IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3433 OF 2019

1. MIG Co-operative Housing Society)
Group-II Ltd.)
a Cooperative Housing Society duly)
registered under the provisions of the)
Maharashtra Co-operative Societies Act,)
1960, having its Registered Office at)
"Kalpataru Sparkle", Stilt Level Wing "B")
Nana Dharmadhikari Road, Gandhinagar)
Bandra (East), Mumbai-400 051.)

2. Sharat Chandra Roongta)
Age 69 Years, Indian Inhabitant of Mumbai)
and Member and Hon'ble Secretary)
of MIG Co-operative Housing Society)
Group-II Ltd., residing at A-132, "Kalpataru)
Sparkle", Nana Dharmadhikari Road,)
Gandhinagar, Bandra (East), Mumbai-400 051).. Petitioners

Versus

1. The State of Maharashtra)
Revenue and Forest Department, having)
its Office at Mantralaya, Madam)
Cama Road, Mumbai-400 032.)
(Service through Government Pleader,)
High Court, Bombay))

2. Inspector General of Registration And)
Controller of Stamps)
(Chief Controlling Revenue Authority))
having office at Ground Floor, New)
Administrative Building, Opposite New)
Council Hall, Pune-411 001)

3. Collector of Stamps, Andheri)
having office at 1st Floor, MMRDA Building)
Bandra Kurla Complex, Bandra (East))
Mumbai-400 051.) .. Respondents

Mr. Amrut M. Vernekar for the Petitioners.

Ms. Vrushali Kabre, A.G.P. for Respondent Nos.1 to 3-State.

CORAM : SARANG V. KOTWAL &
SANDESH D. PATIL, JJ

DATE : 2nd APRIL 2026

JUDGMENT : (Per SARANG V. KOTWAL, J.)

1) Heard Mr. Amrut M. Vernekar, the learned Counsel for the Petitioners and Ms. Vrushali Kabre, the learned A.G.P. for Respondent Nos.1 to 3-State.

2) **Rule**. Rule is made returnable forthwith by consent of the parties.

3) The Petition is filed by MIG Co-operative Housing Society Group-II Ltd, the Petitioner No.1 and one of its members Mr. Sharat Chandra Roongta, as Petitioner No.2.

4) The main prayers in the Petition are for setting aside the impugned Circular No.15/Guidelines/621 dated 23rd June 2015 and the Circular No.KA.5/Stamps/17/Pra.Kr./10/13/303/17 dated 30th March 2017. There are consequential prayers of setting aside some part of the guidelines, which clarify those two circulars. Another main prayer is for setting aside the Final Adjudication Order dated 8th August 2019, passed in Adjudication Case No.ADJ/11900/184/2019, bearing Adjudication Order No.3683/19, passed by the Respondent No.3-Collector of Stamps, Andheri.

5) The Petitioner No.1 is a Co-operative Housing Society, registered under the provisions of Maharashtra Co-operative Societies Act, 1960, registered on 7th August 2001, having its registered office at “Kalpataru Sparkle”, stilt level Wing ‘B’, Nana Dharmadhikari Road, Gandhinagar, Bandra (East), Mumbai-400 051. Petitioner No.2 is a the then Hon. Secretary of the Petitioner No.1-society. The Petitioner No.1-society had entered into redevelopment agreement with Kalpataru Enterprises for redevelopment of the society property. The Petitioner No.2 had submitted a copy of his Permanent Alternate Accommodation Agreement (hereinafter referred to as “PAAA”) in respect of the flat

allotted to him in lieu of his original flat, to the Collector of Stamps, Andheri, for adjudication. He had submitted the said application for adjudication for himself and on behalf of Petitioner No.1. Vide the impugned adjudication Order dated 8th August 2019, the stamp duty was fixed at Rs.2,27,880/- for the Petitioner No.2's flat in the Redeveloped building.

6) By way of interim Order, the society was directed to pay the half amount of the total stamp duty payable on all the flats. Accordingly, the said amount of Rs.1,01,40,660/- is deposited by the Petitioner No.1 in this Court, which is still lying in this Court.

7) The Respondent No.1-is the State of Maharashtra, whose Revenue and Forest Department are implementing the provisions of the Maharashtra Stamp Act, 1958 (hereinafter referred to as "**the Stamp Act**"). The Respondent No.2 is the Inspector General of Registration and Controller of Stamps and is also Chief Controlling Revenue Authority, having its office in Pune. The Respondent No.2 is the Appellate Authority under the Act. The Respondent No.3 is the Collector of Stamps, Andheri. He is the Adjudicating Authority under

Section 31 of the Stamp Act. He has passed the impugned Order of adjudication fixing the stamp duty as mentioned earlier.

