petitioner, although the Agreement contemplated a "limited licence" enabling the developer to carry out development activities, the transaction failed and never came into effect in the manner intended by the parties. The Petitioners, according to him, continued to retain ownership and legal control over the property. The proposed development remained unimplemented. It is submitted that Section 47 of the Maharashtra Stamp Act provides relief in cases where a duly stamped instrument becomes ineffective, incapable of being completed, or fails to achieve the transaction for which it was executed. According to the Petitioner, in the present case, disputes arose between the parties and the Development Agreement became incapable of achieving its intended purpose. It was, therefore, cancelled. It is further submitted that the application for refund was filed within the period prescribed under Section 48 of the Act.

8. According to Mr. Gorwadkar, the objection raised by the Respondents is entirely based upon the assumption that Clause 13 shows transfer of possession. He submits that such an interpretation is contrary to the language of Clause 11, which, according to him, limits the nature of possession to a licence given for development. When the Development Agreement is read as a whole, it does not show any transfer of legal or exclusive possession. It only gives limited contractual permission to enter the property for carrying out the proposed development. The proposed development never took place. It is, therefore, submitted that the Respondents are not correct in treating the contractual licence contemplated under Clause 11 as equal to transfer of legal possession. According to the Petitioner, the Development Agreement only gave a limited licence for the purpose of development. The intended transaction failed, the Agreement was cancelled, and the Petitioners continued to remain in factual as well as juridical possession of the property. It is, therefore, submitted that the Petitioners are entitled to refund of stamp duty under Section 47 of the Maharashtra Stamp Act, 1958. It is further submitted that the ground now sought to be raised by the Respondents through the Affidavit-in-Reply does not form part of the impugned order. According to the Petitioner, an order cannot be supported by adding fresh reasons through an affidavit. In support of this submission, reliance is placed upon the decision of the Supreme Court in *Mohinder Singh Gill v. Chief Election Commr.,* (1978) 1 SCC 405.

9. Per contra, Smt. Srivastava, learned AGP, submits that the Petitioner has not complied with the first part of the proviso to sub-section (1) of Section 48. She submits that the reason stated for cancellation was that “the possession of property” was not given within time. Therefore, according to her, the Petitioner executed the Deed of Cancellation for cancelling and rescinding the said “Development Agreement”. On this basis, it is submitted that the Petitioner is not eligible for refund. She further submits that the application for refund was required to be filed within six months, namely on or before 14 October 2013, calculated from the date of the Development Agreement. The stamps were purchased on 15 April 2013 and the instrument was also executed on the same date. However, according to the learned AGP, the application for refund was filed on 12 April 2014, after expiry of the stipulated period of six months. It is, therefore, submitted that the present Petition deserves to be dismissed. She further submits that the Respondents also object to the claim on the ground that the Petitioner has failed to show that possession of the subject property was not given to the developer. According to her, possession was in fact handed over at the time when the document was executed. In this regard, reliance is placed upon Clause 13 appearing at page 27 of the Petition, which reads as follows:-

> "13. अपिलार्थीला दोन्ही आणि ज्याअर्थी सदर मिळकतीचे विकसनाकामी लिहून देणार यांनी लिहून घेणार यांना प्रत्यक्ष व खुला ताबा दिलेला आहे. त्याबाबत वेगळी पावती लिहून देण्याची आवश्यकता नाही. तसेच सदर मिळकतीमध्ये लिहून घेणार किंवा त्यांचे नामिनिजने प्रवेश करण्यास मिळकतीचे लेव्हलिंग करण्यास इत्यादी विकसनाची कामे कार्यान्वीत आणण्यास लिहून देणार यांनी त्यांची पुर्ण निरंतर संमती दिलेली आहे."

10. The learned AGP further submits that the Development Agreement in the present case is only one step towards effecting a conveyance under the Maharashtra Ownership Flats Act, 1963. According to her, an instrument of Development Agreement and a Conveyance Deed are separate and different kinds of documents. A Conveyance Deed cannot merely be treated as a subsequent document flowing from every Development Agreement. In support of this submission, she relies upon the decision of this Court in *Prasun Developers v. State of Maharashtra*, Writ Petition No.9923 of 2014, decided on 30 January 2015. She submits that the relevant dates in the present case are clear. The Development

Agreement was executed on 15 April 2013. The Deed of Cancellation was registered on 24 February 2014. According to the Respondents, the application for refund was required to be filed on or before 14 October 2013. However, the application for refund was filed on 7 May 2014. It is, therefore, submitted that the application was delayed by about 6 months and 22 days and, therefore, the Petitioner is not entitled to refund. She further submits that in respect of several articles under the Stamp Act, stamp duty is made payable by referring to Article 25. According to her, this does not mean that every such document falls under Article 25.

