

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13821 OF 2016

Shri.Narendra Janardan Pathak & Ors. ...Petitioners
Versus
The Collector of Stamps, Thane City Thane & Ors. ...Respondents

Ms.Gauri Godse, for the Petitioners.

Mr.Saurabh Butala, for the Respondents.

Mr.S.H.Kankal, AGP for the State.

CORAM : G.S. KULKARNI, J.

DATE : 17 July 2019

ORAL JUDGMENT

1. Rule, returnable forthwith. Respondents waive service. By consent of the parties heard finally.

2. This is a petition under Section 226 and 227 of the Constitution, whereby the petitioners have challenged an order dated 24 February 2016 passed by the Chief Controlling Revenue Authority, Maharashtra State, Pune, on an appeal filed by the petitioners under Section 53(1A) of the Maharashtra Stamp Act, 1958 (for short '**the Stamp Act**'). The petitioners had filed the said appeal being aggrieved by an order dated 18 December

2014 passed by the Collector of Stamps, Thane City, adjudicating stamp duty on the document in question titled as “preliminary agreement” dated 21 February 2011 executed between the respondents-vendors and the petitioners-purchasers.

3. The Collector of Stamps in adjudicating stamp duty on this document by an order dated 18 December 2014 directed that the document would fall in the category of 'conveyance' falling under Article 25(b) of Schedule-I to the Stamp Act. The petitioners were directed to deposit a deficit stamp duty of Rs.30,00,000/- and penalty amount of Rs.25,80,000/-.

4. By the impugned order passed by the Chief Revenue Controlling Authority on the appeal, the Chief Controlling Revenue Authority (for short '**the appellate authority**') has confirmed the orders passed by the Collector of Stamps on the following reasoning :-

“5. Reasoning:-

5.1 It is the contention of Appellant that in the subject document possession of property is not delivered immediately and is specifically agreed to be delivered at the time of execution of Conveyance Deed. Therefore, Agreement does not fall in category of Agreement covered under Explanation I below Article 25 of Schedule I of the said Act, to fall in the nomenclature of the same as “deemed Conveyance”.

5.2 Perused subject document, memo of appeal, documents, written say papers filed by Appellant on record.

5.3 Recital portion on page No.2 of the subject document is as follows:
The Purchaser agrees and assures to pay the said consideration of Rs.6,00,00,000/- (Rupees Six Crore only) to the Vendors in the following manner.

(i)	Rs.1,00,00,000/- (Rupees One Crore only) (i.e. Rs.40,00,000/- by cash and Rs.60,00,000/- by cheques) paid at the time of execution of this agreement.
(ii)	Rs.1,00,00,000/- (Rupees One Crore only) to be paid within 30 days from the date of issuance of public notice
(iii)	Rs.4,00,00,000/- (Rupees Four Crore only) to be paid within eight months from the date of payment of (ii) above i.e. at the time of execution and registration of final deed of conveyance but prior to that the Vendors shall take every effort and assistance to enable.

From this it is found that amount of Rs.6,00,00,000/- being agreed as total consideration is not disputed and out of that Rs.1,00,00,000/- has been acknowledged in receipt by the Vendor-Intervener, as earnest amount. Out of balance amount, Appellant agreed to pay it with 30 days to Vendors.

5.4 Para 13 on page no.7 is as follows:-

“It is agreed and understood by and between the parties that the expenses in connection with this agreement stamp duty, registration fees, incidental expenses thereto as well as the expenses in connection with this memorandum of understanding as well as further agreements and conveyance shall be borne and paid by the Purchasers alone”.

From this it is clear that every expenses towards every document including M.O.U. Appellant is under obligation to pay stamp duty and Registration Fee etc.

