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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8030 OF 2017

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KULKARNI

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... **Petitioner**

V/s.

- 1. The State of Maharashtra,**
to be served through Government
Pleader, Appellate Side,
High Court, Mumbai – 38.
- 2. The Chief Controlling Revenue
Authority,** Maharashtra State, Pune
(Deputy Inspector General of
Registration) having it's office
at Ground floor, New Administrative
Building, Pune 411 001

... **Respondents**

Mr. Girish Godbole, Senior Advocate with Ms Vaishnavi
Mane and Sushant Chavan for the petitioner.

Mrs. M.S. Srivastava, AGP for the respondent Nos.1
and 2-State.

CORAM : AMIT BORKAR, J.

RESERVED ON : MARCH 4, 2025

PRONOUNCED ON : MARCH 11, 2025

JUDGMENT:

1. The present case raises an important question under the Maharashtra Stamp Act, 1958: How does one distinguish between an *instrument of conveyance* and a *development agreement* for the purpose of stamp duty?
2. The petitioner has instituted the present Writ Petition under Article 227 of the Constitution of India, assailing the legality, validity, and propriety of the judgment and order dated 3rd June 2017 passed by Respondent No.2 in the purported exercise of powers conferred under Section 53A of the Maharashtra Stamp Act, 1958 (hereinafter referred to as “the Stamp Act”). By the impugned judgment and order, Respondent No.2 dismissed the appeal preferred by the petitioner, which challenged the earlier order dated 25th February 2016 passed by the Joint District Registrar Class-I and Collector of Stamps (hereinafter referred to as “the Collector of Stamps”). In the said order, the petitioner was directed to remit a deficit stamp duty of Rs.5,84,900/- pursuant to the Audit Objection Report submitted by the Comptroller and Auditor General of India. Furthermore, the petitioner was saddled with a penalty of Rs.11,69,800/-, on the premise that the instrument in question is governed by Article 25 of the Schedule to the Maharashtra Stamp Act, 1958, rather than Article 5(g-a).
3. The material facts and circumstances giving rise to the present Writ Petition, in brief, are set out hereinbelow for the sake of clarity and convenience.

4. The dispute pertains to land bearing Survey No.30/1, admeasuring 3H 27.5R, situated at Village Kune, Taluka Maval, District Pune (hereinafter referred to as “the subject land”). The owner of the subject land had moved an application under Section 44 of the Maharashtra Land Revenue Code, 1966, seeking conversion of the said agricultural land into non-agricultural (NA) use. Pursuant thereto, by order dated 11th October 1999, the Additional Collector, Pune, granted permission for non-agricultural use, subject to certain stipulations set forth therein. In furtherance of the said permission, the owner executed a registered Development Agreement on 21st October 2005 in favour of the petitioner, coupled with a Power of Attorney. Under the said Development Agreement, the petitioner was conferred with the right to develop the subject land against consideration of Rs.11,50,00,000/- (Rupees Eleven Crore Fifty Lakh Only). The petitioner was also empowered to convey and assign the right, title, and interest in the subject land in favour of a developer or its nominee, which might include a cooperative society or association of purchasers, as circumstances required. Simultaneously, the Power of Attorney was duly registered on 21st October 2005. At the material time, the stamp duty of Rs.100/-, being the fixed duty applicable under Article 5(g-a) of the Stamp Act, was paid.

5. In consequence of the Development Agreement and Power of Attorney executed in its favour, the petitioner proceeded to execute sale deeds with various third-party purchasers. However, by a notice dated 24th March 2006, the Comptroller and Auditor General of India, through its Audit Objection, sought an

explanation from the petitioner regarding alleged insufficiency of stamp duty. Upon receiving the petitioner's reply, the said objection was initially withdrawn. Subsequently, on 29th April 2015 and 28th September 2015, the petitioner received fresh notices, wherein a deficit payment of stamp duty amounting to Rs.5,84,900/- and a penalty of Rs.11,69,800/- were demanded, based on the communications issued by the Joint District Registrar.