REASONS AND ANALYSIS:

11. I have considered the submissions made by Mr. Gorwadkar, learned Senior Advocate appearing for the Petitioner and Smt. Srivastava, learned AGP appearing for the Respondents. I have also gone through the Development Agreement dated 15 April 2013, the Deed of Cancellation, the application made by the Petitioner for refund of stamp duty, the order dated 11 August 2014 and the impugned order dated 6 December 2014. I have further considered the decision of this Court in M/s. Satyam Construction, Writ Petition No.241 of 2015, decided on 3 September 2025, on which substantial reliance is placed by the Petitioner. In my view, the dispute in the present matter is about applicability of Sections 47 and 48 of the Maharashtra Stamp Act, 1958 to the facts of this case. The Respondents have raised more than one objection. The first objection, which is found in the impugned order, is that the Development Agreement does not come within the proviso to

Section 48(1). According to the Authority, it is neither an Agreement for Sale nor a conveyance of the nature contemplated by the said proviso. Another objection is raised later in the Affidavit-in-Reply. It is contended that possession of the property was already given to the developer under Clause 13 of the Development Agreement and, therefore, the Petitioner does not satisfy the requirement for claiming refund. Apart from this, the Respondents have also raised objection regarding limitation.

12. Before considering these objections, it is necessary to understand the scheme of Sections 47 and 48. Section 47 provides for allowance or refund of stamps in different situations. Section 47(c)(5), which is relevant for the present matter, applies where an instrument:

> "by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any office thereby granted, fails of the intended purpose;"

13. Thus, the substantive provision giving right to claim refund is Section 47. Whether a particular transaction has failed in achieving the purpose for which it was entered into will depend upon facts of that particular case. Section 48, on the other hand, provides the period within which an application for such relief is required to be made. This distinction between the right to claim refund under Section 47 and the period for making such application under Section 48 has been considered by this Court in *M/s. Satyam Construction*. As seen from paragraphs 10 to 13 of the said judgment, the proviso to Section 48(1) does not create an independent right of refund. The right to claim refund has to be found under Section 47. The proviso only gives an extended period of limitation when the conditions mentioned therein are satisfied. Therefore, the approach adopted by the Authority in the present case, namely, first deciding whether the instrument is covered by the proviso and, after answering that question in the negative, rejecting the refund claim, does not appear to be fully in accordance with the scheme of the Act.

14. The first question is whether the Development Agreement in the present case failed to achieve the purpose for which it was executed. The Development Agreement was executed on 15 April 2013. According to the Petitioner, the proposed development could not proceed because the building plans were not sanctioned within reasonable time and disputes also arose between the parties. It is further stated that the consideration amount was returned to the Petitioner Firm. The parties executed a Deed of Cancellation on 18 February 2014, which came to be registered on 24 February 2014.

15. The Development Agreement was not continued by the parties. It was cancelled by mutual agreement through a registered document. There is no material placed before this Court to show that the proposed development was completed or even carried out before cancellation of the agreement. On the contrary, the case of the Petitioner is that the development never commenced, no construction activity was undertaken, and no third-party rights were created. These facts are relevant while considering whether the instrument became incapable of achieving the purpose for which it was executed.

16. The learned AGP submitted that the Development Agreement was cancelled because "the possession of property" was not given within time and, therefore, according to the Respondents, the Petitioner cannot claim refund. This submission requires some examination. Mere cancellation of an agreement does not automatically mean that refund has to be granted. At the same time, only because an agreement is cancelled, it also cannot be said that Section 47 can never apply. What is required to be seen is whether, on facts of the particular case, the intended transaction had failed and whether the conditions under the statute are satisfied.

17. In the present case, the parties themselves found it necessary to cancel the Development Agreement. According to the Petitioner, the building plans could not be sanctioned within reasonable time and disputes had arisen between the parties. Therefore, the agreement was not taken to its intended conclusion. The Development Agreement was executed for development of the property. If the proposed development could not commence and thereafter the parties mutually cancelled the agreement, there is sufficient material to show that the intended transaction did not fructify. This aspect supports the case of the Petitioner under Section 47(c)(5).