5.5 In this regard, Explanation I below Article 25 of Schedule I of said Act is as follows:-

“Explanation I, For the purpose of this Article where in the case of agreement to sell an immovable property, the possession of any immovable property is transferred or agreed to be transferred to the purchaser before the execution or at the time of execution or after the execution of such agreement then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly;”

From this it is observed that present is the case of Appellant squarely covered under this explanation, and therefore, the Agreement is chargeable to stamp duty as being “deemed Conveyance”. For this reason, case law referred by the Appellant would not apply to this case.

5.6 The contention of Appellant that the possession is agreed to be given at the time of execution of Conveyance Deed is not proved and therefore, is not accepted.

In the premises of the facts and circumstances of the case as mentioned above, the following order is passed:

ORDER

“Appeal is rejected.”

5. The short issue which falls for consideration is as to whether the document in question is liable for payment of stamp duty under Article 25(b) as categorized by the Stamp authorities or it falls under any other Article in the Schedule to the Stamp Act. The document itself is titled as a preliminary agreement. It is not in dispute that a final conveyance is to be entered between the parties subject to the modalities/conditions of this preliminary agreement. In this context it would be necessary to note some of the clauses contained in the agreement in question. The relevant clauses on which submissions are made on behalf of the parties are as under:-

“AND WHEREAS Purchaser came to know about the intention of the Vendors, approached the Vendors and during the course of meetings and negotiations, the Vendors represented that they are claiming right in the said property through deceased Raghu Ranchod Rathod and that the title to the said property is clear, marketable and free from reasonable doubts and encumbrances and that they and their family members are occupying the structures situated on the said property and they shall cooperate with

the purchaser for settlement of the claim of the tenants and occupants so as to have the vacant peaceful possession of the tenanted premises occupied by the Tenants, however, the costs and expenses of settlement of tenants shall be borne and paid by the Purchaser and further the Owners shall cause all the persons and their family members having right, title and interest in the said property to sign, execute and register the agreements, deeds, and documents in favour of the Purchaser.

WHEREAS relying upon the above representations of the Vendors the Purchaser have agreed to acquire the said property free from encumbrances and doubts at and for consideration of Rs.6,00,00,000/- (Rupees Six Crore only).

AND WHEREAS the offer of the Purchaser is accepted by the Vendors and the parties are desirous of reducing to writing the understanding reached by and between the parties by executing these presents.

Now therefore this agreement witness and it is hereby agreed by and between the parties hereto as under:

1. THE Vendors do hereby agree to sell, transfer and convey to the Purchaser and Purchaser do hereby agree and assure to acquire all that piece and parcel of land lying, being and situate at Village Kalyan, Taluka Kalyan, bearing Survey No.148 A Hissa No.2 (part) admeasuring 443.14 sq.metres bearing City Survey No.2275-B/2A and 2275-B/2B admeasuring 443.43 sq.meters (however as per the partition the area fallen to the share of deceased Raghu Ranchod Rathod admeasures 529 sq.yards) and denoted on the property Registered Card as 530.30 sq.yards along with the structure standing thereon admeasuring 1800 sq.ft built up in dilapidated condition bearing Property No._____ within the limits of Kalyan Dombivli Municipal Corporation (hereinafter for the sake of brevity called and referred to as the 'said property') and shown bounded by RED colour boundary lines on the plan annexed hereto along with its development rights at and for the price/consideration of Rs.6,00,00,000/- (Rupees Six Crore only)

2. The Purchaser agrees and assures to pay the said consideration of Rs.6,00,00,000/- (Rupees Six Crore only) to the Vendors in the following manner:

(i) Rs.1,00,00,000/- (Rupees One Crore only) (i.e. Rs.40,40,000/- by cash and Rs.60,00,000/- by cheques) paid at the time of execution of this agreement (the receipt and payment whereof the Vendors doth hereby jointly and collectively admit, acknowledge, acquit and discharges the Developers from the payment thereof absolutely and forever),

(ii) Rs.1,00,00,000/- (Rupees One Crore only) to be paid within 30 days from the date of issuance of public notice and after scrutinizing the

claims and objections if any received after publication of the public notice i.e. at the time of execution and registration of the agreement for sale and incidental documents thereto but prior to which the Vendors shall deduce a clear and marketable title and the owners causing the persons having interest in the said property to execute above deeds and documents.

