IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9923 OF 2014

M/s. Prasun Developers .. Petitioner
vs.
State of Maharashtra and ors. .. Respondents

Mr. G.S. Godbole a/w. Drupad Patil, J.G. Reddy and Abhijeet Kandharkar for the Petitioner.
Mr. Sunil Manohar, Advocate General a/w. Ms Neha Bhide 'B' Panel and Vaishali Nimbalkar, AGP for Respondent Nos.1 to 3.

CORAM : M. S. SONAK, J.
Date of Reserving the Judgment : 22 January 2015.
Date of Pronouncing the Judgment: 30 January 2015.

JUDGMENT :-

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is disposed of finally.

2] By this petition under Articles 226 and 227 of the Constitution of India , the petitioner challenges the legality, validity and propriety of the orders dated 26 June 2014 made by the Joint District Registrar Class -I and Collector of Stamps, Pune City, Pune, order dated 5 September 2014 passed by Deputy Inspector General of Registration and Deputy Controller of Stamps Pune (Appellate Authority) and consequential orders of attachment and notice for auction of the petitioner's property, in satisfaction of the claim for deficit stamp duty and penalty (collectively referred to as impugned orders).

3] The brief facts relevant for deciding the issues raised in this petition are that on 18 October 2005 Smt. Kantabai G. Bodake and some others executed a '*development agreement*' in respect of property bearing Survey No. 41, Hissa No.1B admeasuring 4400 sq. Meters situated within municipal limits of Pune (said property), constituting the petitioner as '*developer*'. For the recitals and the clauses set out in the '*development agreement*', it was the petitioner, who undertook to pay Smt. Kantabai Bodake and others, consideration of Rs.42 Lacs. The said '*development agreement*' was registered in the office of Sub-Registrar, Haveli No.7 at Sr.No.8845 of 2005. Alongwith the same, Smt. Kantabai Bodake and others executed a Power of Attorney, constituting the petitioner as their true and lawful attorney. The same was also registered at Sr.No.7127 of 2005 on 17 November 2005. It is the case of the petitioner that upon said '*development agreement*', stamp duty of Rs.42,000/- was paid, being 1% of the consideration stated and that this was in accordance with the provisions contained in Article 5 (ga) of Schedule-I of Bombay Stamp Act, 1958 (said Act). It is also the case of the petitioner that the stamp duty at the rate of 1% was paid upon stated consideration, because on the date of execution and registration of the '*development agreement*', such stated consideration was more than the market value of the said property.

4] It is further the case of the petitioner that even though the instrument dated 18 October 2005 had been styled as "*development agreement*", the same was in fact '*conveyance*', by which Smt. Kantabai Bodake and others had conveyed of their rights, title and interest in the said property, to the petitioner. The petitioner has,

however, conceded that at the time when the instrument dated 18 October 2005 was executed and registered, the stamp duty for conveyance was payable at the rate of 10% of the agreed consideration and/or market value of the said property, whichever was higher.

5] It is further the case of the petitioner that in order to leave no scope of ambiguity, Smt. Kantabai Bodake and others, executed Sale Deed dated 27 August 2008 in respect of said property. In the said instrument, it was made clear that since consideration of Rs.42 Lacs has already been paid by the petitioners and received by the vendors, there was no further consideration in the matter of execution of said Sale Deed dated 27 August 2008. The said Sale Deed was registered in the office of Sub-Registrar, Haveli No.17, Pune. Upon such instrument dated 27 August 2008, the petitioner however, paid stamp duty of Rs.2,10,000/- at the rate of 5% of the agreed consideration in terms of the Article 25 of Schedule-I to the said act, as it obtained in the year 2008.

6] As a matter of routine, a test check of the accounts of Assessment, Levy, Collection, Remission and Refund of Stamp Duty and registration fees maintained in the office of Sub-Registrar, Haveli No.XVII, District Pune for the year 2008 was carried out by the State State Receipt Audit Party No.V (Office of Accountant General, Audit II, Maharashtra Nagpur) from 17 February 2010 and 24 February 2010 under the supervision of Senior Audit Officer. In the course of such inspection, the Inspectors detected short levy of stamp duty due to under valuation of the said property. The inspection report, copy

whereof was duly furnished to the petitioner alongwith show cause notices, records *inter alia,* the following:

