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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11115 OF 2016

1. **Wadhwa Constructions & Infrastructure Private Limited**
2. **Navin Makhija** **... Petitioners**

Vs.

1. **The State of Maharashtra**
2. **Appellate Authority & Deputy Director General of Registration and Deputy Collector of Stamps**
3. **Collector of Stamps, Raigad** **... Respondents**

Mr. Girish Godbole, Senior Advocate with Mr. S.S. Kanetkar, Mr. Parimal K. Shroff, Mr. D.V. Deokar, and Mr. Sachin Pandey i/by M/s. Parimal K. Shroff & Co., for the Petitioners.

Mr. Yatin Shashikant Khochare, "B" Panel Counsel for the Respondents-State.

Mr. Amit Shedage, Collector of Stamps, Raigad, and Mr. Amol Shinide, ATP, JDR Office, Alibag Raigad, are present.

CORAM	**: AMIT BORKAR, J.**
RESERVED ON	**: AUGUST 31, 2026.**
PRONOUNCED ON	**: SEPTEMBER 7, 2026**

JUDGMENT:

1. By the present Writ Petition filed under Articles 226 and 227 of the Constitution of India, the Petitioners are challenging the legality, validity, and correctness of the order dated 19 March 2016 passed by the Joint District Registrar and Collector of Stamps, Raigad, purportedly in exercise of powers under Sections 32A(2) and 33A of the Maharashtra Stamp Act, 1958. The Petitioners challenge the order dated 12 July 2016 passed by the Appellate Authority, namely, the Deputy Inspector General of Registration and Deputy Collector of Stamps, in Appeal No.14 of 2016, as well as the demand notice dated 6 August 2016.

2. The facts and circumstances which have resulted in the filing of the present Writ Petition, as stated by the Petitioners, are as follows. The Union of India, Department of Policy & Promotion, Ministry of Commerce, issued Press Note No.2 of 2005 prescribing the procedure for Direct Foreign Investment in the real estate sector. M/s Valuable Properties Pvt. Ltd., a Company incorporated under the Companies Act, took benefit of the said Press Note No.2 of 2005 and acquired development rights in respect of certain lands situated in Taluka Panvel, District Raigad, in the villages of Vardoli, Berhe and Bingarwadi, forming part of the Panvel Urban Special Region of the Mumbai Metropolitan Region. On 10 March 2006, the Government of Maharashtra issued Development Control Regulations for a Special Township Scheme for development of integrated townships in the State of Maharashtra., on 28 August 2009, Special Development Control Regulations were notified by a Notification relating to Township / Mega City Regulation. On 18 February 2014, the Petitioners issued a Performance Guarantee in favour of Valuable Properties Pvt. Ltd. On the same date, namely, 18 February 2014, the Petitioners and

Valuable Properties Pvt. Ltd. entered into a Joint Development Agreement. On the basis of the consideration agreed under the said Agreement between Petitioner No.1 and VPPL, the stamp duty payable on the instrument was calculated. The Petitioners accordingly paid stamp duty of Rs.15,67,00,000/- on the said instrument on 20 February 2014.

3. The Petitioners received a notice dated 5 August 2015 from the office of the Joint Sub-Registrar, Class II, Panvel (3), purportedly issued under Section 33A of the Maharashtra Stamp Act, 1958. By the said notice, it was alleged that, in respect of the instrument executed between Petitioner No.1 and VPPL, stamp duty of Rs.31,90,35,800/- ought to have been paid. It was therefore alleged that there was a deficit stamp duty of Rs.16,23,35,800/-. Petitioner No.1 was called upon to show cause within eight days as to why such amount should not be recovered. Petitioner No.1 was directed to produce the instrument in its possession. The notice stated that, if the instrument was not produced, the copy of the instrument would be treated as the instrument and would be forwarded to the Joint District Registrar and Collector of Stamps, Raigad, Alibag, for action. In the meantime, the Additional Director of Town Planning addressed a letter dated 27 July 2015 to the Joint District Registrar, Raigad, stating that the market value of the property in question was Rs.797,58,95,000/-. Petitioner No.1 submitted its reply to the office of the Joint Sub-Registrar-II, Panvel (3), on 14 August 2015. In the said reply, Petitioner No.1 stated that the stamp duty payable on the instrument had been correctly calculated and paid.

The Sub-Registrar forwarded the notice dated 5 August 2015, along with the reply submitted by Petitioner No.1, to the office of the Joint District Registrar on 20 August 2015. , notices dated 9 October 2015 and 30 October 2015 were issued by the office of the Joint District Registrar, Class I, calling upon the Petitioners to remain present for hearing. The Petitioners filed detailed submissions on 6 November 2015 in response to the notice. They placed before the authority their calculation of the stamp duty payable on the instrument dated 18 February 2014., on 29 December 2015, the Joint District Registrar issued another demand notice calling upon Petitioner No.1 to deposit Rs.16,23,35,800/-, along with the applicable penalty, within fifteen days. Petitioner No.1 was given an opportunity to submit its reply within fifteen days. In response to the said notice, Petitioner No.1 submitted written submissions with annexures on 7 January 2016. In those submissions, Petitioner No.1 explained its calculation regarding the value of the consideration under the Joint Development Agreement.

4. The office of the Joint District Registrar issued another notice calling upon the Petitioners to remain present for hearing on 20 January 2016. On 8 February 2016, the submissions made by Petitioner No.1 before the Joint District Registrar were recorded in the Roznama. The Petitioners stated that the basic permissible FSI in the U-1 Zone was 1 FSI and not 1.5 FSI, as had been calculated by the Collector of Stamps. They stated that the basic permissible FSI in the G-1 Zone was 0.1 FSI and not 0.5 FSI, as calculated by the Collector of Stamps. The Petitioners contended that the additional area of 50.23 Acres was to be developed only if VPPL issued a swap notice. According to the Petitioners, this was only a future and contingent possibility and had not become a concluded arrangement. Therefore, according to them, no stamp duty was payable in respect of such additional area. The Petitioners submitted that the revenue sharing arrangement in place of the vertical entitlement was only optional. It would arise only if VPPL was unable or unwilling to sell the constructed area measuring 12,60,000 sq. ft. of usable carpet area. The Collector of Stamps, Raigad passed an order dated 19 March 2016. By the said order, the Collector held that the total stamp duty payable was Rs.37,69,13,224/-. After giving credit for the stamp duty of Rs.15,67,00,000/- paid by the Petitioners, the Collector held that an amount of Rs.22,02,13,224/- remained payable as deficit stamp duty. The Petitioners were directed to pay the said amount within sixty days from the date of the order. Certain clerical errors in the order dated 19 March 2016 were corrected by a Corrigendum Order dated 2 April 2016.

5. Being aggrieved by the order dated 19 March 2016 and the corrected order dated 2 April 2016, Petitioner No.1 filed an appeal on 16 May 2016 under Section 32B of the Maharashtra Stamp Act, 1958. The appeal challenged the order passed by the Collector of Stamps, Raigad, dated 19 March 2016. The appeal was filed before the Deputy Inspector General of Registration and Deputy Controller of Stamps, Konkan Division, Thane. Hearings in the appeal were held on 6 June 2016 and 20 June 2016 in the office of the Deputy Inspector General of Registration. Petitioner No.1 filed written submissions in the appeal on 20 June 2016. The Deputy Inspector General of Registration and Deputy Controller of Stamps passed an order dated 12 July 2016. By the said order, it was held that a deficit stamp duty of Rs.21,92,99,814/- was payable in respect of the instrument executed by Petitioner No.1. Petitioner No.1 was directed to pay the said amount within fifteen days from receipt of the order. It was stated that, in case of failure to make payment within the said period, interest at the rate of 2% per month would be charged.

6. Thereafter, the Collector of Stamps issued a demand notice dated 6 August 2016 directing Petitioner No.1 to deposit the alleged deficit stamp duty of Rs.21,92,99,814/- within seven days. Petitioner No.1 replied to the said demand notice by letter dated 29 August 2016. In the said reply, Petitioner No.1 informed the Joint District Registrar and Collector of Stamps that the Petitioners were taking steps to initiate appropriate legal proceedings challenging the validity, legality, and correctness of the order dated 19 August 2016 passed by the Collector of Stamps, Raigad, read with the order dated 12 July 2016 passed by the Deputy Inspector General of Registration and Deputy Controller of Stamps, Konkan Division, Thane. The Petitioners therefore requested the Joint District Registrar and Collector of Stamps not to act upon the demand notice dated 6 August 2016 and not to take any coercive steps for implementing the said notice under the Maharashtra Stamp Act, 1958. In these circumstances, the Petitioners filed the present Writ Petition on 19 September 2016. On 23 September 2016, the Writ Petition was taken up for consideration. On that date, the statement made by the learned AGP was recorded that no coercive steps would be taken against the Petitioners pursuant to the impugned order until the next date of hearing, namely, 1 October 2016. The said statement was accepted by the Court. The ad-interim order has been continued from time to time.

7. Mr. Godbole, learned Senior Advocate appearing for the Petitioners, submits that the Petitioners are concerned with two parcels of land. One is the larger parcel admeasuring about 298 acres and the other is the smaller parcel admeasuring about 50 acres. According to him, the contract was partly concluded in respect of the larger parcel of land. However, even in respect of the larger parcel, there were two contingencies built into the Agreement. The first related to a possible increase in FSI. The second related to the possibility of obtaining consideration through revenue sharing instead of the premises sharing arrangement. He submits that Recitals A, C and D of the Agreement explain the background of the project, its scope and the extent of land proposed to be developed. Learned Senior Advocate then refers to the relevant definitions contained in the Agreement, including Alternate Vertical Premises, Gross Revenue, Horizontal Infrastructure Development, Phase-1 Land, Project Land, Salable Area, Swap Notice, VPPL Additional Vertical Entitlement, VPPL Entitlement, VPPL Horizontal Development Land, VPPL Horizontal Entitlement, VPPL Land, VPPL Share, VPPL Vertical Entitlement and Wadhawa Entitlement. According to him, these definitions are important because they describe the respective rights and entitlements of the parties under the Agreement.