8) The Petitioner No.1 originally had 96 members, some of the members have sold their flats and as of today, there are 89 members. The 96 flats were allotted to the society by MHADA. The allottees had paid full value under the hire purchase scheme of MHADA, whereby they became absolute owners of their respective flats and then they formed a co-operative housing society, which the is the Petitioner No.1 in this Petition.

9) By an agreement of sale dated 12th December 2006, MHADA sold 12 buildings to the society. The agreement was registered through the Sub-Registrar of Assurances, Bandra (East), at Sr. No.BDR-4/9203/2006. The land admeasuring 9973.19 sq.mtrs., on which those 12 buildings were situated, was leased to the Petitioner No.1-society.

10) The Petitioner No.1 entered into an agreement dated 26th April 2010 with Kalpataru Enterprises for the Redevelopment of the society's property on the terms and conditions contained therein. It is the case of the Petitioners that on the said agreement, full adjudicated stamp

duty of Rs.4,07,60,000/- was paid on the determined market value of Rs.78,51,97,500/- and the agreement was duly registered with Sub-Registrar of Assurances, Andheri-2, Mumbai Suburban under Sr. No.BDR-9/4269/2010. As per the scheme of redevelopment, Kalpataru had agreed to construct three buildings/towers, designated as 'A', 'B' and 'C', each having 18 floors and to provide free of costs to the original 96 members occupying the old flats with 96 new self contained residential flats in the entire 'B' building and in a part of 'A' building, each flat consisting of 1070 sq. ft., including enclosed balconies with a service slab of 30 sq.ft. Subsequent to executing the registered agreement dated 26th April, 2010, a Supplemental Agreement dated 7th January 2014, was entered into between the Petitioner No.1 and Kalpataru, in relation to the redevelopment of the Petitioner No.1's property. It was also registered and for this agreement, the stamp duty was adjudicated at Rs.47,55,526/-. After the redevelopment was completed and the 91 of the original members occupied their rehabilitated flats, provided as Permanent Alternate Accommodation, the Petitioner No.1 along with the developers M/s Kalpataru Enterprises, intended to execute PAAA in favour of the 91 original members in the name of each of the 91 original members. Accordingly, the Petitioner No.2 on behalf of the society and himself submitted a copy of his PAAA in respect of Flat No.A/132 allotted to him to the Respondent No.3, on 12th February 2019 on payment of adjudication fees for adjudication.

11) Mr. Vernekar, learned Counsel appearing for the Petitioners submitted that as per the Circular issued dated 30th March 2017, explanation (4) provided that, it was permissible to submit one such agreement for adjudication and as per that adjudication, the other agreements for individual members could be registered with such stamp duty. On this adjudication process, the impugned Order was passed by the Respondent No.3. According to the Petitioners, the PAAA is only an incidental agreement and not the main agreement as per Section 4 of the Stamp Act and the stamp duty ought to have been fixed at Rs.100/-. Instead of that, the adjudication Authority, treated it as a separate agreement under Section 4 of the Stamp Act and the stamp duty was fixed at Rs.2,27,880/- per an individual flat owner. Being aggrieved by this adjudication, the present Petition is filed.

12) Mr. Vernekar, learned Counsel for the Petitioners submitted that

the controversy is no more *res-integra.* A Division Bench of this Court has passed a detailed judgment, covering all these aspects in the case of **Adityaraj Builders Vs. State of Maharashtra and Ors**.[1] The ratio and observations of the said judgment covers the Petitioners' case. Infact the said judgment has set aside both the impugned circulars dated 23rd June 2015 and 30th March 2027. Mr. Vernekar, learned Counsel, heavily relied on the observations of the Division Bench made in the said judgment.

13) In fact, Ms. Vrushali Kable, learned A.G.P. appearing for Respondent Nos.1 to 3-State, submitted a copy of fresh Circular dated 26th July 2023. It is taken on record and marked '**X**' for identification. The said circular specifically refers to the said case of **Adityraj Builders**, decided by the Division Bench. The said Circular dated 26th July 2023, clarifies the provisions of Section 4(1) of the Stamp Act. It is specifically mentioned in the said Circular that it was being issued in view of the Order passed by the Division Bench in **Adityaraj Builders**' case.

14) In this background, it is necessary to refer to the observations

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made by the Division Bench in the said case of **Adityaraj Builders**. Paragraph-43 of that judgment considers three situations and observes that a home in replacement of a home as well as a larger home in replacement of a smaller home, are not liable for stamp duty. It is only when the flat owners purchase additional area for the replacement home, then it can be brought to stamp.