> *"The sale deeds of open lands were executed in the year 2008 between seller and purchase as shown in Annexure 'B'. It was seen from the document that the Sub Registrar has charged the stamp duty on the prevailing market rates which was incorrect as the documents were registered and executed in the year 2008, hence as per provision of stamp Act, the current market rate should be taken. Due to under valuation of property, resulted in short levy of stamp duty Rs.8,24,8000/- as disclosed in Annexure 'B'. In Reply the Sub-Registrar stated the comments of JDR would be obtained. Further progress may be intimated to the audit."*

05/38	8955 /08	Kantabai Bodke	M/s. Prasuun Developers	55/669 323	8100	4400 /41 Mauza Kharadi (PMC)	4000 x 8100 x 80% =25920000 400x8100 x70% = 2268000 Total =28188000	1409400	210000	1199400

7] Based upon the aforesaid, notices dated 27 June 2011 and 24 August 2011 were issued by the Sub-Registrar, Haveli No. 17, Pune raising a demand of deficit stamp duty to the extent of Rs.11,99,400/-. Upon consideration of the petitioner's response dated 28 September 2011, the Deputy District Registrar and Collector of Stamps, Pune, confirmed the demand and called upon the petitioner to pay deficit stamp duty. The petitioner did not pay the deficit stamp duty, but submitted yet another response dated 27 June 2013, denying liability to pay. Thereupon the Deputy District Registrar and Collector of Stamps, Pune issued an attachment notice dated 27 January 2014, which was followed by proclamation notice

dated 21 March 2014. In the said notices, the demand raised was for an amount of Rs.27,34,632/-. This includes the demand for deficit stamp duty in an amount of Rs.11,99,400/- and penalty, in an amount of Rs.15, 35,232/-.

8] Since the petitioner had made a grievance about not being afforded an opportunity of hearing prior to raising of the demand and its enforcement, the Deputy District Registrar and Collector of Stamps, Pune, afforded the petitioner hearing in the matter. Thereafter, the Deputy District Registrar and Collector of Stamps, Pune made the order dated 26 June 2014, requiring the petitioner to pay the deficit stamp duty of Rs.11,99,400/- alongwith interest thereon at the rate of 2% from the date of execution of the Sale Deed dated 27 August 2008, till the date of payment thereof.

9] The petitioner appealed against the order dated 26 June 2014, which was dismissed by the Appellate Authority, by its order dated 5 September 2014 and consequential orders/notices in the matter of enforcement of the demand for deficit stamp duty and penalty came to be issued.

10] Mr. Godbole, learned counsel for the petitioner made the following submissions in support of the petition:

(a) The impugned orders to the extent they hold that the instruments dated 18 October 2005 and 27 August 2008, are different and distinct instruments or relate to different and distinct transactions, having no nexus with one another, the

same are vitiated by non-application of mind and perversity. In matters of interpretation of instruments, nomenclature thereof is irrelevant and it is substance of the instruments, which must determine their true colour. Thus construed, it is clear that the instruments dated 18 October 2005 and 27 August 2008 are nothing, but two instruments employed in the completion of transactions of sale of said property. For this reason, it was submitted that the impugned orders deserve to be set aside.

(b) That the instruments dated 18 October 2005, Power of Attorney dated 18 October 2005 and the Sale Deed dated 27 August 2008 are three instruments employed for completing the transaction of sale of the said property. Notwithstanding, the nomenclature assigned to each of them, there is more than ample indication that the petitioner has determined that the '*development agreement*' dated 18 October 2005 shall be the '*principal instrument*' in completion of transaction. The full stamp duty, in accordance with the law and the rates as applicable on 18 October 2005, has been paid upon such '*principal instrument*'. This is entirely consistent with the provisions contained in Section 4 of the said Act, which specifically permits the parties to determine themselves which of the instruments employed for purposes of completing the transaction, may be '*the principal instrument*'. Accordingly, there was no deficit stamp duty paid either upon such '*principal instrument*' or Sale Deed dated 27 August 2008. The impugned orders, inasmuch as they do not consider this

aspect, are without jurisdiction and consequently liable to be set aside;