8. Learned Senior Advocate submits that Clauses 2.1 and 2.2 deal with the grant of rights and the coming into effect of the Agreement. Under these clauses, VPPL granted to Wadhawa the right to develop the VPPL Land on an "as is where is" basis, subject to VPPL retaining FSI equivalent to 12,60,000 sq. ft. of usable carpet area. He submits that Clause 3.1 dealing with consideration is the most important clause for deciding the dispute. Clause 3.1.1 provides for cash consideration of Rs.187 crore. Clause 3.1.2 provides for other consideration. Under Clause 3.1.2(i), if a Swap Notice is issued, Wadhawa is required to construct, complete and deliver the VPPL Horizontal Development Land having an aggregate value of Rs.21,78,00,000/-, towards infrastructure development cost calculated at Rs.100/- per sq. ft. of ground area. Under Clause 3.1.2(ii), Wadhawa is required to construct, complete and deliver the VPPL Vertical Entitlement in Phase 1 retained by VPPL, having a construction value of Rs.99,53,99,737/-, calculated at Rs.790/- per sq. ft. of usable carpet area. According to the Petitioners, Clause 3.1.2(i) is dependent upon the happening of a future event. Therefore, the land covered by that clause could not have been taken into account for determining the stamp duty payable on the date of execution of the Agreement. Learned Senior Advocate submits that Clause 6 of the Agreement deals with VPPL Additional Vertical Entitlement and is directly connected with the issue of Swap Notice. Learned Senior Advocate refers to Clause 7 relating to Alternate Vertical Premises and, in particular, Clause 7.1. According to him, this clause contains another contingency under which VPPL has an option to choose revenue sharing instead of premises sharing. He submits that there are three separate contingencies in the Agreement. The first arises from the definition of VPPL Additional Entitlement. Under that provision, if the FSI increases from 0.1 to 0.3 before the Swap Notice is issued, the FSI area would increase to a salable area of 10,50,000 sq. ft. The second contingency arises under Clause 6.1, which gives VPPL an option to issue a Swap Notice. The third contingency arises under Clause 7.1, which gives VPPL an option to choose revenue sharing.

9. Learned Senior Advocate submits that the nature of a contingent contract is explained in Section 31 of the Indian Contract Act. A contingent contract is an agreement where the rights and obligations under the contract depend upon the happening or non-happening of an uncertain future event. According to him, such a contract does not create a present and unconditional obligation in respect of an event which has not yet happened. He relies upon the judgments in MCX Stock Exchange Ltd. vs. SEBI and Kesoram Industries & Cotton Mills vs. Commissioner of Wealth Tax in support of this submission. Learned Senior Advocate submits that the order dated 19 March 2016 passed by the Collector of Stamps and the subsequent appellate order are unsustainable because the authorities have proceeded on the basis that all the three contingencies had come into existence. According to him, this approach is not supported by the Agreement or the material on record. He submits that the authorities have assumed that the FSI had increased from 0.1 to 0.5 without any proper basis. The specific assertion made in the Petition that the

FSI had not increased beyond 0.1 has not been denied. On the basis of the assumed FSI of 0.5, the authorities have increased the VPPL Additional Vertical Entitlement to 11,65,000 sq. ft., although the entitlement was dependent upon a contingency. He submits that, while calculating the multiplier for converting FSI or carpet area into built-up area, the authorities have applied a multiplier of 1.5 instead of 1.2. According to him, this is contrary to the valuation guidelines issued by the Inspector General of Registration. The same incorrect multiplier of 1.5 has again been applied while calculating the area of Vertical Entitlement. He submits that the parking requirement has been calculated on the assumption that FSI of 0.5 was available., instead of taking the construction cost of Rs.8,500/- per square metre, the authorities have applied a sale price of Rs.24,000/- per square metre. Learned Senior Advocate then deals with the construction cost and the rate applicable to a ready-made flat. He submits that Clause 3 of the Agreement specifies the consideration payable under the Agreement. It includes cash consideration as well as constructed area, for which a specific construction cost has been provided. According to him, the authorities have wrongly taken Rs.24,000/- per square metre, which is the rate of a ready-made flat, instead of Rs.8,500/- per square metre, which is the stipulated construction cost. He submits that Clause 32 of the valuation guidelines dated 31 December 2012 provides the method for calculation where constructed area is to be made available. However, the authorities have relied upon Clause 33, which applies to a case of revenue sharing. According to the Petitioners, this has resulted in an incorrect valuation. Learned Senior Advocate submits that the valuation could have been considered under four different methods. The first method relates to construction where no Swap Notice is given. The second relates to construction where a Swap Notice is given. The third relates to revenue sharing where no Swap Notice is given. The fourth relates to revenue sharing where a Swap Notice is given. According to him, the authority has adopted the highest of these four possible calculations. It has adopted the calculation based on revenue sharing after assuming that a Swap Notice had been given. Learned Senior Advocate therefore submits that the valuation made by the authorities suffers from several errors. First, the calculation is based upon revenue sharing, although such revenue sharing was not an existing obligation under the Agreement. Secondly, even the revenue sharing calculation has been made on the basis of a contingency which had not occurred. Thirdly, while calculating the value of the constructed area, the authorities have applied the rate of a ready-made flat instead of the agreed construction cost. Fourthly, the parking area has been valued on the basis of an incorrect saleable area and an incorrect multiplication factor. Fifthly, the calculation does not consider the actual FSI available on the date on which the Agreement was executed. According to him, the calculation ought to have been based upon the FSI existing on that date and not upon a future or assumed FSI.

10. Learned Senior Advocate submits that the 50 acres of land described in the Second Schedule to the Agreement could not have been included while calculating the consideration and, consequently, the stamp duty. According to him, the rights relating to this land were entirely dependent upon a contingency. Therefore, before including this land for the purpose of valuation, the authority was required to first determine whether the contingency had occurred. In the absence of such an event, according to the Petitioners, the value of the said land could not have been included for calculating stamp duty.

11. The Petitioners have placed on record a chart showing the differences between the valuation made by the Deputy Inspector General of Registration in the order dated 12 July 2016 and the stamp duty calculation made by the Petitioners on the basis of the Joint Development Agreement. The said chart gives the difference in area, the factor applied, the total area, the rate adopted and the resulting financial impact. The material differences shown in the chart are considered below.

12. The first difference relates to the Vertical Entitlement. According to the calculation made in the order of the Deputy Inspector General of Registration, the Vertical Entitlement of 12,60,000 sq. ft. was multiplied by a factor of 1.5, resulting in a total area of 18,90,000 sq. ft. According to the stamp duty calculation made by the Petitioners under the Joint Development Agreement, the same area of 12,60,000 sq. ft. was required to be multiplied by a factor of 1.2, resulting in a total area of 15,12,000 sq. ft. The difference in the total area is therefore shown as 3,78,000 sq. ft. The rate considered for this difference is Rs.24,000/- per sq. mtr. and the chart shows the resulting impact at Rs.84.28 crore.

13. The second difference shown in the chart concerns the rate applied to the Vertical Entitlement. The rate adopted in the order of the Deputy Inspector General of Registration is Rs.24,000/- per sq. mtr., whereas, according to the Petitioners, the applicable rate should have been Rs.8,500/- per sq. mtr. Thus, according to the Petitioners, there is a difference of Rs.15,500/- per sq. mtr. The area considered for this difference is 18,90,000 sq. ft. and the chart shows the total impact of this difference at Rs.272.16 crore.

14. The third difference relates to Additional Vertical Entitlement in the event of a Swap Notice. According to the valuation made by the Deputy Inspector General of Registration, an area of 2,33,000 sq. ft. was multiplied by a factor of 1.5, resulting in a total area of 3,49,500 sq. ft. According to the Petitioners' calculation, the same area of 2,33,000 sq. ft. was required to be multiplied by a factor of 1.2, resulting in a total area of 2,79,600 sq. ft. The difference in the total area is shown as 69,900 sq. ft. At the rate of Rs.24,000/- per sq. mtr., the chart shows the impact of this difference at Rs.15.59 crore.

15. The fourth difference concerns the Additional Vertical Entitlement in the event of a Swap Notice and relates to the FSI applied for determining the area. According to the calculation made by the Deputy Inspector General of Registration, an area of 2,33,000 sq. ft. was considered with FSI of 5, resulting in a total area of 11,65,000 sq. ft. According to the Petitioners' calculation, the same area of 2,33,000 sq. ft. was considered with FSI of 1, resulting in a total area of 2,33,000 sq. ft. The difference is therefore shown as 9,32,000 sq. ft. The rate considered for this difference is Rs.24,000/- per sq. mtr. and the chart shows the total impact at Rs.207.80 crore.

16. The chart sets out the difference relating to parking. According to the valuation made by the Deputy Inspector General of Registration, 3,383 parking spaces were considered. According to the Petitioners' calculation, the number of parking spaces was 1,387. The difference is therefore shown as 3,181 parking spaces. The area considered per parking space is 12.5 and the factor shown in the chart is 0.1275. The rate considered is Rs.24,000/- per sq. mtr. and the total impact of the difference is shown as Rs.0.71 crore.

17. The chart shows a separate difference in the rate applied to the parking area. According to the Deputy Inspector General of Registration, the rate applied was Rs.24,000/- per sq. mtr. According to the Petitioners, the rate applicable was Rs.8,500/- per sq. mtr. The difference in the rate is therefore shown as Rs.15,500/- per sq. mtr. For the total area of 3,181 sq. mtr., the chart shows the impact of the rate difference at Rs.4.93 crore.

18. The chart placed on record by the Petitioners gives the overall effect of the differences stated above. It records the “TOTAL DIFFERENCE IN VALUATIONS - as per above” at Rs.585.47 crore. It records the valuation according to the DIGR order dated 12 July 2016 at Rs.939.99 crore. The valuation according to the JDA calculation, after considering the valuation made for the constructed areas to be provided to VPPL, is shown at Rs.356.35 crore. The chart accordingly records the "Difference in valuations" at Rs.583.64 crore.

19. Thus, the case of the Petitioners is that the substantial difference between the valuation made by the Deputy Inspector General of Registration and the valuation according to the Joint Development Agreement is mainly because of the factors applied for converting the area, the rate adopted for valuation, the FSI taken into consideration, the Additional Vertical Entitlement arising in case of a Swap Notice and the number and valuation of parking spaces. The Petitioners contend that these differences have materially increased the market value and, consequently, the stamp duty determined by the authorities.

