Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11127 OF 2018

M/S Star Developers Through Partners ... Petitioner
V/s.
State of Maharashtra Through
Ministry Of Revenue And Ors. ... Respondents

WITH
CIVIL APPLICATION NO. 2128 OF 2018
IN
WRIT PETITION NO. 11127 OF 2018

Ms. Manjiri Parasnis, for the Petitioner.

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

CORAM : AMIT BORKAR, J.

RESERVED ON : AUGUST 24, 2026

PRONOUNCED ON : AUGUST 28, 2026

JUDGMENT:

1. By the present Petition, the Petitioner challenges the Judgment and Order dated 3 November 2017 passed by Respondent No. 2 in Appeal No. 30 of 2016. The Petitioner challenges the Judgment and Order dated 30 May 2016 passed by Respondent No. 3 in Case No.JK/SJL/PS/MLP/S-9/PR/No.08_13 / Instrument No.3986_13/1784/2016.

2. The facts giving rise to the present Petition are as follows. The property in question consists of land bearing Survey Nos. 47/1, 47/2 and 47/3, having total area of 5,109.62 sq. metres. The property is situated at Village Bavdhan (B.K.), Taluka Haveli, District Pune. The said property is owned by Mr. Dnyaneshwari Ashok Phadke. On 27 May 2005, a Development Agreement was executed in favour of Mr. David Koli Pillai in respect of the said property. Subsequently, on 29 April 2013, a Joint Venture Agreement was entered into between the Petitioner and Mr. David Koli Pillai. Under this Agreement, the parties agreed to develop a residential and commercial project on the said property. They agreed that the constructed tenements would be sold to prospective purchasers. Under the terms of the Joint Venture Agreement, the Petitioner was responsible for getting the building plans sanctioned, obtaining the N.A. order and carrying out the demarcation of the property. Clause 9 of the Joint Venture Agreement provided for sharing of the revenue between the parties. Under the said clause, Mr. David Koli Pillai was entitled to 42% of the revenue, while the Petitioner was entitled to 58%. Clause 12(ii) of the Joint Venture Agreement set out the meaning of the expression “gross sale proceeds”. Clause 22 of the Joint Venture Agreement contained a tentative calculation of the stamp duty payable on the Agreement. The calculation was made on the basis of the market value or Ready Reckoner value prevailing at that time, as prescribed by the Government of Maharashtra under Section (Vibhag) 27.9 at page 153 of the Ready Reckoner, 2003.

3. At the relevant time, the value of the land was Rs.7,900/- per sq. metre and the total area of the plot was 5,109.62 sq. metres. On the basis of the applicable slabs, the value of the area covered by the Agreement was calculated at Rs.3,25,16,400/-. In accordance with Clause 5(g)(a), the Petitioner paid stamp duty of Rs.16,26,000/-. Thereafter, on 16 July 2015, Respondent No. 3 issued a notice to the Petitioner demanding payment of alleged deficit stamp duty of Rs.22,62,625/-.

4. Thereafter, on 30 July 2015, Respondent No. 3 issued another notice to the Petitioner in respect of the same matter. The Petitioner submitted its reply to the said notice on 20 August 2015. Thereafter, the Petitioner filed Writ Petition No. 5079 of 2016 before this Court. The said Writ Petition was decided on 4 May 2016, with a direction to the concerned authority to decide the matter within a period of six weeks. Pursuant to the said direction, Respondent No. 3 passed an order dated 7 May 2016 in Case No. JK/SJL/PS/MLP/S-9/PR/No.08_13/Instrument No.3986_13/ 1784 /2016. By the said order, Respondent No. 3 determined the value of the property at Rs.8,26,33,500/- by applying Clause 5(g)(a) of Schedule I. Respondent No. 3 thereafter calculated the stamp duty at the rate of 4% of the said value. The stamp duty so calculated came to Rs.33,05,340/-. After giving credit for the stamp duty of Rs.16,26,000/- paid by the Petitioner, Respondent No. 3 determined the deficit stamp duty at Rs.16,79,340/-. Penalty at the rate of 2%, along with other applicable charges, was imposed. Being dissatisfied with the said order, the Petitioner preferred Appeal No. 30 of 2016 before Respondent No. 2. Respondent No. 2

considered the said appeal and, by Judgment and Order dated 3 November 2017 passed in Appeal No. 30 of 2016, decided the same. The Petitioner is aggrieved by the orders passed by Respondent Nos. 2 and 3. The Petitioner has, therefore, filed the present Petition challenging the said orders.