(c) In the alternate, the deficit in payment of stamp duty, if any, was upon '*development agreement',* which had been determined as the "*principal instrument*" by the petitioner in completing the transaction of sale of said property. This is because, as on 18 October 2005, the stamp duty payable upon the '*conveyance',* which is what '*development agreement*' in reality was, would be 10% of the agreed consideration and/or the market value of the said property whichever is higher. Since, the stamp duty of only 1% had been paid the same, on demurer, the petitioner was not averse to the payment of deficit stamp duty upon the '*development agreement*' by treating the same as a '*conveyance*' at the rates and valuation applicable as on 18 October 2005. Such amount together with penalty thereon, would be far lesser than that imposed by the impugned orders;

11] Mr. Sunil Manohar, learned Advocate General appearing for respondent Nos.1 to 3, at the very outset submitted that the conduct of the petitioner was such, as would dis-entitle it to any equitable reliefs under Articles 226 and 227 of the Constitution of India. In this regard, it was submitted that the petitioner, in paragraphs 4 and 5 of the petition had admitted that the petitioner in fact, had decided to execute Sale Deed in respect of the said property, but in order to circumvent the provisions of Urban Land Ceiling Act, 1976 (ULC), the parties adopted the device of executing '*development*

agreement' and Power of Attorney. Relying upon decision of the Division Bench of this Court in case of *Satpal Singh Arora Vs. Santdas Prabhudas Malkani*[1], learned Advocate General submitted that such a petitioner cannot invite this Court to exercise its constitutional powers under Articles 226 and 227 of the Constitution of India.

12] Learned Advocate General, further submitted that the '*development agreement*' and the Sale Deed dated 27 August 2008 were different and distinct instruments relating to different and distinct transactions. The same were treated as different and distinct by the parties at stage of execution and registration. The stamp duty was paid upon the '*development agreement*' in accordance with Article 5 (ga) of Schedule-I to the said Act, which was the correct Article applicable to '*development agreement*'. Similarly, the stamp duty was paid upon the Sale Deed dated 27 August 2008 by reference to Article 25 of Schedule-I to the said Act, which is again the correct Article in the matter of determination of stamp duties upon a '*Sale Deed*' or '*conveyance*'. No doubt, in determining the market value of the said property as on the date of execution of Sale Deed dated 27 August 2008, reference was made to the erstwhile Ready Reckoner, thereby resulting in under valuation and consequent short levy of stamp duty. However, by reference to the Articles of the said Act under which stamp duty was determined by the parties themselves, it is more than apparent that the two instruments related to different and distinct transactions and further

1 1973 Mh.L.J. 292

the same were treated as such, atleast and until the issue of short payment came to fore.

13] Learned Advocate General, disputed the very applicability of Section 4 of the said Act in the matter of determination of stamp duty upon the instruments concerned in the present case. In any case, learned Advocate General joined serious issue with the interpretation suggested by Mr. Godbole with regard to the said Section 4 of the said Act. Learned Advocate General submitted that reference to transactions like '*development agreement*', sale, mortgage or settlement is in the disjunctive form. Accordingly, the provisions of Section 4 of the said Act would apply in a situation where several instruments are employed for completing the transaction of '*development agreement*' or where several instruments are employed for completing the transactions of sale and so on. The provisions of Section 4 would not apply to a situation where it is contended that '*development agreement*' was employed for completing the transaction of a sale.

14] Learned Advocate General further submitted that even if it is assumed that the provisions of Section 4 of the said Act, are attracted to the present case, then there is nothing to indicate that the petitioner had at any stage determined that the '*development agreement*' shall be '*principal instrument*' as contemplated by sub-section 2 of Section 4 of the said Act. In any case, the proviso applies to entire Section 4 and not merely to sub-section 3 of Section 4 of the said Act. Accordingly, the duty chargeable upon the '*principal instrument*' would be the '*highest duty*' which would be chargeable in

respect of any of the said instruments so employed in completion of transaction of sale. In the present case, '*highest duty*' payable would be upon the Sale Deed dated 27 August 2008 and consequently, there was no legal infirmity in the impugned orders, which merely demanded the proper stamp duty upon the Sale Deed dated 27 August 2008.

15] The rival contentions, now fall for my determination.