18. The next important question is regarding possession of the property. The learned AGP has relied upon Clause 13 of the Development Agreement. The relevant part, as reproduced before this Court, reads as under:

"13. अपिलार्थीला दोन्ही आणि ज्याअर्थी सदर मिळकतीचे विकसनाकामी लिहून देणार यांनी लिहून घेणार यांना प्रत्यक्ष व खुला ताबा दिलेला आहे. त्याबाबत वेगळी पावती लिहून देण्याची आवश्यकता नाही. तसेच सदर मिळकतीमध्ये लिहून घेणार किंवा त्यांचे नामिनिजने प्रवेश करण्यास मिळकतीचे लेव्हलिंग करण्यास इत्यादी विकसनाची कामे कार्यान्वीत आणण्यास लिहून देणार यांनी त्यांची पुर्ण निरंतर संमती दिलेली आहे."

19. According to the Respondents, the words "प्रत्यक्ष व खुला ताबा दिलेला आहे." show that possession was handed over to the developer. It is submitted that once possession was given, the Petitioner cannot claim refund under the statutory provisions. However, this submission cannot be decided by taking only the words "प्रत्यक्ष व खुला ताबा" from Clause 13 and reading those words separately. The Development Agreement has to be read as a whole. One clause may explain, control or qualify the meaning of another clause. Therefore, it is necessary to also consider Clause 11 of the same Development Agreement.

20. According to the Petitioner, Clause 11 specifically records that the developer was given "प्रत्यक्ष व खुला ताबा विकासनाकरिता लायसेन्सी म्हणून". The important qualifying words are "विकासनाकरिता लायसेन्सी म्हणून". These words cannot be simply ignored. The parties themselves have used the expression "लायसेन्सी म्हणून", meaning thereby as a licensee, while describing the right given to the developer in respect of the property.

21. The Respondents have not placed any material before the Court to show that Clause 11 was superseded, changed or made ineffective by Clause 13. Both clauses form part of the same

Development Agreement. Therefore, the expression “प्रत्यक्ष व खुला ताबा” occurring in Clause 13 has to be understood along with the description in Clause 11 that such entry or possession was given “विकासनाकरिता लायसेन्सी म्हणून”. If the interpretation suggested by the Respondents is accepted, the qualifying words “विकासनाकरिता लायसेन्सी म्हणून” would practically become without any meaning. Such interpretation would not be proper. As far as possible, every part of the document has to be given some meaning. On reading Clauses 11 and 13 together, what appears is that the developer was permitted to enter upon the property and undertake the acts necessary for development. The parties themselves have described such permission as a licence for development. The remaining part of Clause 13 also supports such reading. The developer and its nominees were permitted to enter the property, carry out levelling and undertake other acts necessary for implementation of the proposed development. These rights are consistent with permission given for development work. By themselves, they do not conclusively establish that complete and exclusive legal possession of the property was transferred to the developer. Clause 13 also states that no separate receipt for possession was required. The learned AGP submits that this shows that possession was already handed over under the Development Agreement. There is some substance in this submission to the extent that the parties intended that no separate document concerning possession was necessary. However, this circumstance by cannot decide the exact legal nature of the possession. The Development Agreement has to be read for understanding what kind of right was actually given. When the same agreement describes the arrangement as "विकासनाकरिता लायसेन्सी म्हणून", mere absence of a separate possession receipt cannot convert such licence into an unconditional transfer of legal or exclusive possession.

22. There is also another factual circumstance which is relevant. According to the Petitioner, the developer never commenced the development, did not carry out construction and did not create any third-party rights. The proposed transaction was cancelled. The Respondents have not pointed out any material showing that, after execution of the Development Agreement, the developer had asserted exclusive possession against the owners or dealt with the property. Therefore, on the material presently available, I am unable to accept that Clause 13 establishes transfer of exclusive possession in such manner as to defeat the claim for refund. A more reasonable reading of the Development Agreement is that the developer was given a contractual right to enter upon the property and carry out development activities. Such right was connected with the proposed development and was in the nature described by the parties in Clause 11 as a licensee.