20. On the other hand, the case of the State is that the figures used by the Deputy Inspector General of Registration are based upon the terms of the Joint Development Agreement and the applicable ASR Guidelines. The State particularly relies upon the references in the Agreement to saleable area, FSI of 0.5, the Additional Vertical Entitlement and the possible exercise of the Swap Notice. The question, which therefore arises for consideration is whether, for the purpose of determining the market value and stamp duty payable on the instrument, the authorities were entitled to take into account these provisions and contingencies in the manner in which they have done. The above chart is therefore required to be considered along with the Joint Development Agreement, the applicable provisions of the Maharashtra Stamp Act, the relevant ASR Guidelines and the reasons recorded by the authorities in the impugned orders. The mere difference between the two calculations cannot by determine the correctness of either calculation. The Court is required to examine whether the particular area, FSI, rate and other factors used by the authorities were and factually permissible on the date of execution of the instrument.

21. Learned Senior Advocate submits that the judgment relied upon by the Respondents in *Kolte Patil vs. Chief Controller of Stamp* has no application to the facts of the present case. He submits that, in Kolte Patil, the Development Agreement provided for revenue sharing between the owners and the developers in the ratio of 38%:62%. The factual position in the present case is different because revenue sharing under the Agreement is only an option and is dependent upon a contingency. He submits that the judgment dated 11 November 2024 in *Kolte Patil* was reviewed by an order dated 17 February 2025. By the review order, the earlier order was set aside, and the matter was remanded to the authorities for calculating stamp duty on the basis of the FSI available on the date of execution of the instrument. Learned Senior Advocate submits that the chart produced by the Petitioners before the authorities gives the correct position of the various factors as they existed on the date of execution of the Agreement. According to him, the stamp duty ought to have been calculated on the basis of those actual figures. The chart shows the difference in the amount of stamp duty resulting from the authorities applying excessive rates and taking into account contingencies which had not occurred.

22. Learned Senior Advocate lastly relies upon the judgment in *Shantibhusan vs. State of U.P.,* 2023 SCC OnLine Page 489, particularly paragraph 20, to submit that provisions of a taxing statute have to be interpreted strictly. According to him, while interpreting such provisions, something which is not provided cannot be added to the statute. He therefore submits that stamp duty cannot be imposed by taking into account a future contingency which had not occurred on the date of execution of the instrument. In support of this submission, he relies upon the judgment in *Kesoram Industries & Cotton Mills*, referred to above.

23. Mr. Yatin Khochare, learned Advocate appearing for the State, submits that the Petitioners have placed an incorrect case before this Court by stating that the basic permissible FSI in the G-1 Zone was 0.1 FSI and not 0.5 FSI. According to him, this statement is contrary to Annexure X to Government Notification No. TPS-1213/1533/C.R.236/13/UD-12 dated 1 January 2014, issued under Section 20(4) of the Maharashtra Regional and Town Planning Act, 1966 ("MRTP Act"). He particularly relies upon Modification No.6, sanctioned under Section 24 of the MRTP Act, and submits that Clause 5.1 thereof provides for the permissible FSI in the G-1 Zone. The relevant provision reads as follows:

> "5.1(ii) Special Township Projects in G-1 Zone Development of a Special Township Project in G-1 Zone contained in the Regional Plan shall be permissible subjeci to the condition that 50 percent of the gross areas of the Special Township Project shall be kept open while such project shall be executed on the remaining 50 percent land with basic FSI of 0.50, worked out on the entire gross area of the Project...."

24. Learned Advocate submits that it is important to consider the position which existed under the earlier sanctioned regulations before the above modification came into force. Annexure X to the Government Notification dated 1 January 2014 records the existing provision in the following terms:

> "5.1 Special Township in urbanisable (U-2), Green (G-1). (G-2) Zone: (I) The total built-up area / FSI of entire gross area of the Special Township in urbanisable zone (U-2) and Green Zone (G-1, G-2) will be 0.5."

25. According to the learned Advocate, therefore, the contention of the Petitioners that the permissible FSI in the G-1 Zone was only 0.1 FSI cannot be accepted in view of the provisions of the applicable Government Notification. Learned Advocate submits that the Joint Development Agreement contains material which supports the case of the State. He refers particularly to the definition of "Horizontal Infrastructure Development" contained in the Agreement. The Petitioners have themselves agreed in the Agreement that the infrastructure and utilities relating to the VPPL Horizontal Development Land were required to be sufficient to enable construction of a township having FSI of 0.5. The relevant provision reads as follows:

> "(a) In the context for Phase I Land, the Trunk Road and VPPL Horizontal Development Land, the infrastructure and Utilities that is required to be provided in the form of fully developed roads (internal and external including Trunk Road), parks, street lightning, water and electricity supply, electricity sub-stations, sewerage, short water drainage, telecommunication and power supply and all other common amenities facilities / conveniences /infrastructure in compliance with the Township Regulations, the Approved Plans, the Approvals and Applicable Laws and in this regard (a) with respect to the Phase I Land and Trunk Road such

> infrastructure and Utilities should be sufficient to enable construction of a township having FSI of 1.5;
> and (b) with respect to VPPL Horizontal Development Land, such
> infrastructure and Utilities should be sufficient to enable construction of a township having FSI of 0.5.”

26. Learned Advocate points out that the Petitioners have defined the expression "VPPL Horizontal Entitlement" in the Joint Development Agreement. The definition refers to development based on FSI of 0.5. The relevant provision reads as follows:

> “VPPL Horizontal Entitlement shall mean the horizontal infrastructure development, approval and utilities required to be provided on the VPPL horizontal development land to enable construction / development of 0.5 FSI.”

27. According to the learned Advocate, despite these clear provisions in the Joint Development Agreement, the Petitioners have made statements in the Writ Petition which are contrary to the contents of their own Agreement. He submits that the Petitioners have therefore placed an incorrect and misleading case before this Court. He refers to the following statements made by the Petitioners in the Writ Petition:

> “i) At para 3.14, page 53 as follows:
>
> “… It was recorded that the basic entitlement of permissible FSI in U-1 Zone was 1 FSI and not 1.5 FSI (as computed by the Collector of Stamps); that the basic permissible FSI in G-1 Zone was 0.1 and 0.5 FSI (as computed by the Collector of Stamps); …”
>
> ii) At para 3.15, page 54 as follows:
>
> “in computing the maximum developable area, the FSI of 1.5

> was considered for land under U-1 Zone, in disregard to the fact that the basic entitlement of FSI for saleable component was only 1, whereas 0.2 FSI was for the purpose of constructing Economically Weaker Section tenements and the additional FSI of 0.3 was on a payment of premium which ought not to be considered in computing basic entitlement of area available for development."

28. Learned Advocate submits that the Joint Development Agreement provides for different modes of consideration and different entitlements depending upon whether the Swap Notice is exercised or not. According to him, the Appellate Authority, therefore, was justified in examining the instrument under both possible situations. He submits that this approach is consistent with the requirement of law to determine the market value by considering the rights and obligations which arise from the instrument on the date on which it is executed. According to him, the valuation cannot be treated as contingent or speculative merely because the Joint Development Agreement gives the parties different options.

29. Learned Advocate submits that Respondent No.2 was correct in taking into consideration the land admeasuring 50.23 Acres described in the Second Schedule to the Joint Development Agreement. According to him, whether possession of this land was delivered is not relevant for determining its market value and the stamp duty payable on the instrument. The said land forms part of the Joint Development Agreement and the rights and obligations relating to it have been consciously included by the parties in the Agreement. Therefore, according to the State, Respondent No.2

was required to consider this land while determining the market value of the property covered by the instrument. Learned Advocate submits that Respondent No.2 considered the various possibilities provided for in the Joint Development Agreement. It did not proceed merely on the basis of what the Petitioners say ought to have happened or what might happen in future, as alleged in ground (t) of the Petition. According to him, if the issue of Swap Notice was irrelevant to the instrument, the parties would not have incorporated provisions relating to it in the Joint Development Agreement. The fact that the parties included the land described in the Second Schedule and incorporated terms relating to that land shows that the same forms an inseparable part of the instrument. Respondent No.2 was therefore justified in considering the said land for determining the market value and the corresponding stamp duty.

30. Learned Advocate submits that the Deputy Inspector General of Registration considered the market value by examining four different situations relating to construction and revenue sharing. These were as follows:

A. Division of area of construction.

i. Without Swap Notice. In this case, the shares of Petitioner No.1 and VPPL were considered.

ii. With Swap Notice. In this case, the shares of Petitioner No.1 and VPPL were considered.

B. Revenue sharing.

i. Without Swap Notice. The respective shares of Petitioner No.1 and VPPL were considered.

ii. With Swap Notice. The respective shares of Petitioner No.1 and VPPL were considered.

31. Learned Advocate submits that out of these four methods of valuation, the valuation based on revenue sharing where the Swap Notice is given resulted in the highest value. Therefore, the authority adopted that method for calculating the market value and consequently determined the stamp duty payable on the instrument on that basis.

32. Learned Advocate relies upon the definition of "Saleable Area" contained in the Joint Development Agreement. The Petitioners themselves have defined the said expression in the following terms:

> "'Saleable Area' means useable carpet area x 1.5 in case of residential units."

33. Learned Advocate submits that, at this stage, Point No.5 of the Annual Statement of Rates, namely, the ASR Guidelines, is relevant. According to him, the ASR refers to "built-up area". Where the instrument uses the expression "carpet area", the ASR provides a method for converting carpet area into built-up area by applying a factor of 1.2. However, where the instrument uses some other expression for the construction area, the area mentioned in the instrument is required to be considered as the built-up area for determining market value. According to him, therefore, when the Joint Development Agreement refers to a particular area as "saleable area", the authority was justified in taking that area into consideration in accordance with the applicable ASR provisions.

34. Learned Advocate submits that the Joint Development Agreement concerns land admeasuring 298 acres described in the First Schedule. At the same time, the Agreement refers to land admeasuring 50.23 acres described in the Second Schedule. According to him, while determining the market value, the Respondents were correct in considering the value of the 50.23 acres covered by the Second Schedule. He submits that the stamp duty has to be determined with reference to the property and rights covered by the instrument as a whole. The Petitioners cannot restrict the valuation only to the land described in the First Schedule by contending that the land in the Second Schedule was subject to a Swap Notice which was not issued. According to the learned Advocate, the non-issuance of the Swap Notice does not make the land in the Second Schedule irrelevant for determining the market value of the instrument. What is important is that the parties had included the said land and the related rights and obligations in the Joint Development Agreement.