16] Althought there is merit in the contention of learned Advocate General that the extra ordinary and equitable jurisdiction under Articles 226 and 227 of the Constitution of India ought not to be exercised in favour of the petitioner, there is no necessity rest this decision, upon the said circumstance, by itself. In paragraphs 4 and 5 of the petition, the petitioner has, though not very candidly, admitted and averred that '*development agreement*' was executed, in order to overcome '*certain impediments like ULC permission, etc.*'. Further, it is admitted and affirmed that thereafter, in the year 2008, after the repeal of the ULC, and on the basis of and in continuation of the earlier transaction, the parties executed the Sale Deed dated 27 August 2008. There are admissions and averments to the effect that the parties in fact decided to execute Sale Deed, but due to the impediments like ULC permissions, the parties executed '*development agreement*' and Power of Attorney. All these averments when construed with the attendant circumstances do lead to a reasonable inference that the main purpose for the execution of several instruments, was basically to avoid compliances with the provisions of the ULC. Further, it is the contention of the petitioner that

notwithstanding the nomenclature assigned to the instrument dated 18 October 2005, i.e., '*development agreement*' and '*Irrevocable Power of Attorney*', the same were in fact a '*conveyance*' chargeable to duty under Article 25 of Schedule-I of the said Act. Notwithstanding such case, the petitioners avoided payment of stamp duty upon '*development agreement*' under Article 25 of Schedule-I to the said Act, which would be 10% of the agreed consideration and/or market value of the said property, whichever was higher. Instead, at that stage, the petitioner paid stamp duty upon the '*development agreement*' at the rate of only 1% by resort to Article 5(ga) of Schedule-I to the said Act, by treating such instrument as '*development agreement*'. All this would establish that the petitioner's conduct is hardly such, as would entitle it to invite this Court to exercise its extra-ordinary and equitable jurisdiction under Articles 226 and 227 of the Constitution of India.

17] In some what similar circumstances, a Division Bench of this Court in case of *Satpalsingh Arora (supra)*, when approached by a petitioner who had entered into a paying guest agreement, with a view to circumvent the provisions of law, declined to exercise its constitutional jurisdiction, at the behest of such a petitioner. In paragraph 31, this Court observed thus:

> *31. But there is something much worse than all this. The stand which the petitioner has taken in para. 2 of the petition is eloquent. In order to explain the circumstances under which he entered into the agreement in dispute dated January 24, 1962 he has said :*
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> > *"With a view to circumvent the provisions of law, a paying guest agreement was at first entered into between the parties dated 1-11-1961; later on*

> *another agreement dated 24-1-1962 was entered into between the parties, copy whereof is hereto annexed and marked as Ex. A."*
>
> *(The italics are ours).*
>
> *Arora thus openly says that the parties entered into these agreements in order to circumvent the provisions of law. We cannot conceive of any petitioner inviting the Court to exercise its Constitutional powers under such circumstances. It is that very agreement whereby both the parties to the agreement intended to circumvent the law, which is the subject-matter of the dispute before us and if that agreement was admittedly entered into by the parties to circumvent the law, we think that the petitioner should ipso facto be deprived of his right to any remedy at our hands. Even if it had been an ordinary suit and it had been established that both the parties intended to play a fraud upon the law to circumvent its provisions the guiding maxim would have applied, in pari delecto, potior est conditio defendanties (where both the parties are equally at fault the position of the defendant is the stronger). That would also be the position in the present case although by this statement Arora the petitioner has suggested that the respondent equally intended to play a fraud upon the law. These are additional reasons why the Special Civil Application No. 2323 of 1968 will have to be dismissed.*
>
> *(emphasis supplied)*

18] The aforesaid decision of the Division Bench would apply to the facts and circumstances of the present case. The conduct of the petitioner, in the present case, is such, as would not entitle it to invite this Court to exercise its extra ordinary and discretionary jurisdiction under Articles 226 and 227 of the Constitution of India. However, as noted earlier, it is not necessary to rest this decision by merely relying upon the conduct of the petitioner. This is because there is no merit in rest of the submissions urged by and on behalf of the petitioner.

19] In the present case, the impugned orders have held that the two instruments in-question relate to different and distinct transactions. Irrespective of petitioner's motive, perusal of the '*development agreement*', would indicate that the same was primarily entered into to enable the petitioner to develop the said property. Mr. Godbole made reference to the decision of the Supreme Court in case of *The Madras Refineries Ltd. vs. The Chief Controlling Revenue Authority, Board of Revenue, Madras*[2], to contend that description given by the parties to an instrument is irrelevant and the real and true meaning of the instrument has to be ascertained with reference to its contents. There can obviously be no dispute as regards such principle. However, the overall circumstances do indicate that the two instruments came to be executed for two different and distinct purposes, namely development of the said property and sale of said property. Further, in a situation of present kind where the parties have not only adopted different and distinct nomenclature for the two instruments in-question, but further even stamp duty was paid by reference to two different and distinct Articles of Schedule-I to the said Act, the burden was indeed heavy upon the parties to establish that true state of affairs was other than that indicated by the language employed in the two instruments. Such principle has been accepted by this Court in case of *Satpal Singh v. Santdas (supra)*, by observing that no doubt, in every transaction one has to determine what is the true nature of the transaction irrespective of the verbiage used in a document but the language of document ordinarily binds the parties to it, unless they can manifestly show that true state of affairs was other than that indicated by the