5. Ms. Parasnis, learned Advocate appearing for the Petitioner, submitted that the provisions of Section 32A(5) have not been considered by the Respondent Authorities. According to her, the said provision has a direct bearing on the manner in which the value of the instrument and the stamp duty payable thereon are required to be determined. The learned Advocate submitted that the Respondent Authorities have wrongly calculated the stamp duty by applying Article 5(g)(a) of Schedule I. According to her, the Authorities have made a slab-wise calculation. The learned Advocate submitted that Article 47 relating to "Partnership – Joint Venture" was introduced by an amendment which came into effect from 24 April 2015. Therefore, according to the Petitioner, the expression "Joint Venture" was specifically brought into the Stamp Act only from the said date.

6. It was submitted that, prior to the said amendment, an instrument of the nature of the Joint Venture Agreement in the present case was never treated as an instrument falling under Article 5(g)(a). The learned Advocate submitted that under Article 25, the valuation is required to be made in the manner applicable to a Conveyance. Therefore, the proper provision applicable to the transaction had to be examined before determining the value for the purpose of stamp duty. It was submitted that Article 5(h)(b) provides that an instrument which is not otherwise provided for in Schedule I is chargeable with stamp duty of Rs.100/-. According to the learned Advocate, Respondent Nos. 2 and 3 were therefore required to give proper and clear reasons for treating the instrument in question as one falling under Article 5(g)(a). In the absence of such reasons, the impugned determination could not be sustained.

7. The learned Advocate thereafter dealt with the manner in which the Respondent Authorities had calculated the land cost and the revenue sharing under the Joint Venture Agreement. According to the Petitioner, the impugned Orders have calculated the land cost and revenue sharing by applying the following formula:

“5109.62 × 0.42 × 45,300 × 0.85 = Rs.8,26,33,285/-”

8. The learned Advocate submitted that this calculation was then used for determining the deficit stamp duty, after giving credit for the amount of Rs.16,26,000/- paid by the Petitioner. It was submitted that the entire calculation made under Article 5(g)(a) is erroneous and has no proper basis in the terms of the Joint Venture Agreement. According to the learned Advocate, the Joint Venture Agreement is essentially an agreement for sharing profit and revenue between the parties. The agreed ratio of sharing was 42% for Mr. David Koli Pillai and 58% for the Petitioner. The learned Advocate submitted that the transaction cannot be treated as a Development Agreement.

9. According to her, both parties were to act as developers in respect of the proposed project and neither party could be treated merely as a developer acting on behalf of the other. In support of this submission, reliance was placed on Paragraph No. 16(ii) at Page No. 11 of the Joint Venture Agreement, which specifically provides:

> "All the brochures and other publicity materials shall show the names of both the parties as co-ventures thereof."

10. On the basis of this clause, the learned Advocate submitted that the document could not be treated as a "Development Agreement". According to her, the true nature of the transaction had to be determined from the complete terms of the Joint Venture Agreement and not merely from the fact that the property was proposed to be developed.

11. The learned Advocate submitted that the consideration value determined in the impugned Order has no proper basis. According to her, the amount determined by the Respondent Authorities is baseless, without authority, hypothetical and illogical. She submitted that "Consideration" cannot be determined on the basis of an imaginary or assumed value. It was submitted that the revenue which may be received in future under the revenue-sharing arrangement cannot be treated as the present consideration for the purpose of calculating stamp duty. According to the Petitioner, the market value had to be determined on the basis of the value of the land existing at the relevant time. The future construction proposed to be carried out on the property could not be added for determining the stamp duty payable on the present instrument. The learned Advocate specifically challenged the manner in which the 42% share was calculated. According to her, the Authorities first took the total land area of 5,109 sq. metres, then hypothetically divided the land according to the profit-sharing ratio and thereafter multiplied the resulting area by the new flat purchase rate of Rs.45,300/- per sq. metre. According to the Petitioner, this method of calculation has no basis in the Joint Venture Agreement and is completely incorrect. It was submitted that there was no material before the Respondent Authorities to presume that 42% of the flats proposed to be constructed would actually be sold in the market as the share of the Petitioner. The revenue-sharing ratio between the parties could not, according to the Petitioner, be automatically treated as the proportion of flats or constructed area belonging to either party.

12. The learned Advocate then submitted that the Respondent Authorities had failed to consider several factors which had a direct effect on the actual market value of the property. According to the Petitioner, the Ready Reckoner is only a reference for arriving at a tentative market value of property in a particular area. It is a guiding factor and cannot, by, be treated as conclusive of the actual market value in every case. The learned Advocate submitted that the property in question was landlocked and that this circumstance had a direct effect on its value. It was submitted that the property was under dispute. It was submitted that a suit and appeal concerning the said property were pending at the relevant time. According to the Petitioner, this pending litigation was an important factor which ought to have been considered while determining the actual market value of the property.