(iii) Rs.4,00,00,000/- (Rupees Four Crore only) to be paid within eight months from the date of payment of (ii) above i.e. at the time of execution and registration of final deed of conveyance but prior to that the Vendors shall take every effort and assistance to enable the Purchasers to acquire the adjacent land from the legal heirs of Mavji Ranchod Rathod viz. Shri.Jayantilal Devram Rathod and his family members so as to facilitate the Purchasers to have more portion of frontage of land to the extent of approximately 60 feet wide having access from the main existing Agra Road and such acquisition shall be the essence of contract and the Vendors shall not demand any consideration from the Purchasers prior to compliance of the above referred requisitions.

3. THE Vendors declare that:

(a) they are well and sufficiently entitled to sell and dispose of the said property and that they have not created any encumbrances like Agreements, Exchange, Mortgage, Trust, Gift, Lien, Possession, Lease or even otherwise whatsoever on the said property and their title to the said property is clear, marketable and free from all doubts and encumbrances and that they shall cause all the other co-owners, persons having right, title and interest in the said property to execute and register the agreement for sale, power of attorney, deed of conveyance and incidental documents thereto.

(b) that there are only 2 tenants occupying the premises in the said entire property and certain part of the property is affected by the Road widening and is acquired by the Kalyan Dombivli Municipal Corporation and that they are in continuous and uninterrupted possession of the said property and they shall cooperate and render their support to the Purchaser to settle the claims and demand of such tenants and costs of such settlement shall be borne and paid by the Purchaser and such settlement shall be prior to execution of the conveyance.

... ..

6. The Vendors have permitted the Purchaser to enter upon the said property for the purpose of survey and measurement and to get boundaries of the said property demarcated and further to do and perform all the acts, things, deeds and matters for the incidental development of the said property.

7. The Vendors have permitted the Purchaser to issue public notices in

any newspapers inviting claims from general public in respect of said sale and if any claim is raised by any person, then the Vendors will clear the same at their own costs and expenses to the entire satisfaction of the Purchasers or their Advocate/s.

8. It is clearly agreed and understood between the parties that the aforesaid consideration is and shall be the total consideration payable by the Purchasers for acquiring the said property free from encumbrances and doubts and in no event the Purchasers shall be called upon to pay any additional consideration to the Vendors herein and/or the persons claiming right, title and interest through the deceased Raghu Ranchod Rathod in any manner whatsoever.

9. It is agreed and understood by and between the parties that the purchaser shall have the right and authority to amalgamate the said property with the other adjacent properties as well as grant the right of way/access, permanent easement rights to any adjacent owners/purchaser or Holder of land as they may deem fit and proper and to receive the benefit thereof for their own use and benefit and also to obtain the layout of the said property as well as sub-divide the property as the Purchaser may deem fit and proper.

10. The Purchaser shall be entitled to use, avail and obtain the Transferable Development Rights from other sources on the said property as well as obtain the optimum F.S.I. in respect of the said property on account of tenants' F.S.I., staircase F.S.I. or enhancement in F.S.I. under the provisions of the relevant enactments and statutes and as per the rules and regulations of the Municipal Corporation from time to time and the Vendors will render their sincere cooperation therefor.

.....

13. It is agreed and understood by and between the parties that the expenses in connection with this agreement, stamp duty, registration fees, incidental expenses thereto as well as the expenses in connection with this memorandum of understanding as well as further agreements and conveyance shall be borne and paid by the Purchasers alone.”