2 (1977) 2 SCC 308

language of a document. At the cost of repetition, it must be recorded that this is not a case where the parties, though styled the first instrument as '*development agreement*' but paid stamp duty on the same by treating the same as '*conveyance*' under Article 25 of the Schedule-I to the said Act, which would be 10% of the agreed consideration or market value, whichever is higher. Similarly, insofar as the second instrument, which is the Sale Deed, the parties without any demur offered to and paid stamp duty by reference to the Article 25 of the Schedule-I to the said Act, on the basis that it was the '*conveyance*'. In such circumstances, it can hardly be said that there is any perversity or unreasonableness in the concurrent findings recorded by two authorities that the two instruments relate to different and distinct transactions. There is no force in the contention that the two instruments were employed in completing one and the same transaction of the sale of said property, so as to attract the provisions of Section 4 of the said Act, to the case at hand.

20] In the scheme of said Act, Section 3 is the charging section, which, in terms provides that subject to the provisions of said Act and the exemptions contained in Schedule-I thereto, the instruments mentioned in Schedule-I shall be chargeable with duty of the amount as indicated. This means that every instrument mentioned in Schedule-I (unless the same is exempted) would be chargeable to the stamp duty of the amount as indicated in Schedule-I. This is the general rule. Section 4 of the said Act, however constitutes a sort of an exception to the general rule contained in Section 3 of the said Act.

21] Section 4 of the said Act, *inter alia,* provides that where, in case of any specific instruments, i.e., development agreement, sale, mortgage or settlement, if several instruments are employed for completing the transaction, then the principal instrument only shall be chargeable with duty prescribed in Schedule-I and each of the other instruments shall be chargeable with duty of Rs.100/- instead of the duty, if any, prescribed for it in that schedule. Sub-section 2 of Section 4 of the said Act enables the parties determine for themselves which of the instruments so employed shall for the purposes of sub-section 1, be deemed to be the principal instrument. Sub-section 3 of Section 4 of the said Act provides that where parties fail to determine the principal instrument between themselves, then the officer before whom the instrument is produced may, for the purposes of this section, determine the principal instrument. The proviso to Section 4, which governs the entire Section provides that the duty chargeable on principal instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments so employed.

22] Thus, in order that the provisions of Section 4 of the said Act are attracted, in the first place it will have to be established that several instruments were employed for completing one and the same transaction. In the context of present case therefore, it was for the petitioner to establish that the '*development agreement*', Power of Attorney and the Sale Deed were nothing but several instruments employed for completing the transaction of the sale of the said property. This, the petitioner has failed to establish. Further, at least *prima-facie,* learned Advocate General is right in his submission that

for Section 4 of the said Act to be attracted, the several instruments employed, shall have to be for completing the transactions of development or sale or mortgage or settlement. The description of transactions is in the disjunctive form. There is, therefore, ordinarily no scope to contend that the instrument like development agreement, is in fact one of the instruments for completion of transaction of sale. In any case, the burden would be substantially heavy upon a party, who contends this . In the present case, as noted earlier, such burden has not been discharged by the petitioner.

23] By way of a demurer, if it is accepted that in the present case, the '*development agreement*', '*power of attorney*' and '*Sale Deed*' indeed constitute several instruments employed for completing the transaction for sale of the said property, even then, no infirmity can be found with the impugned orders. This is because, in the first place there is absolutely nothing on record to indicate that the petitioner had at any stage prior to the issue of short payment of stamp duty cropping up, determined that the '*development agreement*' shall be the principal instrument in terms of sub-section 2 of Section 4 of the said Act. Such determination cannot be by mere reference to some links in the '*development agreement*' and the '*Sale Deed*'. Such determination cannot also be inferred by the circumstance that the two instruments relate to one and the same property. At the stage when the petitioner presented the Sale Deed dated 27 August 2008 for registration, it was incumbent upon the petitioner to have indicated that the '*Sale Deed*' was only one of the several instruments employed for completion of transaction of the sale of said property. Further it was incumbent upon the petitioner to have indicated that