13. The learned Advocate thereafter raised a separate submission concerning the powers of the Comptroller and Auditor General of India, namely, the CAG. According to her, the powers of the CAG are limited by the Constitution and are concerned with the affairs and accounts of the Union and the States. On this basis, the learned Advocate submitted that an important question arises as to whether the CAG could examine or decide the correctness or veracity of an order passed by an authority constituted under the Maharashtra Stamp Act for determining the stamp duty payable on an instrument. The learned Advocate submitted that the CAG could not determine or alter the computation of stamp duty made by the competent authority while exercising the statutory powers vested in that authority under the Maharashtra Stamp Act. According to the Petitioner, the statutory determination of stamp duty could be made only in accordance with the provisions of the Maharashtra Stamp Act by the authority empowered under that Act, and the CAG could not assume those statutory powers.

14. Ms. Raje, learned AGP appearing for the Respondents, submitted that in the cases referred to earlier, the Collectors of Stamps in the State of Maharashtra have been determining the market value by considering the clause in the agreement under which the owner is entitled to receive a particular percentage of the revenue generated from the project. According to her, stamp duty was required to be paid on the amount so determined. She submitted that this method of determining stamp duty has been followed for many years, at least since 1997. However, the Inspector General of Registration and Controller of Stamps, Maharashtra State, Pune, noticed that in some cases this general practice was not being followed. Therefore, it was considered necessary to clarify the manner in which such instruments were to be valued. This clarification was made in the ASR Guidelines of 2015. Ms. Raje therefore submitted that the Petitioner's main contention that the 2015 Guidelines cannot be applied to the Development Agreement executed by the Petitioner in 2013 is incorrect. According to her, the Guidelines did not introduce a new method of valuation, but only clarified the practice which had been followed for a long period.

15. It was submitted that the instrument involved in the present Petition is a Development Agreement concerning land admeasuring 5,109.62 sq. metres, bearing Survey Nos. 47/1, 47/2 and 47/3, situated at Bavdhan Budruk, Pune. The said Agreement was executed on 29 April 2013. According to the learned AGP, Clause 12(i) and Clause 12(ii) of the Agreement provide for sharing of the revenue generated from the project between the parties. Therefore, as per the practice followed by the stamp authorities, the stamp duty ought to have been determined by taking into consideration the said revenue-sharing clauses.

16. The learned AGP submitted that the Petitioner did not submit the said instrument to the Collector of Stamps for adjudication of the proper stamp duty. It appears that, when the instrument was submitted for registration, the fourth Respondent determined the market value of the immovable property at Rs.3,25,16,400/-. On that basis, the Petitioner paid stamp duty of Rs.16,26,000/-. It was submitted that the market value of a property has to be determined with reference to the “subject matter” of the instrument. According to the learned AGP, this follows from the definition of market value under the Maharashtra Stamp Act. Therefore, while registering an instrument of the present nature, the market value has to be determined by considering the consideration arising from the sale proceeds of the project. According to the Respondents, however, in certain cases, including the present case, the market value was initially determined on the basis of the cost of construction, even though the real subject matter of the instrument was the sharing of revenue arising from the project.

17. The learned AGP relied upon the judgment of this Court in *Kolte Patil Developers Ltd. v. Chief Controller (Revenue Authority) and Inspector General of Registration and Controller of Stamp & Ors., Writ Petition No.10675 of 2019, decided on 11 November 2024*. Reliance was particularly placed on paragraphs 18 to 20 of the said judgment.

18. She submitted that the contention of the Petitioner that the gross sale proceeds could not be determined on the date of execution or registration of the Development Agreement was considered. The contention was that the amount of revenue sharing or gross sale proceeds depended upon the future market value of the property and, therefore, such value could not be known at the time of registration. The Respondents submitted that this contention was not correct. According to them, stamp duty can be calculated on the basis of the consideration which would be received in future by applying the rates of flats prevailing on the date of execution of the instrument. While doing so, there was no requirement to apply a deferment factor merely because the consideration would actually be received in future. It was submitted that, according to the normal principles of valuation, the present value of an amount which is to be received in future can be determined by considering the period over which the project is expected to be completed and by applying an appropriate deferment factor having regard to the prevailing interest rates. In the present case, the Collector of Stamps applied a deferment factor of 0.85. On that basis, the Collector determined the present value of the consideration represented by the agreed percentage of revenue. The calculation was made by taking the rates of flats prevailing on the date of execution of the instrument and not any future rates of flats, which could in fact be higher.