(emphasis supplied)

6. Learned Counsel for the petitioners would contend that there is clearly non application of mind on the part of both the authorities in applying the provisions of Article 25(b) to categorize this document to be a 'conveyance' for the purposes of payment of stamp duty. It is submitted

that under Clause 2(iii) of the agreement the parties have agreed that a “final sale deed” or “conveyance” would be entered into between the parties. In short, the petitioners contention is that this is an agreement to enter into a further agreement. It is contended that clauses 3 to 10 merely enable the petitioners/purchasers to undertake certain steps so that a final sale deed can be entered into. It is submitted that considering the specific clauses of the agreement and more particularly clauses 3 to 13, there is no indication whatsoever that possession of the land is being handed over so as to attract Explanation I of Article 25(b) of Schedule I of the Maharashtra Stamp Act. It is submitted that the agreement in question necessarily falls under the provisions of Article 5(B) and it has been appropriately stamped at Rs.100/-. Learned Counsel for the petitioners in support of his submission has relied on the decision of the Division Bench of this Court in **“Balawanigir Ganaptgir Giri (Deceased through L.Rs. Vs. Manasi Construction & Developers & Ors.”**¹

7. On the other hand, the Assistant Government Pleader would submit that both the authorities have appropriately applied the provisions of Article 25(b) and more particularly considering clause 3(b) and clause 6 of the agreement, which according to him renders the agreement in

¹ 2006(6) ALL MR 109

question as conveyance, as it is his contention that these clauses would confer rights in favour of the petitioners to undertake acts which can be undertaken after the possession is handed over.

8. Mr. Butala, learned Counsel for the private respondents i.e. respondent 3 to 24 (for short '**respondents**') however would not agree with the learned Assistant Government Pleader and would submit that the finding as recorded by both the authorities that the document falls under Article 25(b), is not a correct finding. His contention is however that the agreement would fall under Article 5(g-a) for payment of stamp duty which pertains to *“giving authority or power to a promoters or a developer, by whatever name called to undertake construction or development or to sale or transfer in any manner whatsoever of, any immovable property.”* Learned Counsel for the respondents would also not dispute and would admit that the possession of the land is not handed over to the petitioners by his clients. Learned Counsel for the respondents has also laid emphasis on clauses 6, 9 and 10 of the agreement as noted above to contend that taking into consideration these clauses, surely the document is not adequately stamped at Rs.100/- and thus the agreement is required to be stamped under Article 5(g-a).

9. Having heard the learned Counsel for the parties and having perused the impugned orders and the agreement in question, the material consideration to attract 'Explanation I' below Article 25(b) is required to be noted namely the possession of the land in question being handed over as required by Explanation I. In the present case not only the petitioners but also the respondents agree that the possession is not handed over to the petitioners. It is also not in dispute that the parties have agreed that an amount of Rs.4 crores has remained to be paid and only after the entire payment is made by the petitioners to the respondent a final deed of conveyance would be entered into between the parties as specifically agreed in clause (2) of the agreement as noted above. Despite this admitted factual position the Collector of Stamp holds that possession was handed over to the petitioners.

10. Further it needs to be noted that the Collector of Stamps (the First Authority) and the Appellate Authority although opined that the agreement in question is required to be stamped as “conveyance” under Article 25(b), have different reasoning. The Collector of Stamp has blanketly applied Article 25(b) whereas the Appellate Authority has adopted a different approach namely by referring to 'Explanation I' under

Article 25(b). Having noted the reasoning of the Appellate Authority it would also be necessary to note the reasoning of the Controller of Stamps as set out in paragraph (5) of the order dated 16 December 2014. The ordinary translation of which reads thus:-

“The subject agreement is a preliminary agreement executed on 21.2.2011. As per the contents of page no.2 the party who is writing this document has stated that their shares in the land and right, title and interest is sold for a consideration of Rs.6 crores. Also on page no.3 paragraph no.4 the party making the writing and his family members have stated that they are the owners of the land and they are agreeable that necessary document would be executed by them in favour of the persons who are receiving the agreement. On page no.5 paragraph sub-clause (b) it is stated that there are no tenants. On page no.6 paragraphs 5 to 7 enumerates the steps to be taken for finalizing the sale deed and for which the persons who are giving the document in writing have permitted so in favour of the person receiving the said writing. The documents have also been signed between the parties. Considering the above analysis, the applicant's contentions are without any basis. Therefore, this agreement is required to be stamped as per Article 25(b) and therefore, the following final order is being passed.”