35. Learned Advocate submits that a plain reading of Clause 4.6 of the Development Agreement, appearing at page 39 of Document No.1009 of 2014, shows that the parties had agreed upon their respective entitlement to any additional Floor Space Index, or other development potential, if and when such additional FSI or development potential became available. He submits that the Agreement provides that, if such additional FSI or development potential became available in respect of the VPPL Horizontal Development Land on or before the date of the Swap Notice, VPPL would be entitled to such additional FSI or development potential.

According to him, this provision forms part of the rights and obligations created by the instrument. Respondent No.2 was therefore entitled to consider the same while determining the true market value of the property covered by the instrument. He submits that the valuation was accordingly made in accordance with the Maharashtra Stamp Act and the applicable valuation rules. On that basis, the market value of the property covered by the instrument was determined at Rs.939,99,95,350/- and the stamp duty payable was calculated at Rs.37,59,99,814/-. Since the Petitioners had paid only Rs.15,67,00,000/- as stamp duty at the time of registration, the shortfall was determined at Rs.21,92,99,814/-.

36. The learned Advocate has relied upon the following chart to explain the difference between the calculation made in the order dated 12 July 2016 passed by the Deputy Inspector General of Registration and the stamp duty calculation according to the Petitioners under the Joint Development Agreement:

Sr. No.	**Description**	**Type of Difference**	**As per DIGR Order**			**As per JDA SD Calculation**			**Difference**	**Impact**	
			Area	Factor	Total Area	Area	Factor	Total Area		Rate Per Sq. Mtr. Considered	Total Impact (Cr.)
1.	Vertical Entitle-ment	Area Difference	12,60,000	1.5	18,90,000	12,60,000	1.2	15,12,000	3,78,000	24,000	84.28

37. Learned Advocate refers to the order bearing Outward No. uksamefu@ Bk.ks @ 32(c) vihy & 14/16/2937 – 40/16 dated 12 July 2016. He submits that, on page 5 of the said order, VPPL Vertical Entitlement is stated as 12,60,000 sq. ft. of carpet area, which corresponds to 18,90,000 sq. ft. of saleable area. According to him, this figure of 18,90,000 sq. ft. is mentioned on page 10 of the Development Agreement, corresponding to page 110 of the Writ Petition. He submits that, under Guideline No.4 of the Annual Statement of Rates, where carpet area is required to be converted into built-up area, the carpet area is multiplied by 1.2. However, where another built-up or construction area is mentioned in the document, such area is required to be taken into consideration. Since the Development Agreement mentions 18,90,000 sq. ft. as the saleable area, the Deputy Inspector General of Registration took that figure into consideration while making the valuation.

Sr. No.	**Description**	**Type of Difference**	**As per DIGR Order**	**As per JDA SD Calculation**	**Difference**	**Impact**	
			Rate per Sq. Mtr.	Rate per sq. mtr.	Difference in rate per sq. mtr.	Total Area (Sq. ft.)	Total Impact (Cr.)
2.	Vertical Entitle-ment	Rate Difference	24,000	8,500	15,500	18,90,000	272.16

38. Learned Advocate refers to the same order dated 12 July 2016 and submits that the valuation was carried out by four methods as contemplated under the ASR Guidelines. The methods relied upon were as follows:

Construction Area Distribution (ASR Guidelines No. 23).

i. If Swap Notice is Not Given. While calculating the owner's share of construction, the construction rate of Rs.8,500/- per sq. mtr. was taken for valuation.

ii. If Swap Notice is Given. While calculating the owner's share of construction, the construction rate of Rs.8,500/- per sq. mtr. was taken for valuation.

Revenue Distribution (ASR Guidelines No. 24).

i. If Swap Notice is Not Given. While calculating the owner's share, the flat rate of Rs.24,000/- per sq. mtr. was taken for valuation.

ii. If Swap Notice is Given. While calculating the owner's share, the flat rate of Rs.24,000/- per sq. mtr. was taken for valuation.

39. According to the learned Advocate, all four methods were considered and the method which resulted in the higher valuation was adopted for determining the stamp duty.

Sr. No.	**Description**	**Type of Difference**	**As per DIGR Order**			**As per JDA SD Calculation**			**Difference**	**Impact**	
			Area	Factor	Total Area	Area	Factor	Total Area		Rate Per Sq. Mtr. Considered	Total Impact (Cr.)
3.	Addition-al Vertical Entitle-ment (in case of	Area Differ-ence	2,33,000	1.5	3,49,500	2,33,000	1.2	2,79,600	69,900	24,000	15.59

Swap Notice)

40. Learned Advocate refers to the order bearing Outward No. uksamefu@Bk.ks@32(c) vihy & 14/16/2937 – 40/16 dated 12 July 2016. He submits that, on page 6 of the said order, VPPL Vertical Entitlement is stated as 2,33,333 sq. ft. of carpet area, corresponding to 3,50,000 sq. ft. of saleable area. According to him, the Development Agreement contains a reference to this area on page 9, corresponding to page 109 of the Writ Petition. He again relies upon Guideline No.4 of the Annual Statement of Rates and submits that, where carpet area is mentioned, the prescribed factor of 1.2 is applied for conversion into built-up area. However, if another built-up area is mentioned in the document, the same is required to be considered. According to him, the Deputy Inspector General of Registration therefore took the saleable area mentioned in the Agreement into consideration for valuation.

Sr. No.	**Description**	**Type of Difference**	**As per DIGR Order**			**As per JDA SD Calculation**			**Difference**	**Impact**	
			Area	Factor	Total Area	Area	Factor	Total Area		Rate Per Sq. Mtr. Considered	Total Impact (Cr.)
4.	Addition-al Vertical Entitle-ment	Permissib-le FSI difference	2,33,000	5	11,655,000	2,33,1000		2,33,000	9,32,000	24,000	207.80

(in case of Swap Notice)

41. Learned Advocate submits that the figures of 0.5 FSI and 1 FSI have been used throughout the valuation made in the order dated 12 July 2016. He relies upon the Notification issued under Section 20(4) of the Maharashtra Regional and Town Planning Act, 1966, relating to the Regulations for Development of Special Township Projects in areas covered by the Mumbai Metropolitan Regional Plan. The Notification bears No. TPS-1213/1533/ C.R.236/13/UD-12 dated 1 January 2014. According to him, Appendix X to the said Notification introduced certain sanctioned modifications to the earlier Notification No.1205/MMR/DCR/CR-48/06/UD-12 dated 10 March 2006. He particularly refers to Modification No.1 relating to general requirements and area requirements. According to him, under the said modification, land falling within Green Zone 2 and other environmentally sensitive areas was excluded for the relevant purpose.

42. Learned Advocate submits that Modification No.6 to the said Notification modified Clause 5.1 relating to Special Townships in the G-1 Zone. According to him, the modified provision provides that a Special Township Project in the G-1 Zone is permissible subject to the condition that 50% of the gross area of the project is kept open and the project is developed on the remaining 50% land with basic FSI of 0.5, calculated on the entire gross area of the project. He submits that the Development Agreement, particularly on pages 6 and 10, corresponding to pages 106 and 110 of the Writ Petition, refers to FSI of 0.5 in relation to the VPPL Horizontal Development Land. Therefore, according to him, the Deputy Inspector General of Registration correctly adopted FSI of 0.5 for the purpose of valuation.

Sr. No.	**Description**	**Type of Difference**	**As per DIGR Order**			**As per JDA SD Calculation**			**Difference**	**Impact**	
			No. of Parking	Area per parking	Factor (0.85*0.05)	No. of Parking	Area per parking	Factor (0.85*0.05)		Rate Per Sq. Mtr. Considered	Total Impact (Cr.)
1.	Parking	No. of Parking difference	3,383	12.5	0.1275	1,387	12.5	0.1275	3,181	24,000	0.71

43. Learned Advocate submits that the valuation of the parking area was carried out by applying four methods. According to him, the Deputy Inspector General of Registration followed the ASR Guidelines relating to construction area distribution and revenue distribution. The four calculations were as follows:

Construction Area Distribution (ASR Guidelines No. 23, 16).

i. If Swap Notice is Not Given. While calculating the owner's share, the number of parking spaces was worked out on the basis of saleable area of 1,75,650 sq. mtr. This resulted in 1,750 parking spaces. The valuation was then made by applying the construction rate of Rs.8,500/- per sq. mtr.

ii. If Swap Notice is Given. While calculating the owner's share, the saleable area of 1,75,650 sq. mtr. plus 1,62,639 sq. mtr. was considered. On that basis, 3,383 parking spaces were worked out. The valuation was made by applying the construction rate of Rs.8,500/- per sq. mtr.

44. Revenue Distribution (ASR Guidelines No. 24, 16).

i. If Swap Notice is Not Given. While calculating the owner's share, the saleable area of 1,75,650 sq. mtr. was considered and 1,750 parking spaces were worked out. The valuation was made by applying the flat rate of Rs.24,000/- per sq. mtr.

ii. If Swap Notice is Given. While calculating the owner's share, the saleable area of 1,75,650 sq. mtr. plus 1,62,639 sq. mtr. was considered and 3,383 parking spaces were worked out. The valuation was made by applying the flat rate of Rs.24,000/- per sq. mtr.

Sr. No.	**Description**	**Type of Difference**	**As per DIGR Order**	**As per JDA SD Calculation**	**Difference**	**Impact**	
			Rate per Sq. Mtr.	Rate per sq. mtr.	Difference in rate per sq. mtr.	Total Area (Sq. ft.)	Total Impact (Cr.)
6.	Parking	Rate Difference	24,000	8,500	15,500	3.181	4.93

45. As stated in the order bearing Outward No. uksamefu@Bk.ks@ 33,3832 (c) vihy & 14/16/2937–40/16 dated 12 July 2016 passed by the Deputy Inspector General of Registration, the valuation was carried out by adopting four different methods.