6. Aggrieved by the said notices and the ensuing demand for deficit duty and penalty, the petitioner preferred an appeal under Section 32A(4) of the Stamp Act before the Joint District Registrar. The petitioner contended that the subject instrument did not, in any manner, transfer ownership rights and was merely in the nature of a Development Agreement, thereby falling squarely within the ambit of Article 5(g-a) of the Stamp Act. It was further urged that the duty at the rate of 1% of the market value of the land, as prescribed for such Development Agreements, had been duly paid. However, by order dated 25th February 2016, the Joint District Registrar of Stamps dismissed the petitioner's appeal, necessitating the further appeal before Respondent No.2. Once again, Respondent No.2 dismissed the petitioner's appeal through its order dated 3rd June 2017, thereby affirming the stance of the Joint District Registrar. In view of the foregoing, the petitioner has approached this Court by way of the present Writ Petition, impugning the order dated 3rd June 2017.

7. Mr. Godbole, the learned Senior Advocate for the petitioner, with characteristic erudition, submits that a development agreement is intrinsically distinct from a conveyance as

contemplated under Article 25 of the Act. He contends that the development agreement in the present matter did not effectuate a transfer of ownership of land in favor of the transferee but was, in its essence, an executory contract whereby the developer undertook the construction project, and the owner was compensated by way of an entire consideration amounting to Rs.1,15,00,000/-. The said development agreement conferred upon the developer an unequivocal right to undertake the development of the land as per the petitioner's choice, be it by way of laying out plots, constructing row-houses, or developing residential units under a group housing scheme, or by any other legally sanctioned method, subject, however, to the extant Development Regulations. Furthermore, the developer was granted the available Floor Space Index (FSI) and was authorized to transfer the same, thereby necessitating that the owner assign the right, title, and interest in the layout in favor of the Association of Buyers or the Condominium, as the case may be.

8. The learned Senior Advocate, placing reliance on the Statement of Objects and Reasons accompanying the Maharashtra Act XVI of 2008, submits that the amendment incorporated in Article (g-a)(1) was intended to generate additional revenue. In furtherance of his submission, he seeks fortification from the pronouncement of the Hon'ble Apex Court in *Southern Roadways Ltd., Madurai v. S.M. Krishnan* ((1989) 4 SCC 603), wherein it has been held that a development agreement effectuates the creation of an agency in favor of the developer; however, such agency, per se, does not vest in the agent an indefeasible right to continue in

possession after the revocation of such agency, unless such authority is coupled with an interest within the meaning of Section 202 of the Indian Contract Act, 1872. It is further submitted that where such agency is revoked, the agent cannot, as a matter of right, claim compensation under Section 205 of the Contract Act, nor can he exercise a lien over the property of the principal under Section 221 of the Contract Act, unless such entitlement is specifically recognized under law. He underscores that a vital consideration in determining the rights of an agent pertains to the fact that an agent, who is merely in receipt of property or money on behalf of or for his principal, does not acquire any proprietary interest in such property. Consequently, an agent holds the principal's property solely in a fiduciary capacity, devoid of any independent or vested interest therein.

9. In bolstering his contentions, learned Senior Advocate places reliance on the judgment of the Division Bench of this Court in *Adityaraj Builders v. State of Maharashtra & Ors.* (2023 SCC OnLine Bom 540), wherein, although the interpretation of Section 4(1) of the Stamp Act was under consideration, the Division Bench deliberated upon the nature and purport of a development agreement in juxtaposition with a conveyance, with due reference to the earlier Division Bench ruling of this Court in *Prabha Ghate*. He submits that the crucial determinative factors in distinguishing between a development agreement and a conveyance under Article 225 pertain to the extent of transfer of title or interest in the property and whether the original owner continues to retain ownership despite the execution of the agreement.