11. On the above conspectus, it would be necessary to note the relevant contents of Article 25 and clause (b) thereunder of the Schedule I of the Maharashtra Act which pertains to 'conveyance' which reads thus:-

25 CONVEYANCE (not being a transfer charged or exempted under Article 59)- On the true market value of the property, which is the subject matter of Conveyance,-	
..
(b) <u>if relating to immovable property situated</u> ,-	

(i) within the limits of any Municipal Corporation or any Cantonment area annexed to it or any urban area not mentioned in sub-clause (ii)	5 percent of the market value of the property
(ii) within the limits of any Municipal Council or Nagar Panchayat or Cantonment area annexed to it, or any rural area within the limits of the Mumbai Metropolitan Region Development Authority, or the Influence Areas as per the annual statement of rates published under the Bombay Stamp (Determination of True Market Value of Property) Rules,1995	5 per cent of the market value of the property
(iii) within the limits of any Grampanchayat area or any such area not mentioned in sub-clause (ii)	4 per cent of the market value of the property
(c) if relating to both moveable and immoveable property	The same duty as is payable under clauses (a) and (b)
(d) (* * *)	
(da) if relating to the order of High Court in respect of the amalgamation or reconstruction of companies under section 394 of the Companies Act,1956 or under the order of the Reserve Bank of India under section 44A of the Banking Regulation Act,1949	<p>10 per cent of the aggregate of the market value of the shares issued or allotted in exchange or otherwise and the amount of consideration paid for such amalgamation:</p> <p>Provided that, the amount of duty chargeable under this clause shall not exceed,-</p> <p>(i) an amount equal to 5 per cent of the true market value of the immovable property located within the State of Maharashtra of the transferor company; or</p> <p>(ii) an amount equal to 5 per cent of the aggregate of the market value of the shares issued or allotted in exchange or otherwise and the amount of consideration paid, for such amalgamation, whichever is higher:</p>

	<p>Provided further that, in case of reconstruction or demerger of the duty chargeable shall not exceed,-</p> <p>(i) an amount equal to 5 per centum of the true market value of the immovable property located within the State of Maharashtra transferred by the Demerging Company to the Resulting Company; or</p> <p>(ii) an amount equal to 0.7 per centum of the aggregate of the market value of the shares issued or allotted to the Resulting Company and the amount of consideration paid for such demerger, whichever is higher.</p>
<p>[(e) ..** ** **]</p>	
<p style="text-align: center;">Exemption</p> <p>Assignment of Copyright under the Copyright Act,1957.</p> <p><u>(Explanation I) – For the purposes of this article, where in the case of agreement to sell an immoveable property, the possession of any immoveable property is transferred (or agreed to be transferred) to the purchaser before the execution, or at the time of execution, or after the execution of, such agreement then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly:</u></p> <p><u>Provided that, the provisions of section 32A shall apply mutatis mutandis to such agreement which is deemed to be a conveyance as aforesaid, as they apply to a conveyance under that section :</u></p> <p><u>Provided further that, where subsequently a conveyance is executed in pursuance of such agreement of sale, the stamp duty, if any already paid and recovered on the agreement of sale which</u></p>	

is deemed to be a conveyance, shall be adjusted towards the total duty leviable on the conveyance:

Provided also that, where proper stamp duty is paid on a registered agreement to sell an immovable property, treating it as a deemed conveyance and subsequently a conveyance deed is executed without any modification then such a conveyance shall be treated as other instrument under Section 4 and the duty of one hundred rupees shall be charged.