Construction Area Distribution (ASR Guidelines No. 23)

i. If Swap Notice is Not Given. While calculating the owner's share of construction, the construction rate of Rs.8,500/- per sq. mtr. was taken for the purpose of valuation.

ii. If Swap Notice is Given. While calculating the owner's share of construction, the construction rate of Rs.8,500/- per sq. mtr. was again taken for the purpose of valuation.

Revenue Distribution (ASR Guidelines No. 24)

i. If Swap Notice is Not Given. While calculating the owner's share, the flat rate of Rs.24,000/- per sq. mtr. was taken for the purpose of valuation.

ii. If Swap Notice is Given. While calculating the owner's share, the flat rate of Rs.24,000/- per sq. mtr. was taken for the purpose of valuation.

46. The Deputy Inspector General of Registration compared the valuation arrived at by these four methods. Since the valuation under one of these methods was higher, the higher valuation was taken into consideration for determining the market value and the stamp duty payable.

REASONS AND FINDINGS:

47. I have considered the submissions made on behalf of the Petitioners as well as the State authorities. The main question before the Court is what rights were transferred on 18 February 2014 and what rights were to come into operation only after the condition in the Agreement was fulfilled. Before considering the objections raised by the parties, it is necessary to see the legal position which applies to a development agreement where some rights are subject to conditions or depend upon some future event.

Merely describing a right as "contingent" will not decide the issue. The Agreement has to be looked at as a whole. It is necessary to see what rights and obligations were created when the Agreement was executed and what rights were to come only when some future event happens, or an option is exercised, or some further act is done by the parties. Stamp duty has to be considered with reference to the instrument and the rights which arise from it on the relevant date. Thus, a benefit which may arise in future cannot be included in valuation only because it is mentioned in the Agreement. At the same time, a right which is created under the Agreement cannot be ignored only because its exercise is to take place later. Keeping this position in view, the submissions regarding the development rights, the 298 acres covered by the First Schedule, the 50.23 acres covered by the Second Schedule, the FSI available on the date of the Agreement, the Additional Vertical Entitlement, the conversion factor, the construction cost or revenue sharing and the consequential parking calculation will have to be considered.

48. The fact that an instrument contains contingent or conditional development rights does not mean that the instrument cannot be placed before the stamp authority for adjudication. Likewise, merely because some right can be exercised only after a future event takes place, it cannot follow that only nominal stamp duty is payable. The important question is to find out what the instrument really is and what rights were created or recorded in it on the date of its execution. The document has to be read as a whole. Under the Maharashtra Stamp Act, it has to be determined whether the document is only an executory development agreement, whether it is an agreement relating to development rights falling under the relevant entry of Article 5, or whether it operates as a conveyance because ownership or an interest in immovable property has been transferred. The name or description given to the document by the parties cannot decide the matter.

Consideration of contingent rights:

49. While examining a contingent right, it is necessary to distinguish between a right which is created under the Agreement on the date of its execution, but which can be exercised only after a condition is fulfilled, and a right which will arise only after a future event. If the developer is given only a promise that development or negotiation will take place after a future approval, and there is no present possession, proprietary interest, authority to sell or power to bind the owner, the document would indicate an executory agreement. Even in such a case, the particular Article applicable on the date of execution has to be considered. But where the Agreement gives the developer an enforceable development interest, a right to enter or possess the property, a right to construct, a right to sell, authority to execute documents, or an irrevocable power of attorney, the mere fact that some of these rights can be exercised later does not mean that no present right has been created. It would then be necessary to examine whether a present interest or substantial rights in the property has been created or transferred. If that is so, the question of higher stamp duty, including treatment of the instrument as a conveyance, would arise.

50. In the same way, if the Agreement transfers or assigns an interest in the land, gives possession, or makes execution of a future sale deed only a formal step, there would be reason to consider the provisions relating to conveyance, including Article 25 treating such instrument as a conveyance. This would depend upon the terms of the document. However, where no right in the land comes into existence until a separate conveyance or assignment is executed after the condition is fulfilled, and the owner continues to retain control over the property until that time, there would be reason to hold that the document is not a conveyance. Even then, the entry relating to development agreements and the provisions under the Maharashtra Stamp Act would have to be considered. The authority has to examine the terms of the Agreement. Possession, control, consideration, exclusive development rights, power to sell or assign, authority to execute conveyances, whether the power is irrevocable, allocation of FSI or TDR, sharing of risks and benefits, and whether the later conveyance is intended to be a transfer or only a formal step, are all relevant matters. The issue cannot be decided merely because a particular right has been described as "contingent".

Principles applicable under the Maharashtra Stamp Act:

51. The decision in *Suhas Damodar Sathe v. State of Maharashtra 2025*, SCC OnLine Bom 576 is relevant in this regard. In that case, the development agreement, when read with the power of attorney and other connected terms, gave the developer extensive rights concerning development and possession or control of the property, including the ability to convey or assign rights to purchasers. The Court therefore considered the effect of the documents instead of looking only at the description of the document as a development agreement. The principle which follows is that the effect of the instrument has to be considered while deciding whether it amounts to a conveyance.

52. The decision of the Supreme Court in *Shyamsundar Radheshyam Agrawal v. Pushpabai Nilkanth Patil*, (2024) 10 SCC 324 is relevant. In the Maharashtra context, the Supreme Court considered an agreement which provided for possession before or without a later conveyance and held that such an arrangement could attract stamp duty at the level applicable to a conveyance under the relevant statutory provision. The later execution of a sale deed and payment of stamp duty on that sale deed did not remove the stamp liability which had arisen from the earlier agreement. This does not mean that every development agreement becomes a conveyance. The document has to be examined with reference to the exact language of the applicable Article and the statutory Explanation which was in force on the date of execution. The date of execution, location of the property, registration of the document, possession clause, rights given to the developer and the Article applicable at that time are therefore important matters.

Examination of a case involving contingent development rights:

53. If the contention is that the instrument is liable to stamp duty only as a development agreement and not as a conveyance, it is not sufficient merely to say that a particular right is contingent. It must be shown from the document that, until the specified future event occurs, the developer has no present proprietary interest, no present possession having the nature of ownership, no power to sell or convey the property, no authority to bind the owner, and no right to compel a conveyance except in accordance with a future agreement or other condition.

54. It is necessary to see whether the later conveyance contemplated by the parties is intended to be a transfer of the property or whether it is only a formal document recording a transfer which has taken place. The position would be different where the Agreement has given possession or control to the developer, created development interest, permitted construction and sale, authorised execution of conveyances, fixed the consideration for the entire transaction, or made the future event only a formality. In such circumstances, the contingency may only postpone the exercise of an existing right. It may not prevent a finding that a present interest in the property has been created.

55. The legal position can be stated as under. An instrument containing contingent development rights can be presented for stamp adjudication. The fact that some rights can be exercised only after a future event does not make the instrument unstampable. The contingent nature of a right is relevant, but it is not the answer. The Court has to find what rights were created or transferred on the date of execution. If the instrument presently transfers an interest in immovable property, possession, control, development rights or authority to convey, such rights may have to be considered for stamp purposes. But if a particular right will come into existence only after a future event or separate conveyance, that future right cannot be treated as an existing right merely because the Agreement states what may happen if the condition is fulfilled. The document therefore has to be read as a whole. The authority has to identify the real nature of the instrument, the rights which were created immediately, the rights which were conditional, the consideration which was presently payable or agreed, the possession and control given, the development potential and FSI available, and the statutory Article and valuation provisions applicable on the date of execution.

56. Before determining stamp duty, the Agreement should be examined clause by clause along with connected documents, wherever such documents form part of the transaction. The authority must identify the exact Article applicable to the instrument and give reasons as to why each present or future right is or is not required to be included in the market value. The important consideration remains the effect of the instrument on the date of its execution.

Rights created on execution of the Agreement:

57. Article 5(g-a)(i) applies to an instrument "if relating to giving authority or power to a promoter or a developer, by whatever name called, for construction of, development of, or sale or transfer (in any manner whatsoever) of, any immovable property." The same provision provides for the same duty as is leviable on a conveyance under Article 25 on the market value of the property. Therefore, merely because the document is called a Joint Development Agreement, the matter does not end there. At the same time, Article 5(g-a)(i) cannot be understood to mean that the Stamp Authority can value every right which may arise in future as if such right had been transferred on the date of execution. The charging provision and the valuation provision have to be applied to the instrument and to the rights which are covered by it. A future event cannot be treated as happened only because the parties have made provision for it in the Agreement.

58. The Agreement contains a clear grant of development rights which operates from the date of the Agreement. Recital D records that, "Subject to retention of FSI equivalent to 12,60,000 sq. ft. of usable carpet area in respect to VPPL Vertical Entitlement (Phase I) unto, VPPL has agreed to grant development rights of VPPL Land to WADHWA." The operative provisions of the Agreement proceed on the same basis. Clause 2.2 states that, subject to retention of the 12,60,000 sq. ft. VPPL Vertical Entitlement, VPPL has agreed to grant and WADHWA has agreed to accept "the right to develop the VPPL Land". It provides for development of the Project Land in accordance with the approved plans and the terms of the Agreement. Clause 2.3 provides that the Agreement "shall become effective on and simultaneously upon the execution of this Agreement VPPL has placed WADHWA in possession of the VPPL Land for the purpose of development of the VPPL Land". The clause records the right of WADHWA to do the necessary acts for development and implementation of the Project. Therefore, the arrangement was not something which was only to be considered or acted upon at a later stage.

59. The provisions relating to the Power of Attorney support this position. Clause 5.1 records that, simultaneously with execution of the Agreement, VPPL executed a power of attorney in favour of

WADHWA for taking the necessary steps for obtaining approvals. Clause 5.2 records a general power of attorney under which WADHWA was authorised, amongst other things, to undertake construction and development, execute agreements for sale and lease and other documents relating to development of the land. The Power of Attorney is stated to be irrevocable except in the case of termination under Clause 10. Therefore, substantial rights and authority came into existence from the date of execution. It was not merely an arrangement to negotiate development rights at some later stage. The rights which came into existence included the right to develop the land which then formed part of VPPL Land, possession for that development, authority to obtain approvals and implement the Project, construction rights and the powers given under the Power of Attorney. The consideration for these rights was not left uncertain. Clause 3.1.1 provides for cash consideration of Rs.187 crores and Clause 3.1.2 provides for construction-related consideration. The Agreement therefore created substantial present rights which could be considered for valuation.