19. The learned AGP submitted that the Petitioner was given several opportunities to pay the deficit stamp duty and penalty by issuing notices. However, despite those opportunities, the Petitioner did not deposit the amount demanded. Therefore, according to the Respondents, they were required to exercise the powers available under Section 46 of the Maharashtra Stamp Act, 1958 for recovery of the deficit stamp duty and penalty. It was therefore submitted that, having regard to the conduct of the Petitioner and the failure to pay the deficit stamp duty despite the notices issued, the action taken by the Respondents under Section 46 of the Act was legal and proper. The learned AGP accordingly submitted that there was no reason to interfere with the impugned Judgment and Orders dated 3 November 2017 and 7 May 2016 and that the present Petition deserved to be rejected.

<u>Reasons and Analysis</u>:

20. I have considered the Petition, the submissions made by Ms. Parasnis, learned Advocate for the Petitioner, and Ms. Raje, learned AGP for the Respondents. I have considered the impugned order passed by the stamp authority, the two judgments and orders relied upon by the parties and the relevant provisions of the Maharashtra Stamp Act, 1958. The question is whether, according to the law applicable on the date of the Agreement, such revenue sharing could be treated as "consideration" for deciding the market value and, on that basis, the stamp duty payable under Article 5(g-a) of Schedule I.

21. The Agreement in the present case was executed on 29 April 2013 in respect of land admeasuring 5,109.62 sq. metres bearing Survey Nos. 47/1, 47/2 and 47/3 at Bavdhan Budruk, Pune. From the material on record, it appears that the parties had agreed to develop the property and thereafter share the revenue which would be received from sale of the proposed flats and commercial units. At the time of registration, stamp duty was paid by taking the value at Rs.3,25,16,400/-. Subsequently, an audit objection was raised and proceedings under Section 32A were started. In those proceedings, the authority came to the conclusion that the amount calculated on the basis of revenue sharing was higher. The stamp authority recorded that the Sub-Registrar had initially taken the consideration at Rs.32,516,400/- and had collected stamp duty of Rs.16,26,000/- under Article 5(g-a). Thereafter, the authority took the view that the owner's 42% share in the sale proceeds was required to be treated as consideration.

22. At the beginning, it is necessary to see the provision under which the stamp duty is being charged. Article 5(g-a)(i), as placed before the Court, reads:

> "Article 5[(g-a)[(i)] [Clause (g-a) was inserted by Maharashtra 9 of 1997, and deemed to have been inserted, Section 14(2) (w.e.f. 7.2.1990).] if relating to giving authority or power to a promoter ora developer, by whatever name called, for construction on,development of or, sale or transfer (in any manner whatsoever)of, any immovable property.]"

23. From the above provision, it is seen that Article 5(g-a) does not become applicable only because the document is called a "Development Agreement". The Court has to see what the document actually provides for. It has to be examined whether, in substance, one party has given authority or power to a promoter or developer for construction on, development of, or sale or transfer of the immovable property. This is important because the Petitioner says that the present document is a Joint Venture Agreement and not a Development Agreement. The name given to the document cannot decide its legal character. At the same time, the actual rights and obligations created under the document cannot be ignored by the Respondents. The distinction made by the Petitioner between a Development Agreement and a Joint Venture Agreement therefore needs to be examined. The Petitioner relies upon Clause 9 of the Joint Venture Agreement, under which the revenue was to be shared in the ratio of 42% and 58%. The

Petitioner relies upon Paragraph 16(ii), which states:

> "All the brochures and other publicity materials shall show the names of both the parties as co-ventures thereof."

24. This clause does show that the parties described as co-ventures in relation to the proposed project. This part of the Petitioner's submission cannot be ignored. It shows that both parties intended to remain associated with the project. It shows that the arrangement was not described only as one where the developer was working as a contractor for the owner. To this limited extent, the submission of the Petitioner has substance.

25. However, the matter cannot be decided only because the expression "co-ventures" has been used in the Agreement. What is more important is to see what rights were given under the Agreement and what was to be received in return for those rights. The material on record shows that the developer was required to arrange the funds, carry out the development and construct the proposed flats, units and commercial premises. The departmental order records that the developer was to carry out the development at his own cost and was responsible for arranging the funds required for the project. It records that 42% of the sale proceeds was to go to the owner and 58% to the developer. These facts are important for deciding the real nature of the transaction. The Petitioner may be correct to some extent that the Agreement has features of a joint venture arrangement. But the presence of such features does not answer whether the owner's agreed share in the gross sale proceeds is consideration for the development rights. For that purpose, the actual substance of the transaction has to be seen.

26. The earlier judgment in *Kolte Patil Developers Ltd.* is relevant on this issue. In that matter, the document was described as a Development Agreement. The owners were to receive 38% of the gross sale proceeds and the developer was to receive the remaining 62%. The Court examined the terms of the Agreement and found that development rights, including the right to construct and sell the units, were given to the developer and that the return to the owners was in the form of revenue sharing. The Court held that "The monetary consideration is not crystallised in the Agreement and takes the form of revenue sharing based on gross sale proceeds to be received from sale of units."