Paragraph-43 is a follows :

> "We are concerned herewith only one aspect: the redevelopment of society buildings and premises. It does not matter how that redevelopment take place. From the perspective of a society member, she or he is getting: (a) a home in replacement of a home; (b) a larger home in replacement of a smaller home; and (c) the option of purchasing additional area for the replacement home. It is only item (c) that can ever be brought to stamp. Items (a) and (b) are never liable to stamp."

15) Considering all the steps of development agreement and status of the individual flat owners as well as the developer and the society, the Division Bench tested those two impugned circulars. After a detailed analysis, the ratio was summarized in paragraph-53, as follows :

> "53. The result of this discussion is as follows:
>
> (a) A Development Agreement between a cooperative housing society and a developer for development of the

society's property (land, building, apartments, flats, garages, godowns, galas) requires to be stamped.

(b) The Development Agreement need not be signed by individual members of the society. That is optional. Even if individual members do not sign, the DA controls the redevelopment and the rights of society members.

(c) A Permanent Alternative Accommodation Agreement between a developer and an individual society member does not require to be signed on behalf of the society. That, too, is optional, with the society as a confirming party

(d) Once the Development Agreement is stamped, the PAAA cannot be separately assessed to stamp beyond the Rs. 100 requirement of Section 4(1) if it relates to and only to rebuilt or reconstructed premises in lieu of the old premises used/occupied by the member, and even if the PAAA includes additional area available free to the member because it is not a purchase or a transfer but is in lieu of the member's old premises. The stamp on the Development Agreement includes the reconstruction of every unit in the society building. Stamp cannot be levied twice.

(e) To the extent that the PAAA is limited to the rebuilt premises without the actual purchase for consideration of any additional area, the PAAA is an incidental document within the meaning of Section 4(1) of the Stamp Act.

(f) A PAAA between a developer and a society member is to be additionally stamped only to the extent that it provides for the purchase by the member for actual stated consideration and a purchase price of additional area over and above any area that is made available to the member in lieu of the earlier premises.

> (g) Clauses (B), (1) and (2) of the 30th March 2017 circular are unsustainable in law. The circular must be quashed. Similarly, the 23rd June 2015 circular that purports to exclude PAAAs from Section 4(1) is ultra vires the Stamp Act and is liable to be quashed.
>
> (h) The provision or stipulation for assessing stamp on the PAAA on the cost of construction of the new premises in lieu of the old premises cannot be sustained."

16) Thus, the case of the Petitioners is clearly covered by the observations of the Division Bench in the said case of **Adityaraj Builders**. Consequently, the Petition will have to be allowed.

17) As far as the prayer clauses (a) and (b) are concerned, they are in respect of challenge and directions to set aside the relevant paragraphs from the impugned Circulars dated 23rd June 2015 and 30th March 2017, which are already set aside. Therefore, we need not pass any Order in respect of prayer clauses (a) and (b), which are including same parts of the same circulars.

18) As far as prayer clause (c) is concerned, in that prayer clause, directions are sought to quash and set aside the Important Valuation Guildlines, which are annexed at Exhibit 'C'. The said Guidelines reads thus :-

2.3) **Valuation of Newly constructed properties of Co-operative Housing Society properties gone for redevelopment** :-

Development agreement entered into between the Co-operative Housing Society and the Developer for redevelopment of the old property of the Housing Society to new one shall be stamped as per Section 4 of the Maharashtra Stamp Act, 1958.

Old Members of the Housing Society who shall receive additional area in their respective flats and galas from the Developer under the development agreement shall be valued as an independent agreement and development agreement entered into between the Developer and Housing Society shall not be taken into consideration. While valuing such newly constructed building, the old members occupying their respective area in the old building shall be valued as per the construction cost and additional area given by the Developer under the Development Agreement shall be valued as per ready recknor rate pertaining to the (Residential/Shops, gala/Office/Industiral) head.

19) It is clarified that this guideline will be subject to the observations of the Division Bench made in the **Adityaraj Builders**' case referred to hereinabove.

20) As far as prayer clause (e) is concerned, vide that prayer clause, the Petitioners have prayed for setting aside the impugned adjudication Order dated 8th August 2019.

21) In view of the above discussion and the ratio laid down in the **Adityaraj Builders**, the impugned Order dated 8th August 2019, passed by Respondent No.3, vide adjudication Order No.3683 of 2019, is not sustainable and hence, is set aside.

22) As a consequence, the amount which is deposited by the Petitioners in this Court, is directed to be refunded to the Petitioner No.1-society along with the accrued interest.

23) Rule is made absolute in the aforesaid terms.

(SANDESH D. PATIL, J.) **(SARANG V. KOTWAL, J.)**