60. This finding has to remain within the limits of the rights which the Agreement made operative at that time. The Agreement has to be read as a whole. The definitions and provisions relating to the Swap show that some development rights were available immediately, whereas some other rights were to become available only after the event mentioned in the Agreement.

<u>**First Schedule land of 298 acres:**</u>

61. The definition of "VPPL Land" is important for this purpose.

The Agreement provides that where no Swap Notice is issued, VPPL Land consists of the lands in the FIRST SCHEDULE. Where a Swap Notice is issued, the lands in the FIRST SCHEDULE together with the VPPL Horizontal Development Land mentioned in the SECOND SCHEDULE form part of VPPL Land. The First Schedule land was not dependent upon the Swap arrangement. It was part of the development arrangement from the date of execution. WADHWA obtained development rights in respect of that land immediately, subject to the rights which VPPL retained under the Agreement. The possession provision operates in respect of VPPL Land as it stood at that time. Therefore, there is no reason to postpone the valuation of the present development rights in the 298 acres merely because the Agreement contains a future Swap arrangement. The submission that the whole transaction was contingent and that no development right existed on 18 February 2014 therefore cannot be accepted. Such submission does not take into account Clauses 2.2 and 2.3, the definition of VPPL Land, the immediate possession and the Powers of Attorney. These provisions show that an actual and enforceable development arrangement came into effect upon execution of the Agreement. At the same time, the submission of the State requires some qualification. Because the development rights in the First Schedule land were created immediately, it does not follow that every right mentioned elsewhere in the Agreement was a present right for valuation purposes. The Second Schedule land was dealt with under the Agreement.

<u>Second Schedule land of 50.23 acres:</u>

62. The definition of "VPPL Horizontal Development Land" refers to approximately 50 acres of land mentioned in the SECOND SCHEDULE. The Agreement provides that VPPL Land consists only of the First Schedule land where no Swap Notice is issued, and that the Second Schedule land is included only when the Swap Notice is issued. Clause 6.1 provides that "VPPL has the option, anytime within 3 (three) years from the Effective Date, to notify WADHWA by giving one (1) month advance notice, that WADHWA shall be entitled to develop the VPPL Horizontal Development Land". The clause provides for exercise of that right by VPPL by notifying WADHWA of its intention to grant the VPPL Horizontal Development Land in place of the relevant additional vertical entitlement.

63. Under the Agreement, it is VPPL which has the option to issue the Swap Notice and not WADHWA. Clause 6.1 does not give WADHWA an option to issue the Swap Notice. Clause 6.2 provides that "upon VPPL giving Swap Notice to WADHWA" the obligations relating to the VPPL Horizontal Entitlement come into effect and WADHWA becomes entitled to the development rights in the VPPL Horizontal Development Land. The Agreement could have provided that the Second Schedule land stood transferred or was available for development immediately from the date of execution. It has not said so. Instead, it has provided for a particular event, namely the Swap Notice, after which the development rights were to come into effect. I therefore cannot hold that on 18 February 2014 WADHWA had the same present and exercisable development rights in respect of the 50.23 acres as it had in respect of the First Schedule land. The right relating to the Second Schedule land was provided for under the Agreement, but its enjoyment as a development right depended upon exercise of the option and issuance of the Swap Notice.

64. I have considered whether the existence of this arrangement makes the Second Schedule land irrelevant for stamp purposes. That cannot be said. The contingency is relevant to the stamp inquiry, though it is not the only consideration. The proper finding is that the Second Schedule land could not be valued in the 2014 determination as if the development rights in that land had unconditionally vested in WADHWA. If the Swap is brought into effect, the State can examine the instrument through which those rights then become operative and can levy stamp duty in accordance with law. The later event does not take away the power of the State. It only means that the later right cannot be assumed to have existed in its final form on the earlier date. A contingent development right can be examined for stamp purposes. What cannot be done is to take a future right and value it as a present vested right merely because the parties had contemplated that such right could arise in future.

Vertical entitlement:

65. The learned Senior Advocate refers to the order bearing Outward No. uksamefu@ Bk.ks @ 32(c) vihy & 14/16/2937 – 40/16 dated 12 July 2016. He submits that, on page 5 of the said order, the VPPL Vertical Entitlement is shown as 12,60,000 sq. ft. carpet area and the same is taken as 18,90,000 sq. ft. saleable area. He also points out that the figure of 18,90,000 sq. ft. is mentioned on page 10 of the Development Agreement, corresponding to page 110 of the Writ Petition. According to him, under Guideline No.4 of the Annual Statement of Rates, where carpet area is to be converted into built-up area, it has to be multiplied by 1.2. However, where the document itself gives another built-up or construction area, that area is to be considered. Therefore, since the Development Agreement mentions 18,90,000 sq. ft. as saleable area, the Deputy Inspector General of Registration was justified, according to him, in taking the said figure for valuation.

66. In my opinion, the figure of saleable area mentioned in the Development Agreement cannot be treated as the built-up area for stamp valuation. The fact that 18,90,000 sq. ft. is mentioned as saleable area does not mean that the conversion factor of 1.2 under Guideline No.4 is to be ignored. The Authority was required to first see what area is required to be taken under the applicable ASR and then apply the conversion as provided. The expression "Saleable Area" used by the parties in the Agreement cannot, only because it is mentioned there, become the built-up area for the purpose of stamp duty. In the present case, the Agreement first refers to VPPL Vertical Entitlement of 12,60,000 sq. ft. of usable carpet area and thereafter refers to the corresponding saleable area of 18,90,000 sq. ft. Therefore, the figure of 18,90,000 sq. ft. could not be taken as the area for valuation without seeing how that figure is required to be treated under the ASR. Guideline No.4 was required to be applied to the area which is relevant for valuation. The Deputy Inspector General of Registration, therefore, was not justified in taking 18,90,000 sq. ft. only because the same is mentioned as saleable area in the Agreement. The valuation will therefore have to be reconsidered by applying the proper conversion to the carpet area, as required under the applicable guideline.

Additional Vertical Entitlement:

67. The Additional Vertical Entitlement has to be considered from the VPPL Vertical Entitlement which was created under the Agreement. The Agreement defines "VPPL Additional Vertical Entitlement" as 233,333 sq. ft. of usable carpet area, with adjustment in the manner provided in the Agreement depending upon changes in FSI. The same definition connects the additional entitlement with the Swap mechanism and provides for corresponding adjustment in the Saleable Area where there is an increase in FSI before issuance of the Swap Notice. Clause 6.1 makes the arrangement clear. The benefit to WADHWA and the corresponding obligations concerning the Horizontal Development Land arise in the situation where the Swap option is exercised. Clause 6.2 then provides that upon VPPL giving the Swap Notice, the obligations concerning the VPPL Horizontal Entitlement come into effect and WADHWA becomes entitled to the development rights in the VPPL Horizontal Development Land. I therefore find that the Additional Vertical Entitlement was not presently vested entitlement of WADHWA on 18 February 2014. It was a future consequence connected with the Swap option. The fact that the Agreement had stated a particular quantity for this entitlement does not make the right presently vested.

68. This does not mean that the Additional Vertical Entitlement was meaningless promise. It was a right which could become enforceable when the condition mentioned in the Agreement was fulfilled. A right may exist as a conditional benefit and still not amount to a present development right in the land which can be treated as vested for valuation of the instrument. Clause 4.6 provides that if any additional FSI or other development potential becomes available in respect of the VPPL Horizontal Development Land "on or prior to the date of the Swap Notice", VPPL shall be entitled to it, whereas additional FSI or development potential becoming available after the Swap Notice belongs to WADHWA. Such division of rights depending upon the date of the Swap Notice would not have much meaning if the entire development potential of the Second Schedule land had become vested in WADHWA on 18 February 2014.

FSI available on 18 February 2014:

69. I now turn to the question of FSI. For this purpose, a distinction has to be made between the FSI which was available on the date of execution and any FSI which might become available later because of changes in planning permissions, development potential or other circumstances. The Agreement gives some indication in this regard. The definition of "Horizontal Infrastructure Development" provides that, in relation to the Phase I Land and Trunk Road, the infrastructure is to be sufficient to enable construction of a township having FSI of 1.5. In relation to the VPPL Horizontal Development Land the definition states that the infrastructure is to be sufficient to enable construction of a township having FSI of 0.5. The definition of "VPPL Horizontal Entitlement" refers to horizontal infrastructure, approvals and utilities required "to enable construction / development of 0.5 FSI" on the VPPL Horizontal Development Land. This position is consistent with the Government position relied upon before the Court, under which development of a Special Township Project in the G-1 Zone was permissible with basic FSI of 0.50 on the gross area, subject to the condition relating to the open area. I therefore find that the available basic FSI for the relevant G-1 Special Township land on the date of execution was 0.50 and not 0.10.

70. The submission that the available FSI on 18 February 2014 was only 0.10 therefore cannot be accepted. The Agreement proceeds on the basis of 0.5 FSI in relation to the VPPL Horizontal Development Land. The State authority could not disregard this provision while determining the development potential of the transaction. However, merely because 0.50 FSI was available, the authority could not adopt some higher future FSI on the ground that the planning provisions might permit development potential.

<u>Whether future or maximum FSI could be adopted:</u>

71. The stamp valuation has to be connected with the instrument on the relevant date. The authority therefore had to determine what development potential was available in respect of the property forming the subject matter of the instrument on 18 February 2014. Clause 4.6 refers to additional FSI or other development potential may become available in future. It deals with development potential available on or before the Swap Notice and development potential which becomes available after the Swap Notice. Therefore, a valuation based upon future maximum development potential, without showing that such development potential was available on the date of execution, cannot be sustained. The authority cannot select the highest possible development which may arise in future and include it in the valuation of the earlier instrument merely because the parties had contemplated that such development might become available.

72. It is no answer to say that market value need not be confined to the construction existing on the date. Development potential is relevant. But the potential which can be considered must be one which the owner and developer could use on the relevant date. A potential dependent upon future approval, future increase in FSI or future Swap cannot be treated as presently available FSI. I therefore find that the authority was entitled to consider the FSI available on 18 February 2014. It was not entitled to replace that FSI by a future or maximum FSI which was not available and operative on that date.