(emphasis supplied)

12. A plain reading of Article 25 under the Schedule to the Stamp Act would indicate, that it applies per se to conveyance relating to an immovable property, leviable at 5% of the market value of the property as set out in the second column qua the categories of the lands as per their location. However, 'Explanation I' below Article 25 (with effect from 10 December 1985) clarifies as to what would be the position when there is an “agreement to sell” a immovable property but where possession is sought to be given thereunder as set out in the said “Explanation I”. 'Explanation I' provides, that for the purposes of this article (Article 25), when there is an agreement to sell an immovable property, if the possession of any immovable property is transferred or agreed to be transferred to the purchasers before the execution or at the time of

execution or after the execution of, such agreement, then such agreement to sell would be deemed to be a conveyance and stamp duty thereon would be leviable accordingly. Thus labelling any “agreement to sale” which has such ingredients of possession as set out in “Explanation I” would fall under Article 25(b) and no other. The object of inserting “Explanation I” is to bring within the ambit of Article 25 such agreements which are deceptive, though titled as agreement for sell are in fact Conveyance.

13. It may be stated that considering the proviso below Explanation I of Article 25 in any case, stamp duty would be required to be paid when parties enter into a final conveyance. The proviso below Explanation I is of some relevance, which states that if the stamp duty is paid on such an agreement to sell, and when the parties enter into a further sale deed/conveyance, the stamp duty already paid would be required to be adjusted towards the total duty leviable on the conveyance.

14. As a sequel to the above observations, the contention as urged on behalf of the petitioners relying on the decision of the Division Bench in *Balawanigir Ganaptgir Giri (Deceased through L.Rs. Vs. Manasi*

Construction & Developers & Ors.” would be required to be accepted that the document in question is in fact an agreement to sell and not a conveyance falling within the ambit of Article 25(b) of the Maharashtra Stamp Act.

15. A plain reading of the agreement in the present case, clearly shows that there are no clauses which would indicate that the possession of the land is transferred to the petitioners before the execution or at the time of execution or after the execution of such agreement. In fact what the parties have categorically agreed in clause 2(iii), is that a final deed of conveyance would be entered between the parties after receipt of Rs.4 crores which was to be paid within eight months of the execution of the said agreement.

16. The contention as urged on behalf of learned Counsel for respondents that clause 6 of the agreement is required to be interpreted to mean it would indicate permission to enter upon the land and would become relevant, cannot be accepted to being the document as falling under 'Explanation I'. In fact this argument as urged on behalf of the respondents militates against the respondents' plea that the possession of

the land was never handed over. Clause 6 of the agreement from its plain reading, cannot be read to mean that it is in the nature of transfer of possession as contemplated under Explanation I below Article 25.

17. Both the authorities below ought to have meaningfully construed the various clauses of the agreement so as to ascertain as to whether any of the clauses as contained in the agreement would attract any ingredients of Article 25(b) read with Explanation I.

18. A perusal of the order passed by the Collector of Stamps, thus clearly reflects non application of mind, when the agreement is being construed to mean that it is amounting to a final transfer of the land in favour of the petitioners, which overlooks that the parties in clauses 2 and 3 have clearly agreed that final deed of conveyance would be entered between the parties. Even the appellate order appears lacks a cogent reasoning, in as much as the appellate order merely referring to clause 2 and 13 of the agreement in question to reach a conclusion that Explanation (I) below Article 25 is applicable to refer the document as “deemed conveyance”. More particularly in paragraph 5.6 of the impugned order the appellate authority has recorded a finding completely

overlooking the specific clauses in the agreement, to observe that the contention of the petitioners that the possession is agreed to be given at the time of entering a conveyance deed is not proved, and therefore it cannot be accepted. Such a finding firstly does not make any meaning, secondly such finding, in my opinion would be a complete misreading of the clauses in the agreement, amounting to a factual and a legal perversity.

19. Thus, the contention as urged on behalf of the learned Assistant Government Pleader that the document is required to be held to be chargeable for stamp duty under Article 25(b), cannot be accepted.