27. The same reasoning applies to the present Agreement. The fact that the consideration is not a fixed amount in rupees does not mean that there is no consideration. Consideration can be agreed in different forms. Here, the amount which the owner was to receive was connected with the sale proceeds of the constructed units. Therefore, merely because the exact amount was not known on 29 April 2013, it cannot be said that there was no consideration at all.

28. The meaning of "market value" is required to be considered. The order under challenge has reproduced Section 2(n), which states:

> "'Market Value', in relation to any property which is the subject matter of an instrument, means the price which such

> property would have fetched if sold in open market on the date of execution of such instrument or the consideration stated in the instrument, whichever is higher."

29. The same provision was considered in *Kolte Patil Developers Ltd.*. The Court observed that Section 2(na) requires the authority to compare the price which the property could have fetched in the open market on the date of execution with the consideration stated in the instrument. The higher amount has to be taken for stamp duty. This provision is important because the Petitioner's main submission is that only the value of the land or the Ready Reckoner value of the land should have been considered. Such a submission cannot be accepted. Article 5(g-a) connects the stamp duty with the market value. Section 2(na) requires comparison between the open-market value and the consideration stated in the instrument. Therefore, when the instrument provides the basis on which consideration is to be received, that consideration has to be examined by the authority.

30. The Petitioner has submitted that revenue sharing is a future amount and therefore cannot be treated as present consideration because the future sale price of the flats was not known. This submission cannot be accepte. The exact amount which may be received may be uncertain. But the method by which that amount was to be calculated had been agreed between the parties. The parties had fixed a percentage of the sale proceeds as the basis of the consideration. Therefore, the future receipt cannot be treated as imaginary. The actual receipt may take place later. The contractual basis for that receipt was present on the date of the

Agreement.

31. The earlier judgment considered this submission. It held that "The consideration is not payable in praesenti but is deferred to the time of sale of the units after they are completely constructed on the subject property." Even though the payment was to be received later, the Court did not hold that it ceased to be consideration. The Court held that revenue sharing of the gross sale proceeds, though payable later, constituted consideration for transfer of development rights.

32. The Petitioner has challenged the calculation made by the authority as hypothetical. According to the Petitioner, the authority assumed future sale of flats and applied the rate of constructed tenements. If the authority had merely assumed an arbitrary future amount without any connection with the Agreement or the statutory provisions, the objection could have had some force. However, the record shows that the authority considered the available area, the relevant ASR rates for land and residential flats, the agreed 42% share and thereafter applied the deferment factor of 0.85. The departmental order records the calculation as follows:

> "Consideration value of the property = 5,109.62 × 0.42 × 45,300 × 0.85 = Rs. 82,633,285.60/-."

33. The authority thereafter took the consideration value at Rs.82,633,500/-. It may be that the amount arrived at through this calculation will not be the actual amount which is received after the flats are sold. But that is not the test under the Stamp Act. The authority has to determine the market value for stamp duty as on the date of execution of the instrument. The determination cannot be kept pending until the project is completed and the actual sale prices become known. Therefore, merely because the future sale proceeds were uncertain, the valuation cannot for that reason be held invalid. The deferment factor is relevant to the Petitioner's submission that the consideration was to be received in future. According to the Respondents, the present value of the future consideration was worked out by taking the prevailing rate and applying the deferment factor. The earlier judgment accepted this method. It held that where consideration is in the form of revenue sharing, it has to be calculated as on the date of execution by considering the available FSI and the applicable ASR of the land and constructed tenements.

34. The submission regarding the absence of a specific guideline in 2013 requires consideration. The parties had submitted before the authority that the Ready Reckoner for 2013 did not contain any specific provision for valuation of such instruments on revenue-sharing basis and that detailed instructions came only later in 2015. This submission cannot be rejected without examining it. The Agreement was executed on 29 April 2013. A later guideline cannot become the source of a stamp duty liability for an earlier document. Stamp duty is a fiscal levy. Therefore, the authority must find the legal basis for the demand in the Act and the Rules. The demand cannot be sustained merely by saying that a particular method was stated in the 2015 Guidelines. However, this submission does not assist the Petitioner because the statutory provision was in existence when the Agreement was executed. The earlier judgment has specifically held that “The absence of valuation guidelines in the year 2013 as regards the revenue sharing for determining market value is irrelevant as Section 2 (na) mandates the authority to compute the market value based on the rate of property as per the ASR or the consideration stated in the instrument whichever is higher.”

35. Therefore, the 2015 Guidelines cannot create a new liability in respect of a document executed in 2013. They may, however, explain or provide a method for calculating the consideration which was required to be considered under the Act. In the present case, the Respondents have relied upon the later instruction for valuation. The actual power to consider the revenue-sharing amount, however, comes from Section 2(na) read with Article 5(g-a), and not merely from the 2015 Guidelines.