1.5 factor and 1.2 factor:

73. The next question is regarding the conversion factor. For this purpose, the meaning of "Saleable Area" has to be kept separate from the valuation method of converting carpet area for applying the ASR rate. The Agreement defines the VPPL Vertical Entitlement with reference to 12,60,000 sq. ft. of usable carpet area. It refers to the corresponding figure of 18,90,000 sq. ft. as the "Saleable Area". Therefore, the factor of 1.5 is used in the Agreement for the purpose of converting the entitlement into saleable area. That factor cannot become the conversion factor for determining market value under the ASR. The description of Saleable Area serves the arrangement between the parties. The Stamp Authority must still apply the conversion method provided under the applicable valuation method.

74. The material relied upon by the Petitioners shows that, for converting the usable carpet area into the area to which the ASR rate is to be applied, the appropriate factor is 1.2. The State authority has treated the factor of 1.5 as if it was the prescribed valuation conversion factor. I do not find that approach sustainable. The 1.5 factor may have significance for determining the entitlement between VPPL and WADHWA. Its presence in the Agreement does not make it the conversion factor prescribed for stamp valuation under the ASR. I therefore hold that, for the present stamp valuation, the area has to be converted by applying the applicable 1.2 factor and not the 1.5 factor. The use of 1.5 by the authority as the valuation conversion factor was therefore erroneous.

Construction cost and sale price:

75. The next issue relates to the rate which is to be applied. The Agreement contains different components and they cannot be combined merely because they occur in the same transaction. Clause 3.1.2(ii) records that WADHWA is required to "construct, complete and deliver free and clear of any Encumbrances the VPPL Vertical Entitlement (Phase I)" aggregating to a value of Rs.99,53,99,737 at the specified rate of Rs.790 per sq. ft. of usable carpet area. The rate works out to approximately Rs.8,500 per sq.

metre. This is a construction obligation. It represents the agreed value of the construction which WADHWA has to provide to VPPL. It is different from the market sale price at which the residential premises may be sold to third-party purchasers. The Petitioners are therefore correct to the extent that the authority could not take the ASR sale price of approximately Rs.24,000 per sq. metre and substitute that rate for the construction value while calculating the construction component of the consideration.

76. At the same time, I do not accept the submission that because there is a construction-cost component, the entire stamp valuation must be restricted to construction cost. If the Agreement contains a genuine sale-revenue component which is consideration for the development rights and is operative, that component may have to be considered. The proper exercise is to identify the actual components of consideration and then apply the statutory method applicable to each. In the present Agreement the construction component has to be considered as construction consideration at the construction value, subject to the applicable valuation provisions. It cannot be increased merely by applying the retail sale price of the completed premises.

<u>Revenue Sharing under Clause 7.1:</u>

77. The State has relied upon Clause 7.1 of the Agreement and the provisions relating to sharing of Gross Revenue. Clause 7.1 deals with the sale of the Alternate Vertical Premises and provides an option to VPPL concerning the manner in which such premises are to be sold. The clause refers to VPPL's entitlement to receive 35% of the Gross Revenues in the circumstances contemplated under that clause. The question is whether this provision constitutes consideration for the development rights granted under the Agreement and, if so, to what extent it was required to be considered while determining the market value of the instrument as on 18 February 2014.

78. At the outset, the submission that the revenue-sharing provision must be left out only because the actual sale of the premises and receipt of the revenue would take place later cannot be accepted. The decision in *Kolte Patil Developers Ltd.* makes it clear that consideration for development rights may be in the form of a share in gross sale proceeds, even though such consideration is payable only when the constructed premises are sold. In that case, the owners were entitled to 38% of the gross sale proceeds and the Court held that the deferred revenue sharing constituted consideration for transfer of the development rights. The Court held that where consideration under a development agreement is in the form of revenue sharing, such consideration has to be computed as on the date of execution. For that purpose, the development potential available on that date and the applicable ASR relating to the land and constructed tenements are required to be considered. The fact that the premises would be constructed and sold only later does not make the consideration incapable of valuation.

79. The Review Order in *Kolte Patil* is relevant. It makes it clear that when the consideration has to be worked out on the basis of the development potential available on the date of execution, the authority has to ascertain the FSI available on the date on which the instrument was executed. The review was required because that exercise had not been carried out by the authority.

80. Therefore, the question in the present case is not whether the revenue under Clause 7.1 would be received on 18 February 2014. The fact that an agreed revenue-sharing consideration is payable at a later date does not take it outside Section 2(na) of the Maharashtra Stamp Act. The real question is whether, on a proper reading of Clause 7.1 along with the Agreement as a whole, the entitlement to 35% of the Gross Revenues was agreed consideration for the development rights granted on 18 February 2014, or whether that entitlement depended upon some separate condition which had not become operative on that date.

81. In *Kolte Patil*, the answer came from the terms of the development agreement. The owners had granted the developer an absolute right to develop the property, construct buildings and sell the constructed units. The Agreement provided that the consideration for that transfer would be the specified share of gross sale proceeds. The Court therefore treated the revenue-sharing provision as consideration even though payment was deferred until the units were sold.

82. The arrangement in the present case requires a closer examination. Clause 7.1 does not state that VPPL would from the date of execution receive 35% of all Gross Revenues arising from the entire development as consideration for the development rights granted under the Agreement. The clause concerns Alternate Vertical Premises and operates with reference to the options, notices, and consequences provided in that clause. The 35%

entitlement has to be understood with reference to the circumstances to which Clause 7.1 applies.

83. Where a provision provides for deferred consideration, the consideration does not cease to be consideration merely because payment is postponed. But where a provision creates an entitlement only after a specified future event or exercise of an option, the Court has to see whether that event had occurred or the option had been exercised on the date of execution. The mere existence of a future arrangement cannot make a possible future entitlement a present consideration for the whole transaction.

84. On reading the Agreement as a whole, I find that Clause 7.1 does not make VPPL unconditionally entitled, from 18 February 2014, to 35% of all Gross Revenues arising from the entire development. The clause is concerned with the Alternate Vertical Premises and operates through the options provided therein. The 35% entitlement must be confined to those circumstances in which Clause 7.1 makes the revenue-sharing obligation operative.

85. It follows that the State could not treat every future sale contemplated under the Agreement and every future revenue which may arise from such sale as consideration for the grant merely by referring to Clause 7.1. Before doing so, the authority had to identify the particular right which was being valued and show that the corresponding revenue-sharing entitlement constituted consideration for that right as on the date of execution. The consideration cannot be enlarged beyond what the Agreement provides. At the same time, it would be incorrect to hold that Clause 7.1 has no relevance because the revenue is receivable in future. If the 35% Gross Revenue entitlement is consideration for development rights which were presently granted, then the fact that payment is deferred would not prevent it from being taken into account under Section 2(na). In that event, it would have to be computed as on 18 February 2014 with reference to the development potential and FSI available on that date and the applicable ASR.

86. The development rights in the Second Schedule land and the additional rights which depended upon the Swap Notice cannot be included merely because the Agreement contemplated that such rights could become available. If those rights were to arise only upon the event contemplated under the Agreement, they were not part of the present development rights on 18 February 2014. Revenue, if any, attributable exclusively to such later rights cannot therefore be used to enlarge the consideration for the rights which were granted on the date of execution.

87. The development potential used for computing deferred consideration must be the development potential available on the date of execution. The authority cannot proceed on an uncertain development potential. Therefore, even where Clause 7.1 is required to be taken into account, the computation cannot be based upon FSI or development potential which was not available on 18 February 2014. I therefore find that the proper approach is neither to exclude Clause 7.1 merely because the revenue contemplated under it is deferred, nor to include the whole projected future revenue as present consideration without examining the conditions governing the entitlement. First, the development rights presently granted have to be identified. Then it has to be determined whether the 35% Gross Revenue entitlement under Clause 7.1 is consideration for those rights. If it is so, that consideration has to be computed as on the date of execution on the basis of the development potential and FSI available on that date. This finding does not mean that every subsequent receipt of revenue under Clause 7.1 would become a fresh consideration for the Agreement. The stamp liability of the instrument has to be determined with reference to the rights and consideration forming part of that instrument on the date of its execution. A later transaction or instrument may attract stamp duty if it falls within a charging provision of the Maharashtra Stamp Act. But the subsequent actual receipt of revenue cannot by retrospectively enlarge the subject matter or consideration of the Agreement.

88. The above approach is in line with the strict manner in which a fiscal statute relating to stamp duty has to be applied. The liability has to be found from the statutory provision and from the instrument. A consideration which the parties did not make payable cannot be introduced into the Agreement. Equally, a consideration which the Agreement makes payable cannot be excluded only because its payment is postponed.

89. I accordingly hold that Clause 7.1 cannot be treated as an independent basis for adding the value of all future revenue from the contemplated development to the value of the development rights transferred on 18 February 2014. Its effect has to remain within the entitlement which was operative on that date. At the same time, if any part of the 35% Gross Revenue entitlement constituted consideration for the development rights granted, that part cannot be excluded only because payment was deferred. The valuation has, in either case, to proceed on the rights existing on the date of execution and on the FSI and development potential available on that date.

Parking:

90. The calculation of parking has to follow the area which could and be developed at the relevant time. Parking cannot be calculated by taking development area which depends upon the future Swap or future additional development potential. Once the 298 acres forming the First Schedule development rights are treated as the presently relevant land, the contingent development rights in the Second Schedule are excluded from the initial valuation, the FSI is confined to what was available on the date of execution and the carpet area is converted by the applicable 1.2 factor, the parking requirement has to be worked out on that reduced and presently available development area. The figure of 3,383 parking spaces adopted by the authority proceeds on an area base which includes additional development potential and area which cannot be treated as presently available on 18 February 2014. The same defect which affects the valuation therefore affects the parking calculation.

Whether the Swap arrangement was an attempt to evade stamp duty:

91. I have considered the submission that the Swap mechanism was inserted only for keeping the 50.23 acres outside the valuation and thereby avoiding stamp duty. I am unable to accept that submission on the material before the Court.