10. The learned Senior Advocate further relies upon the authoritative pronouncement of the Hon'ble Supreme Court in *Shyamsundar Radheshyam Agrawal & Anr. v. Pushpabai Nilkanth Patil & Ors.* ((2024) 10 SCC 324), wherein, although the Apex Court was primarily concerned with the applicability of Section 4 of the Bombay Stamp Act, it nonetheless delved into the essential ingredients that constitute a conveyance in the context of a document being the principal document forming part of a singular transaction. It is pointed out that, in the facts of the said case, six distinct instruments were executed; however, the Supreme Court observed that those instruments did not constitute a single composite transaction between the parties. In this context, the Hon'ble Court held that Explanation 1 to Section 4 makes it abundantly clear that stamp duty is levied solely on the instrument and not on the underlying transaction. Drawing attention to paragraphs 16 and 20 of the said judgment, the learned Senior Advocate submits that Section 4(2) of the Maharashtra Stamp Act accords discretion to the parties to determine which instrument shall be deemed the principal document for the purpose of levy of stamp duty. In light of the second proviso to Article 25, he contends that the State is not vested with the authority to recover stamp duty in excess of its legitimate entitlement and that such recovery must remain circumscribed to the difference in stamp duty, along with the applicable penalty, from the date of execution of the agreement for sale.

11. Relying on the judgment of the Hon'ble Supreme Court in *Victory Iron Works Limited v. Jitendra Lohia & Anr.* ((2023) 7 SCC

227), the learned Senior Advocate contends that the Apex Court had the occasion to interpret the meaning of the terms "estate and property" within the framework of the Insolvency and Bankruptcy Code, 2016. He submits that in the factual context of the case, a joint development agreement was executed by the Resolution Professional with the purchaser of the property under the provisions of the Securitization Act. In light of the statutory definition of "property" under Section 3(27) of the IBC, he argues that the terms "estate and property" bear distinct connotations. By drawing attention to paragraph 40 of the judgment, he submits that through a series of seven interrelated documents, a bundle of rights and interests were conferred upon the corporate debtor, some of which assumed the attributes and characteristics of ownership rights.

12. The learned Senior Advocate further relies on the decision of the Hon'ble Supreme Court in *Rajasthan Art Emporium v. Kuwait Airways & Anr.* ((2024) 2 SCC 570), wherein the Apex Court expounded upon the rights of an agent by analyzing Sections 186 and 188 of the Contract Act, which empower an agent to undertake lawful acts necessary for carrying out an authorized task.

13. Lastly, he submits that in the event of ambiguity in a fiscal statute, the interpretation that favors the assessee ought to be preferred. He contends that in light of the recitals in the development agreement, which obligate the owners to execute conveyance in favor of the Association of Persons, the document in question ought to be construed as a development agreement rather

than a conveyance. He further submits that, as a matter of fact, the conveyance executed by the petitioner in favor of the purchasers has been carried out jointly by the owner and the developer, which serves as a crucial indicator that the document in question is indeed a development agreement.

14. Thus, in view of the legal position expounded above, the petitioner asserts that the development agreement in question ought to be construed in consonance with the settled legal principles governing such agreements and should not be erroneously treated as a conveyance for the purposes of Article 25 of the Maharashtra Stamp Act.

15. Per contra, the learned Assistant Government Pleader (AGP) appearing on behalf of the State opposes the writ petition and stoutly defends the stamp duty assessment. The principal contention advanced on behalf of the State is that, although the scheme of the Stamp Act recognizes development agreements, such agreements effectively transfer a bundle of valuable rights pertaining to the land, including the right to enter upon and occupy the land for development, the right to construct new structures, and, crucially, the right to sell or otherwise transfer newly constructed units or flats to third parties. The State submits that these rights amount to a transfer of interest in immovable property. The learned AGP submits that acceding to the petitioner's contentions would undermine the statutory scheme and potentially facilitate stamp duty evasion under the guise of labeling conveyance as a development agreement.

16. Having perused the legislative framework set forth in Section 2(g) of the Maharashtra Stamp Act, 1958 (hereinafter, “the Stamp Act”), it is evident that the term “*Conveyance*” has been assigned a notably wide import. The statutory definition not only covers a “conveyance on sale” but also extends to “every instrument ... by which property, movable or immovable, or any estate or interest therein, is transferred to, or vested in, any other person, *inter vivos*,” barring those instruments otherwise specifically provided for in Schedule I. The express language employed by the legislature underscores that the chargeability under the Stamp Act is primarily contingent on the *substance* of the instrument rather than the label affixed to it. This position is further bolstered by the Explanation to Section 2(g), which clarifies that even a transfer of a co-owner’s share outside the pale of partition would be deemed to effectuate an *inter vivos* transfer of property. Thus, while construing the document at hand, the Court is duty-bound to look beyond its nomenclature and to inquire whether it, in reality, conveys any interest in property from one party to another. Where such an interest is indeed conveyed, the statutory levy of stamp duty must follow.