the '*Sale Deed*' was not the principal instrument, but rather the '*development agreement*' executed on 18 October 2005 was the principal instrument. The petitioner choose to do nothing of this sort. Instead, the petitioner proceeded to pay upon the Sale Deed dated 27 August 2008, the entire stamp duty as contemplated by Article 25 of Schedule-I to the said Act. In doing so, however, the petitioner chose to undervalue the said property, by reference to the consideration reflected in development agreement executed on 18 October 2005. This resulted in short levy of stamp duty and warranted the making of impugned orders. Accordingly, there is no merit in the submission of Mr. Godbole that the parties had, at any stage determined that the '*development agreement*' executed on 18 October 2005, was to be the principal instrument as contemplated by sub-section 2 of the Section 4 of the said Act.

24] Further, if we proceed on the basis that the petitioner had indeed determined that the '*development agreement*' executed on 18 October 2005 was to be the principal instrument in the matter of completion of transaction of sale of said property, even then, by applying the proviso to Section 4 of the said Act, the stamp duty payable thereon would be the highest duty, which would be chargeable in respect of any of the instruments so employed in completion of a transaction of the sale of the said property. The instruments so employed in the present case are the '*development agreement*', '*Power of Attorney*' and '*Sale Deed*'. There is no dispute that the highest duty payable would be upon the Sale Deed dated 27 August 2008. This is because the market value of the said property as on 27 August 2008 shall have to be reckoned. Therefore,

whichever way one looks at the matter, there is no escape that the petitioner was required to pay the stamp duty corresponding to that payable upon the Sale Deed dated 27 August 2008 as per the rates as well as the market value of the said property prevalent as on 27 August 2008.

25] From the scheme of Section 4 of the said Act, it is clear that the same is not intended to enable the parties to an instrument, to either evade or avoid payment of proper stamp duty thereon. The provisions of Section 4 of the said Act only exempt parties from rigors of Section 3 of the said Act, which would, in the absence of provisions contained in Section 4 of the said Act, require the parties to pay stamp duty as prescribed under Schedule-I upon each of the several instruments employed in completing one and the same transaction. The limited exemption is therefore, in respect of several instruments employed in completing one and the same transaction, so long as proper duty is paid upon any one of the instruments, which may either have been determined by the parties or by the Officer before whom such instrument is produced for registration as the '*principal instrument*'. Further, notwithstanding such determination by the parties or the Officer and notwithstanding the character of such principal instrument, stamp duty thereon shall be the highest duty, which would be chargeable in respect of any of the several instruments so employed for completing one and the same transaction. Upon the remaining instruments again notwithstanding their nomenclature or character, instead of payment of entire stamp duty as prescribed under Schedule-I, there would be sufficient

compliance, if duty of Rs.100/- as prescribed under Section 4 of the said Act is paid in respect thereof.

26] In case of *Farida Memon and ors. Vs. The Collector of Stamps and ors*[3] upon which reliance was placed by Mr. Godbole, this Court had the occasion to observe thus:

> *13] From the scheme of section 4 to the said Act, it appears that the liberty granted to the parties for determining which from out of the series of instruments employed in a single transaction, shall be principal instrument, is basically for sake of convenience of the parties. However, the scheme is not to enable the parties to either evade the stamp duty or for that matter pay stamp duty upon any one of the instruments, which would bear the lowest stamp duty in the series of instruments. On the contrary the proviso, which applies to the entire section makes it clear that the duty chargeable on the instrument, so determined shall be highest duty which would be chargeable in respect of 'any of the said instruments employed'. The expression 'any of the said instruments employed' as appearing in the proviso to section 4 makes it clear that the stamp duty, even upon the principal instrument which may have been determined by the parties themselves, shall be the highest duty which would be chargeable in respect of any of several instruments used in a single transaction of either sale, mortgage, settlement or development agreement.*
>
> *14] Applying the provisions of section 4 of the said Act to the facts and circumstances of the present case, it is clear therefore, that the stamp duty payable, even upon the principal instrument as determined by the parties in the present case shall be the highest duty which would be chargeable in respect of the two instruments so employed in the single transaction of sale of the said property. Therefore, although there could be no objection to the parties determining the Deed of Conveyance as being the principal instrument, upon such instrument, the parties would have to*