92. A provision cannot be treated as an attempt to evade stamp duty merely because it makes a future transfer of development rights dependent upon a stated event. It has to be examined whether the contingency is genuine or whether it is only a form used for concealing a transfer which had in substance taken place. In the present case, the Agreement provides different consequences depending upon whether the Swap Notice is issued. Clause 6.1 gives the option to VPPL. Clause 6.2 provides that the consequences follow upon the Swap Notice. Clause 6.3 requires steps, including execution of the NOC and other documents, once the Swap Notice is issued. These provisions show that the parties contemplated an actual change in their rights upon the later event. The structure therefore does not support the submission that the Second Schedule land had become an unconditional development asset of WADHWA on the date of execution. There are present rights under the Agreement, including possession, development authority and the irrevocable Power of Attorney. Those rights are sufficient to attract the appropriate stamp consequences under Article 5(g-a)(i). But those features do not permit a separate future right in the Second Schedule land to be treated as if it had matured on 18 February 2014.

93. The proper conclusion is therefore that the Swap clause is a genuine mechanism having relevance for stamp valuation. Its mere existence or postponement of the Second Schedule development rights cannot, without sufficient material, be treated as an attempt to evade stamp duty.

The subsequent Swap, if exercised:

94. The question then arises as to what would happen if the Swap is exercised. That issue does not alter the question of valuation of the Second Schedule rights under the Agreement. It is relevant because it shows that exclusion of those rights from the 2014 valuation does not mean that the State loses its power to levy duty if a later chargeable transaction takes place. If VPPL issues the Swap Notice contemplated by Clause 6, the consequences provided in Clauses 6.1 to 6.3 would come into operation. WADHWA would then become entitled to development rights in the VPPL Horizontal Development Land and the parties would have to execute the documents contemplated under the Agreement. At that stage, the competent Stamp Authority can examine the instrument through which the later right is transferred. The applicable Article and market value can then be determined with reference to the law applicable to that later instrument and to the rights which have become operative at that time. Such later levy is different from retrospectively increasing the value of the Agreement by assuming that the Swap was certain to take place. The State has power to levy duty upon a later chargeable transaction. That does not mean that the later transaction can be treated as a completed transfer for the purpose of the 2014 valuation.

95. This answers the question that otherwise the structure would result in loss of stamp revenue. The Stamp Act can operate at the proper stage when the later chargeable instrument or transaction comes into existence. What cannot be done is to bring that later stage into the earlier valuation.

Article 5(g-a)(i) and valuation under the Stamp Act:

96. I now consider whether the valuation adopted by the authority can still be sustained under the Maharashtra Stamp Act.

97. Article 5(g-a)(i) covers an instrument relating to giving authority or power to a promoter or developer for "construction", "development" or "sale or transfer" of immovable property and provides for duty at the same rate as applicable to a conveyance on the market value of the property. Thus, the Petitioners cannot contend that merely because some rights under the Agreement were contingent, the document becomes only a nominally stamped executory agreement. The Agreement created development rights and authority upon execution. The statutory charge under Article 5(g-a)(i) is therefore attracted. The Petitioners are correct to the extent that the reference to conveyance-level duty does not give the authority an unrestricted power to determine market value on hypothetical assumptions. The expression "market value" has to be applied to the property and rights which form the subject matter of the instrument on the relevant date. The Stamp Authority was therefore required to identify the development rights which were presently transferred, take the FSI available on 18 February 2014, apply the proper ASR conversion method, distinguish construction consideration from sale consideration and exclude future contingent rights unless those rights were presently operative.

98. On the material before the Court, the impugned valuation does not maintain these distinctions. The authority has combined presently available and future contingent development potential, applied a higher area conversion factor, used the sale rate in place of the construction value for the construction component, treated the revenue-sharing provision without sufficiently separating its conditions, and consequently increased the parking component. The authority was therefore entitled to undertake valuation of the Agreement for stamp purposes, but the particular method adopted for arriving at the impugned valuation cannot be sustained.

99. I, therefore, record my conclusions on the points which arise for consideration.

(i) Upon execution of the Agreement, WADHWA acquired present development rights in the land then forming VPPL Land, including the First Schedule land, together with possession for development, construction and implementation rights, authority relating to approvals and the substantial powers contained in the irrevocable Power of Attorney. These were present rights and were liable to be considered for stamp duty;

(ii) The development rights in the First Schedule land were immediately available. The rights in the Second Schedule land were not available in the same manner. Their operative development rights depended upon the Swap mechanism;

(iii) The Swap Notice under Clause 6 was an option given to VPPL and not to WADHWA. Upon VPPL giving the Swap Notice, Clause 6.2 brought the development rights into operation. The Swap Notice was therefore a trigger for the

Second Schedule rights;

(iv) The 50.23 acres covered by the Second Schedule could not be valued in the stamp valuation of 18 February 2014 as if the development rights in that land had vested in WADHWA. The future possibility could be recognised, but the final development value of such rights could not be brought into the present valuation merely by assuming that the Swap would take place;

(v) The FSI available for the relevant G-1 Special Township development on the date of execution was 0.50 and not 0.10. The Agreement consistently refers to 0.5 FSI for the VPPL Horizontal Development Land;

(vi) The authority could not adopt a future FSI which was not available on the date of execution. Future development potential had to remain future unless and until it became and presently available;

(vii) The 1.2 factor is the appropriate conversion factor for the present stamp valuation exercise. The 1.5 factor used for expressing "Saleable Area" in the Agreement cannot be treated as the ASR conversion factor merely because it is mentioned in the contract;

(viii) In relation to the construction component, the construction value, approximately corresponding to Rs.8,500 per sq. metre, had to be kept separate from the residential sale rate of approximately Rs.24,000 per sq. metre;

(ix) The revenue-sharing provision in Clause 7.1 cannot be excluded from consideration merely because the actual revenue is receivable in future. Deferred revenue sharing can constitute consideration. However, Clause 7.1 has to be examined according to its own terms. Only to the extent the 35% Gross Revenue entitlement constitutes consideration for the development rights presently granted can it be taken into account under Section 2(na). The valuation must remain confined to the rights and premises to which that entitlement relates on the date of execution. Rights dependent upon the subsequent Swap Notice cannot be included merely by assuming that the event would occur;

(x) The parking calculation had to be based upon the development area available under the Agreement and the law on the date of execution;

(xi) Article 5(g-a)(i) applies to the Agreement because it relates to giving authority and power to a developer for construction and development of immovable property;

(xii) The valuation method adopted by the authority cannot be sustained. It has treated future and contingent rights as present rights, adopted an incorrect area conversion, failed to maintain the required distinction between construction consideration and sale value, and proceeded upon a revenue-sharing and parking computation without confining the same to the rights and development potential relevant on 18 February 2014.

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

i) The Petition is allowed in the above terms;

ii) The order dated 19 March 2016 passed by the Collector of Stamps, Raigad, and the appellate order dated 12 July 2016 passed by the Deputy Inspector General of Registration and Deputy Controller of Stamps, Konkan Division, Thane, are quashed and set aside to the extent they determine the market value and stamp duty on the basis of the valuation method discussed and rejected in this judgment;

iii) It is declared that, for the purpose of stamp adjudication of the Agreement for Joint Development bearing Instrument No. Panvel-3/1009/2014, the rights created and available on the date of execution shall alone form the basis of valuation, subject to the provisions of the Maharashtra Stamp Act, 1958;

iv) The 298 acres covered by the First Schedule shall be treated as forming part of the arrangement created by the Agreement on the date of its execution;

v) The 50.23 acres covered by the Second Schedule shall not be treated as a presently transferred development right for the purpose of valuation on the date of execution. Its inclusion was dependent upon the issuance of the Swap Notice in accordance with the Agreement;

vi) The Swap Notice shall be treated as an existing option in favour of VPPL. The additional development rights and the corresponding rights in the Second Schedule land arising upon exercise of that option shall not be treated as having vested on the date of execution when the Swap Notice had not been issued;

vii) The Additional Vertical Entitlement, to the extent it was dependent upon the issuance of the Swap Notice or upon any future increase in FSI, shall not be included in the market value as an existing development entitlement on the date of execution;

viii) The FSI available for the operative development rights on the date of execution shall be taken for valuation. The authority shall not adopt a future or contingent FSI merely because such FSI was contemplated by the Agreement or could become available upon the happening of a future event;

ix) The conversion factor applicable for converting carpet area for the valuation shall be the factor prescribed by the applicable ASR method. The factor of 1.2 shall be applied for such conversion. The contractual use of the factor of 1.5 for determining "saleable area" shall not be treated as the statutory ASR conversion factor;

x) The construction component shall be valued on the construction basis applicable under the Agreement and the applicable ASR Guidelines. The construction rate of

Rs.8,500/- per sq. mtr., as accepted in the appellate order, shall be applied and the rate of Rs.24,000/- per sq. mtr. shall not be applied as a construction rate;

xi) The revenue-sharing method shall not be treated as consideration for valuation where the conditions necessary to bring that mode into operation had not occurred on the date of execution;

xii) The parking requirement shall be recalculated on the basis of the development area and construction entitlement operative on the date of execution. The figure of 3,383 parking spaces, which proceeds on the Swap Notice scenario, shall not be adopted. The no-Swap position, namely 1,750 parking spaces, shall be taken as the basis;

xiii) The competent authority shall undertake a fresh determination of the market value of the instrument in accordance with the above findings and the applicable provisions of the Maharashtra Stamp Act, 1958, the Maharashtra Stamp (Determination of True Market Value of Property) Rules, 1995 and the applicable ASR Guidelines;

xiv) While undertaking such fresh determination, the competent authority shall identify each component of the valuation and shall give reasons for accepting or rejecting the material submissions made by the parties;

xv) The competent authority shall thereafter determine the stamp duty payable under the applicable provision of Article 5(g-a) of Schedule I of the Maharashtra Stamp Act, 1958, after giving due credit for the stamp duty paid by the Petitioners;

xvi) The fresh determination shall be made as expeditiously as possible and preferably within a period of twelve weeks from the date on which a copy of this order is placed before the competent authority;

xvii) Until the fresh determination is made and for period of eight weeks thereafter, if the order is adverse, no coercive steps shall be taken against the Petitioners pursuant to the impugned orders;

xviii) The Petition is disposed of in the above terms. There shall be no order as to costs.

(AMIT BORKAR, J.)