23. The next submission of the Respondents is regarding limitation. According to the learned AGP, the Development Agreement was executed on 15 April 2013 and under the ordinary part of Section 48(1), the application for refund was required to be made within six months, namely, on or before 14 October 2013. According to the Respondents, the application was made after expiry of this period. It is, therefore, submitted that the claim is barred by limitation. The ordinary period of six months under

Section 48(1) cannot be disputed. If the matter falls only under the main provision, the application would be required to be made within six months from the date of the instrument. However, the Petitioner is relying upon the provision contained in the proviso to Section 48(1). Therefore, it is necessary to see whether the present Development Agreement can get the benefit of the said proviso.

24. The relevant proviso, as considered in *M/s. Satyam Construction*, provides a period where an agreement concerning immovable property, on which stamp duty is paid under Article 25 of Schedule I, is registered and is thereafter cancelled by a registered Deed of Cancellation on the grounds specified therein. Thus, the proviso provides a exception to the ordinary period of six months. The main objection in the impugned order is that a Development Agreement is not a "conveyance" or an agreement of the kind covered by the proviso. In view of the reasoning given by this Court in *M/s. Satyam Construction*, this question cannot be considered in the same manner as it was considered by the Authority. In paragraph 14 of *M/s. Satyam Construction,* the objection raised by the Authority was that stamp duty on the Development Agreement was not paid under Article 25 but under Article 5(g-a)(i). In paragraphs 14 and 15, the Court considered the decision in *Sandeep Dwellers Pvt. Ltd.* and also considered the position that though a Development Agreement may specifically fall under Article 5(g-a)(i), the duty payable on such instrument is calculated with reference to the duty payable on a conveyance under Article 25. Paragraph 16 of *M/s. Satyam Construction* then refers to the decision in *Shweta Infrastructure and Housing (I) Pvt.*

Ltd. In that matter, the issue concerned refund of stamp duty and the extended period under the proviso to Section 48(1). The Court held that merely because the document is described as a Development Agreement or an Agreement for Sale, that by would not be decisive where the stamp duty payable on such instrument is the same as the duty payable under Article 25. The conclusion recorded in paragraph 18 of *M/s. Satyam Construction* is important. It is held that:

> "a) Development Agreement can be treated at par with an instrument of conveyance for the purpose of applying the proviso to Section 48(1), where the stamp duty payable on such Development Agreement is calculated as per Article 25 of Schedule I."

25. This reasoning deals with the main ground stated in the impugned order.

26. In the present case, it is not disputed that stamp duty of Rs.70,12,500/- was paid on the Development Agreement. The case of the Petitioner is that the duty was paid under Article 25 read with Article 5 of Schedule I. The Respondents have not placed any factual material to show that the nature of stamp duty paid in the present matter was such that the reasoning in M/s. Satyam Construction would not apply. The submission of the learned AGP that a Development Agreement and a Conveyance Deed are different documents, and one cannot simply be treated as the other, is correct as a general proposition. A Development Agreement does not become a Conveyance Deed merely because stamp duty is calculated by referring to Article 25. The decision in Prasun Developers cannot be ignored on this aspect. However, this does not finally decide the issue in the present matter. The question here is not whether the Development Agreement becomes identical to a Conveyance Deed for all purposes. The limited question is whether, for applying the proviso to Section 48(1), a Development Agreement on which stamp duty is payable by reference to Article 25 can get the benefit of the period. On this particular issue, the reasoning in *M/s. Satyam Construction,* particularly paragraphs 14 to 19, supports the case of the Petitioner. Therefore, the objection that the document is called a Development Agreement and is, for that reason alone, outside the proviso cannot be accepted. For the limited purpose of Section 48(1), what is required to be seen is the nature of the transaction, the stamp duty payable on the instrument and whether the other statutory requirements are fulfilled. The mere name or description of the document cannot decide the matter.

27. The next question is whether the Deed of Cancellation and the application for refund were made within the period prescribed by the applicable proviso. The Development Agreement was executed on 15 April 2013. The Deed of Cancellation was executed on 18 February 2014 and registered on 24 February 2014. Thus, the original transaction was cancelled through a registered instrument. The Petitioner states that the application for refund was made on 7 April 2014. The submissions recorded on behalf of the Respondents refer, at one place, to an application dated 12 April 2014 and, at another place, to 7 May 2014. However, the case pleaded by the Petitioner and the facts recorded earlier show that the application was made on 7 April 2014. In absence of any clear material showing otherwise, the date of 7 April 2014 will have to be considered for deciding the present matter. The registered Deed of Cancellation was executed and registered within the period applicable to the original instrument. The application for refund was also made shortly thereafter. Therefore, once the case is held to fall within the proviso, the objection that the application was not made within six months from 15 April 2013 cannot survive. The ordinary period of six months cannot be applied by ignoring the period provided under the proviso.