36. The Petitioner has submitted that future construction could not be considered because, on the date of the Agreement, the flats had not yet been constructed. This submission cannot be accepte. The purpose of the Agreement was development of the land and construction and sale of units. Therefore, the development potential of the property is connected with the rights granted under the Agreement. If the development potential is ignored, the value of the development rights would not reflect the transaction entered into by the parties. The earlier judgment held that “the development potential of the subject property on the date of execution of the instrument would form the basis of the valuation of the consideration.”

37. The Petitioner has submitted that the Respondent Authorities have treated 42% of the total area as though 42% of the land was transferred. If the calculation is understood as an actual division of the land, this submission may appear to have some force. But the material on record does not show that the authority treated 42% as a physical portion of the land. The figure of 42% was taken because, under the Agreement, that was the percentage of the gross sale proceeds payable to the owner. The calculation was therefore intended to value that agreed share as consideration. It has to be understood in this manner.

38. The departmental calculation shows this approach. It records that “42% share to owner = Total area × 42%” and thereafter calculates the consideration with reference to the ASR rate for residential flats. The deferment factor was then applied and the consideration was determined at Rs.82,633,285.60/-.

39. The Petitioner has submitted that the Ready Reckoner is only a guiding factor and that various circumstances reducing the value of the property were not considered. It is submitted that the property was landlocked and that litigation concerning the property was pending. These circumstances may have some relevance while determining the open-market value. However, there is no sufficient material before the Court to show that the Respondent Authorities ignored any proved circumstance which would necessarily change the statutory valuation., the demand in the present case is not based only on the Ready Reckoner value of the land. It is based on the consideration contained in the Agreement, which according to the Respondents was higher.

40. The statutory scheme requires this comparison. Section 2(na) does not say that the ASR value is always the final value. It requires higher of the open-market price and the consideration stated in the instrument to be taken as the market value. Therefore, once the authority finds a valid consideration clause and calculates its value according to the statutory method, the existence of certain disadvantages relating to the property does not remove that consideration from the calculation.

41. The submission regarding the powers of the Accountant General and the CAG requires separate consideration. The Petitioner submits that the audit authority cannot determine stamp duty because the Maharashtra Stamp Act gives the power to determine market value and stamp duty to the competent stamp authority. To this limited extent, the submission is correct. An audit objection is not an order determining stamp duty. The final determination has to be made by the authority empowered under the Act. But this does not mean that an audit objection cannot bring possible undervaluation to the notice of the competent authority. The record shows that the audit objection led to examination of the document and thereafter the matter was dealt with under Section 32A. Notices were issued. Written and oral submissions were considered. Thereafter, the authority passed the order under Section 32A. Thus, the final determination was made by the statutory stamp authority. The audit objection was only the information through which the matter came to the notice of that authority.

42. Section 32A(5), on which the Petitioner has particularly relied, therefore becomes relevant. It provides:

> "(5) The Collector of the District may, suo motu or on receipt of information from any source, within ten years from the date of registration of any instrument referred to in sub-section (1), (not being the instrument upon which an endorsement has been made under section 32 or the instrument or the instruments in respect to which the proper duty has been determined by him under sub-section (4) or an instrument executed before the 4th July 1980), call for the true copy or an abstract of the instrument from the registering officer and examine it for the purpose of satisfying himself as to the correctness of the market value of the immovable property which is the subject matter of such instrument and the duty payable thereon; and if, after such examination, he has reason to believe that the market value of such property has not been truly and fully set forth in the instrument he shall proceed as provided in sub-section (4)."

43. The language of Section 32A(5) permits the Collector to act "on receipt of information from any source". Therefore, merely because the proceedings were started after an audit objection, it cannot be said that Section 32A(5) was wrongly invoked. What has to be seen is whether, after receiving such information, the Collector independently examined the correctness of the market value and the stamp duty. The material on record shows that such examination was made. Notices were issued. The parties submitted their replies. Oral submissions were made. The authority considered the nature of the document, the revenue-sharing clause, the relevant ASR rates, the residential rate and the deferment factor and thereafter recorded its calculation. Therefore, it cannot be said that the requirement of examination under Section 32A(5) was ignored.

44. The Petitioner has submitted that Respondent Nos. 2 and 3 were required to give proper reasons for applying Article 5(g-a). In the present case, reasons are found in the order. The authority considered the document to be a Joint Development Agreement, referred to the development activities to be carried out by the developer, considered the 42% share of the owner in the sale proceeds and thereafter applied Article 5(g-a). The correctness of that conclusion may be disputed. But it cannot be said that Article 5(g-a) was applied without giving any reason.