20. As regards the contention of the learned Counsel for the respondent that the document is required to be charged for payment of stamp duty under Article 5(g-a) also cannot be accepted. Article 5(g-a) pertains to; (i) “Agreement or its records or memorandum of an agreement”, relating to giving authority or power to a promoter or a developer, by whatever name called, for construction on, development of or, sale or transfer in any manner whatsoever of, any immovable property. Article 5(g-a) reads as under:-

<p>5. AGREEMENT OR ITS RECORDS OR MEMORANDUM OF AN AGREEMENT -</p> <p>.....</p> <p>[(g-a) [(i)] if relating to giving authority or power to a promoter or a developer, by whatever name called, for construction on, development of or, sale or transfer (in any manner whatsoever) of, any immovable property.</p> <p>[(ii) if relating to the purchase of one or more units in any scheme or project by a person from a developer:</p> <p style="padding-left: 40px;">Provided that, on conveyance of property by the person, under an agreement under this sub-clause, to the subsequent purchaser, the duty chargeable for each unit under this sub-clause shall be adjusted against the duty chargeable under article 25 (conveyance) after keeping the balance of one hundred rupees, if such transfer or assignment is made [within a period of one year] from the date of the agreement. If on adjustment, no duty is required to be paid, then the minimum duty for the conveyance shall be rupees one hundred.</p> <p style="padding-left: 40px;">Explanation.- For the purposes of this sub-clause, the unit shall include a flat, apartment, tenement, block or any other unit by whatever name called, as approved by the Competent Authority in the building plan.</p>	<p>.....</p> <p>[The same duty as is leviable on a Conveyance under clause (b), [or (c)], as the case may be, of Article 25, on the market value of the property] :</p> <p>Provided that, the provisions of section 32A shall, <i>mutatis mutandis</i>, apply to such agreement, records thereof or memorandum, as they apply to an instrument under that section :</p> <p>Provided further that, if the proper stamp duty is paid under clause (g) of article 48 on a power of attorney executed between the same parties in respect of the same property then, the stamp duty under this article shall be one hundred rupees.]</p> <p>Same duty as is leviable on conveyance under clauses (a), (b), [or (c)], as the case may be, of article 25 on the market value of the unit.]</p>
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21. The agreement in question being a preliminary agreement and with a definitive clause that the parties would be entering into a final sale deed, cannot be construed to mean that it is a document relating to giving

authority or power to a promoter or a developer or any such person by whatever name called to undertake construction, development, sale etc. as contemplated under Article 5(g-a). As noted above the various clauses of the document clearly indicate that the parties have agreed to enter into a final sale deed and to enable the parties to enter into such a final sale deed the parties have agreed for various modalities which will enable achieving final sale deed/conveyance.

22. In my opinion, as urged on behalf of the petitioners, the document is adequately stamped at Rs.100/- clearly falling under Article 5(h)(B) which reads thus:-

5.AGREEMENT OR ITS RECORDS OR MEMORANDUM OF AN AGREEMENT	
...
(h) (A) If relating to,-	
<u>(B) If not otherwise provided for,-</u>	<u>One hundred rupees</u>
<u>Explanation- No duty shall be chargeable on agreements or its record covered under sub-clauses (b) and (c) of this article, if proper duty is paid under article 51A.</u>	

(emphasis supplied)

23. In the light of the above deliberation, the petition needs to succeed. It is accordingly allowed in terms by the following order:-

ORDER

(i) The impugned orders dated 18 December 2014 passed by the Collector of Stamps and of the Appellate Authority dated 24 February 2016 in Appeal no.28 of 2015, are quashed and set aside, while holding that the document is adequately stamped at Rs.100/- under Article 5(h) (B) of Schedule I to the Maharashtra Stamp Act. The petitioners are directed to pay stamp duty as per law on the final sale deed, if so entered between the parties.

(ii) Rule is made absolute in the above terms. No costs.

(G.S.Kulkarni, J.)