28. There is also one further submission made on behalf of the Petitioner. It is contended that the objection regarding possession was not a ground forming part of the impugned order and has been raised later through the Affidavit-in-Reply. Reliance is placed upon *Mohinder Singh Gill*. The principle stated in *Mohinder Singh Gill* is that an order has to stand or fall on the reasons stated in that order and, ordinarily, new reasons cannot be added through an affidavit for improving or supporting the impugned order. Therefore, if the impugned order was based only on the ground that the Development Agreement did not fall within the proviso to Section 48(1), the Respondents cannot change the basis of that order by later raising a new factual ground concerning possession. However, since the issue of possession is closely connected with the statutory requirements and both sides have made submissions on that issue, I have also examined the said contention on merits. For the reasons already recorded in paragraphs 23 to 31 above, the material does not show that the Petitioner had transferred such legal and exclusive possession of the property which, by, would defeat the claim for refund. When the Development Agreement is read as a whole, it shows a limited permission connected with the proposed development.

29. Thus, the overall position which emerges is this. The Development Agreement was entered into for carrying out development. The intended development did not proceed. Disputes arose between the parties. The agreement was thereafter cancelled by a registered Deed of Cancellation. The Petitioner is claiming refund of stamp duty on the basis that the transaction failed. The right for claiming such refund has to be examined under Section 47. The proviso to Section 48(1) only provides the period within which such right can be exercised, if the necessary conditions are satisfied.

30. The main reason given in the impugned order, namely that a Development Agreement cannot come within the proviso because it is not a conveyance, cannot be sustained in view of the reasoning in *M/s. Satyam Construction,* particularly paragraphs 14 to 19. The objection concerning possession also does not assist the Respondents when Clauses 11 and 13 are read together. The words "प्रत्यक्ष व खुला ताबा" cannot be separated from the qualifying expression "विकासनाकरिता लायसेन्सी म्हणून" used by the parties in the same agreement. The submission of the Respondents regarding the ordinary period of limitation of six months would have been relevant if the present case was governed only by the main part of Section 48(1). Once the instrument is found capable of falling within the proviso, and the registered Deed of Cancellation and application for refund are found to have been made within the applicable period, the ordinary period cannot be applied.

31. I am, therefore, of the view that rejection of the Petitioner's application on the ground that the Development Agreement does not fall within the proviso to Section 48(1) is not sustainable. The further objection concerning possession also does not justify rejection of the claim on the facts and terms of the present Development Agreement. The material on record shows that the proposed transaction failed before the intended development could be carried into effect and the agreement was thereafter cancelled through a registered instrument. Consequently, the Petitioner is entitled to have its claim for refund considered and allowed in accordance with Section 47 read with the applicable proviso to Section 48(1) of the Maharashtra Stamp Act, 1958. The impugned order dated 6 December 2014, as also the decision refusing to recommend refund, therefore cannot be sustained. The Petitioner is entitled to refund of the stamp duty amount of Rs.70,12,500/-, subject to consequential directions regarding payment and interest. The question of interest can be determined by applying the principles recognised in *M/s. Satyam Construction* and the applicable statutory and equitable considerations from the date on which the application for refund was made.

32. In view of the above discussion, the following order is passed:-

(i) The Writ Petition is allowed;

(ii) The order dated 6 December 2014 passed by Respondent No.1, the Joint District Registrar and Collector of

Stamps, in Case No.118 of 2014, and the order dated 11 August 2014 passed by Respondent No.2, the Deputy Controller of Stamps, Pune, refusing to recommend and grant refund of stamp duty, are hereby quashed and set aside;

(iii) The application dated 7 April 2014 made by the Petitioner for refund of stamp duty is allowed;

(iv) Respondent Nos.1 and 2 shall refund to the Petitioner the amount of Rs.70,12,500/- towards stamp duty paid in respect of the Development Agreement dated 15 April 2013;

(v) The aforesaid amount shall carry simple interest at the rate of 6% per annum from 7 April 2014, being the date of the application for refund, till its actual payment;

(vi) The amount of refund together with accrued interest shall be paid to the Petitioner within a period of six weeks from the date of uploading of this judgment and order;

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

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

(AMIT BORKAR, J.)