45. The reliance placed by the Petitioner on Article 5(h)(b), under which an instrument not otherwise provided for in Schedule I is chargeable with stamp duty of Rs.100/-, therefore cannot be accepted merely because the Petitioner calls the document a Joint Venture Agreement. The real question is whether the substance of the instrument falls under an existing entry. If it does, the residuary provision cannot be used merely because another description has been given to the document. The amendment to Article 47 relating to "Partnership – Joint Venture" and the insertion of the words "Joint Venture" with effect from 24 April 2015 requires consideration. The fact that these words were added later shows that the legislature subsequently made a specific provision regarding such arrangements. But this fact does not mean that every Joint Venture Agreement executed before 24 April 2015 was outside Article 5(g-a). Different commercial arrangements may contain some common features. Therefore, the actual rights and obligations created by the Agreement have to be examined.

46. The Petitioner's argument is that future revenue sharing cannot be calculated because the actual sale may take place at different prices and the project may not be completed. This concerns uncertainty in valuation. The earlier judgment considered this issue and held that consideration has to be calculated as on the date of the instrument by taking the development potential and ASR applicable at that time. The Court noticed that the Act contains provisions dealing with certain situations where the intended transaction does not proceed. Therefore, these future uncertainties by do not make the valuation method invalid.

47. The argument regarding double stamp duty cannot be accepted. The Petitioner submits that stamp duty will again be paid when the flats are subsequently sold. The same argument was considered in the earlier judgment. The Court held that the subsequent sale of the constructed units is a transfer and is separately chargeable. Stamp duty on the Development Agreement is connected with the development rights and the consideration for those rights. The subsequent sale of the constructed unit is another taxable instrument. Therefore, it cannot be treated as double stamp duty on the same transaction.

48. The submission that the Respondents have effectively taxed future profits cannot be accepted. The amount is being considered as consideration for determining market value and stamp duty. It is not a tax on income or profits. The earlier judgment held that merely because the consideration is payable later by way of revenue sharing, it does not become "profit" which cannot be considered under Section 2(na). The purpose of the calculation is only to determine the stamp duty payable on the instrument. It is not an assessment of income-tax.

49. The Petitioner has relied upon the settled principle that the Stamp Act is a fiscal statute and has to be strictly interpreted. There is no dispute about this principle. The Supreme Court judgment referred to in *Kolte Patil Developers Ltd.* states:

> "20. At this stage, we may note that the Stamp Act is a taxing statute. In interpreting such a statute, equitable considerations cannot be applied. A taxing statute has to be interpreted in accordance with what is clearly expressed therein. While interpreting such a statute and determining the liability to pay tax, the provisions are required to be construed strictly. In other words, the rule of literal construction must be applied while interpreting a taxing statute. It must be interpreted in terms of the natural construction of the words used. There is no scope to imply anything which is not expressly provided."

50. Even after applying this strict rule of interpretation, the Petitioner's case does not succeed. The liability in the present case is not being created by implication. Article 5(g-a) expressly covers an agreement giving authority or power to a promoter or developer for construction, development, sale or transfer of immovable property. Section 2(na) provides that the higher of the market price and the consideration stated in the instrument is to be treated as the market value. The consideration in the present case is found in the revenue-sharing arrangement. Therefore, the demand is based upon the statutory provisions.

51. The judgment in *Kolte Patil Developers Ltd.* relied upon by the Respondents is therefore relevant. In that case, the owners were entitled to a percentage of the gross sale proceeds as consideration for development rights. The Court held that such revenue sharing constituted consideration under Section 2(na). It held that the absence of a specific guideline in 2013 did not remove the statutory requirement to calculate the consideration. That decision cannot be applied mechanically to every document merely because it is described as a Joint Venture Agreement. But where the substance of the Agreement is grant of development rights against a percentage of gross sale proceeds, the reasoning applies.

52. There is one distinction which is necessary to be kept in mind. If the present Agreement was genuinely only a partnership or joint venture arrangement where the parties joined together for carrying on business, without any grant of development rights to one party and without any consideration for such grant, Article 5(g-a) may not apply merely because the expressions "Joint Venture" or "co-venture" are used. But the material available in the present case does not establish such a position. The developer is required to develop the property and the owner is to receive a specified percentage of the sale proceeds. The consideration is therefore connected with the development rights. It cannot be treated merely as ordinary sharing of business profits.