3 Writ Petition No.1462 of 2008 decided on 18 July 2014

> *pay stamp duty which would be chargeable in respect of the MOU, because admittedly stamp duty payable in respect of MOU would be higher than the stamp duty payable in respect of the conveyance. Thus construed, there does not appear to be any error in requiring predecessor in title of the petitioners to pay stamp duty upon the MOU at the rate of 10% ad valorem, which admittedly was the rate applicable in respect of the such instrument in the year 1996, which is the year in which the said instrument was admittedly executed. Further the explanation I to Article 25 of Schedule-1 to the said Act makes it clear that in case of agreement for sale of any immovable property where possession of the immovable property has been transferred at the time of execution of the agreement, such agreement shall be deemed to be conveyance and the stamp duty payable thereon shall be leviable accordingly.*

27] The reason which prompted Mr. Godbole to place reliance upon the aforesaid decision in the case of *Farida Memon* (supra) is because in the said case upon the conveyance executed on 17 June 2006, stamp duty was held to be leviable at the rate applicable, when MOU dated 26 September 1996 came to be executed between the parties, in the matter of sale of one and the same property. On this basis, Mr. Godbole would urge that in the present case stamp duty shall have to be determined upon the '*development agreement*' as per rates and the market value of the said property as it obtained on 18 October 2005. Such contention deserves no acceptance. Such contention misses the point that in the case of *Farida Memon* (supra) it was accepted that the MOU dated 26 September 1996 and the conveyance dated 17 July 2006 constituted series of instruments employed for completing the transaction of sale of the property. Further, the stamp duty payable on MOU dated 26 September 1996 was higher than the stamp duty payable upon the conveyance dated

17 July 2006. Therefore, in the fact situation which obtained in the said case and by applying the proviso to Section 4 of the said Act, it was held that since the stamp duty on the MOU dated 26 September 1996 is the '*highest duty*' which would be chargeable in respect of any of the instruments employed for completion of the transaction of the sale, there was nothing wrong in the authorities demanding the same. The ratio of *Farida Memon* (*supra*) is certainly not that stamp duty is required to be levied either upon the earliest instrument or upon any instrument that may be determined as '*principal instrument*' by the parties, irrespective of the circumstance that the '*principal instrument*' may not bear the '*highest duty*' which should be chargeable in respect of any of the instruments employed for completion of a transaction. In fact such a reasoning would run counter to the proviso to Section 4 of the said Act or in any case render it completely otiose.

28] Mr. Godbole made reference to the decision of the Supreme Court in the case of *Suraj Lamp and Industries Private Limited (2) through Director vs. State of Haryana & Anr.*[4], which has held that though transfer of property on basis of specific or general to unregistered Power of Attorneys should not be countenanced, caution has to be exercised against confusing or equating such transactions with genuine transactions based upon registered instruments. The ratio of this decision is of no assistance to the issues raised in the present case.

4 (2012) 1 SCC 656

29] The reliance was also placed by Mr. Godbole upon the decisions of the Supreme Court in case of *Veena Hasmukh Jain & Anr. vs. State of Maharashtra & Ors*.[5] and of this Court in case of *Guruashish Construction Pvt. Ltd. vs. Collector of Stamp & Anr*.[6] In case of *Veena Jain (supra)*, the Supreme Court was dealing with the aspect of '*deemed conveyance*' under the provisions of the said Act. In case of *Guruashish Construction Pvt. Ltd. (supra)*, the issue involved was whether the Collector has power to review his own decision either *suo moto* or on basis of objections raised by the auditors or otherwise. Such issues do not arise in the present case and accordingly, the decisions upon reliance has been placed, are not relevant.

30] For all the aforesaid reasons, there is no merit in the present petition. The petition is, accordingly, dismissed. Interim relief, if any, stands vacated. There shall be no order as to costs.

(M. S. SONAK, J.)

31] At this stage, the learned counsel for the petitioner requests that the interim protection granted to the petitioner on 10 November 2014 should continue for a further period of four weeks from today. The request is reasonable, since the petitioner's properties continue to be attached. Accordingly, the interim protection granted on 10 November 2014 is continued for a further period of four weeks from today.

(M. S. SONAK, J.)

5 (1999) 5 SCC 725
6 2013 (6) Bom. C.R. 287