53. The record shows that the authority did not finally take the initial figure of Rs.97,215,630/-. After applying the deferment factor of 0.85, the consideration was determined at Rs.82,633,500/-. Stamp duty at 4% was calculated at Rs.33,05,340/-. After giving credit for Rs.16,26,000/- paid, the deficit came to Rs.16,79,340/-. The final order directed payment of penalty under Section 39. The Court has considered the Petitioner's objections regarding the calculation, the residential ASR rate, the 42% ratio, the deferment factor and the various uncertainties connected with the project. These are material submissions and cannot be ignored. However, they do not show that the Respondent Authorities had no jurisdiction or that the method adopted was outside the Maharashtra Stamp Act. At the most, these submissions question the manner in which the valuation was made. The authority has disclosed the basis of its calculation. That basis is connected with the revenue-sharing clause and the development potential of the property on the date of execution.

54. The challenge based upon retrospective application of the 2015 Guidelines cannot succeed. This conclusion is not based only upon the Respondents' submission that the same practice was followed since 1997. It is not necessary to decide whether an administrative practice could have the force of law. Administrative practice cannot replace the statute. The demand can stand only because Article 5(g-a), Section 2(na) and Section 32A provide the statutory basis. The 2015 instructions may have supplied or explained the method of calculation. They cannot create a new stamp duty liability for the year 2013. But the absence of a later detailed guideline does not prevent the authority from applying the statutory test which was available.

55. On considering the entire material, I therefore find that the Petitioner's submission that the 2015 Guidelines cannot retrospectively create a fresh stamp duty liability for the 2013 Agreement is correct as a general proposition. But this does not mean that the Petitioner's document was free from the liability arising under the Act. The liability comes from the Act and not from the 2015 Guidelines. The submission that the revenue-sharing amount is not consideration cannot be accepted. The 42% share of the gross sale proceeds was the contractual return connected with the development rights and could be considered for determining market value under Section 2(na). The submission that future construction is irrelevant cannot be accepted because the development potential forms part of the transaction. The argument regarding double stamp duty cannot be accepted because the subsequent sale of the constructed units is a separate transfer. The submission regarding the CAG is correct only to the limited extent that the audit authority cannot finally determine the stamp duty. The final determination in the present case was made by the competent stamp authority under Section 32A.

56. The Petitioner's reliance on the description of the document as a Joint Venture Agreement and on Paragraph 16(ii) does not change the legal position under Article 5(g-a). The expression “co-ventures” is relevant for understanding the intention of the parties. But it cannot decide the legal character of the rights actually created by the Agreement. The material on record shows development rights coupled with an agreed 42% share in the gross sale proceeds to the owner. In the facts of the present case, that amount is consideration in the statutory sense. The reliance upon Article 5(h)(b) cannot be accepted merely because there was no separate “Joint Venture” entry applicable to the document on the date of execution. Article 5(g-a) was in existence and, on the findings recorded above, applies to the substance of the transaction. The residuary provision cannot be used to avoid a specific entry merely because the document has been given a different name.

57. On the overall consideration of the matter, I therefore find that the Respondent Authorities were entitled to examine the Agreement under Section 32A. They were entitled to consider the owner's agreed percentage of the gross sale proceeds as consideration and to determine the market value by applying Section 2(na). The consideration of Rs.82,633,500/- was arrived at after applying the deferment factor of 0.85 to the calculation based on the 42% revenue share and the applicable ASR rate. The stamp duty of Rs.33,05,340/- was thereafter determined. After giving credit for Rs.16,26,000/- paid, the deficit stamps duty was determined at Rs.16,79,340/-. The earlier judgment in *Kolte Patil*

Developers Ltd. reaches the same basic conclusion regarding revenue-sharing arrangements connected with development rights. The Court held that where the owners were entitled to a percentage of gross sale proceeds as consideration for transfer of development rights, "the consideration for purpose of Section 2 (na) of Stamp Act is the Owner's share of the gross sale proceeds". This reasoning is consistent with the statutory provisions and with the material available in the present case.

58. For all these reasons, I find that the impugned determination cannot be set aside merely because the document was described as a Joint Venture Agreement or because the detailed valuation instruction was incorporated in the ASR Guidelines in 2015.

59. The challenge to the impugned orders therefore fails on merits. The Petitioner has not been able to establish that the Respondent Authorities acted contrary to the Maharashtra Stamp Act, 1958 by considering the revenue-sharing amount for determining the market value under Section 2(na) and Article 5(g-a). The deficit stamp duty, after giving credit for the amount paid, is therefore sustainable. The consequential penalty would follow, subject to the requirements of law relating to its levy and calculation.

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

i. The Petition is dismissed.

ii. The impugned Judgment and Order dated 3 November 2017 passed by Respondent No. 2 in Appeal No. 30 of 2016 is upheld.

iii. The impugned order passed by Respondent No. 3 under Section 32A of the Maharashtra Stamp Act, 1958, determining the deficit stamp duty on the basis of the revenue-sharing consideration, is also upheld.

iv. Rule is discharged.

v. There shall be no order as to costs.

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

(AMIT BORKAR, J.)