17. Turning to Schedule I of the Stamp Act, it becomes manifest that the legislature has enumerated various instruments alongside their corresponding stamp duty obligations. Prior to 1990, there existed an ambiguity inasmuch as “development agreements” were not specifically cataloged, leading to repeated controversies regarding the rate and basis of stamping. To remedy this, Article 5(g-a) was introduced into Schedule I by Maharashtra Act 9 of

1997, retrospectively effective from 7 February 1990, thereby unequivocally bringing *development agreements* within the legislative fold.

18. Article 25, which lies at the heart of Schedule I, ordinarily governs stamp duty on conveyances and is typically invoked in cases involving a sale or transfer deed of immovable property. However, Explanation I to Article 25, introduced by the Maharashtra Legislature in 1985, serves as a crucial adjunct. It stipulates that an agreement for sale of immovable property granting possession or providing for future transfer of possession in part performance (within the ambit of Section 53A of the Transfer of Property Act, 1882) is *deemed* a “conveyance” for stamp duty purposes. The legislative rationale is plain: parties should not circumvent their duty obligations merely by crafting an “agreement for sale with possession” and deferring the formal deed of sale. Under this fiction, the State’s right to collect proper revenue accrues immediately upon the execution of such an agreement, irrespective of whether a subsequent deed of conveyance is executed. Moreover, the Explanation clarifies that even if one later proceeds to execute and duly stamp a formal sale deed, the prior agreement—if it had already transferred or promised to transfer possession—cannot evade stamp duty in its own right; it would remain the *principal instrument* for assessment under Section 4 of the Act.

19. Section 4 of the Stamp Act, in turn, prescribes that if a transaction is effectuated through multiple instruments—e.g., an initial agreement followed by a final conveyance—only one of

those instruments is chargeable with the full rate of stamp duty, while the remainder may be subjected to nominal duty, provided the full duty has been paid on one principal instrument. The legislative design here is to prevent *double taxation* where a single transaction is segmented among multiple documents. Indeed, within the realm of development projects, the legislature has manifestly accommodated the practicalities by allowing either the development agreement or an accompanying power of attorney to bear the full duty, with the other instruments being stamped nominally. The proviso to Article 5(g-a)(i) specifically states that if the associated power of attorney—executed in respect of the same property between the same parties—is duly stamped under Article 48(g), the development agreement itself may be stamped at ₹100, and vice versa. Article 5(g-a)(ii), similarly, shields purchasers of units in a project by allowing for the adjustment of the duty paid on individual unit purchase agreements against the ultimate conveyance, thereby preventing repetitive levy at full rates. At every turn, the Act thus seeks to ensure that while there is no undue duplication of duty, no instrument creating or transferring an interest in property escapes the net of proper stamp duty.

20. It is instructive to note that, prior to the amendment of Article 5(g-a) by Maharashtra Act XVI of 2009, development agreements were liable to stamp duty at the rate of five rupees (Rs.5/-) for every five hundred rupees (Rs.500/-) or part thereof of the market value. Recognizing the imperative of augmenting state revenue and forestalling potential under-assessment of such instruments, the legislature, by the amending enactment, revised

the schedule of stamp duty for development agreements and allied powers of attorney to develop immovable property. Consequently, such instruments have been brought within the broader fold of Article 25 of Schedule-I, attracting a stamp duty rate of three to five percent of the property's market value, thereby reflecting the legislative intent of capturing the commercial essence of such conveyances.

21. It stands settled as a matter of *stamp duty jurisprudence* that it is the underlying substance and operative terms of the document which determine its true character, not the *nomen juris* or caption under which the parties describe it. The Court must delve into the recitals, obligations, and rights conferred by the instrument.

22. This legal position finds lucid enunciation in the Division Bench judgment of this Court in *Chheda Housing Development Corporation v. Bibijan Shaikh Farid* (2007) 3 Mah.L.J 402. While dealing with a comparable scenario, the Division Bench observed that in such development agreements, once the owner has received consideration and handed over all rights of construction and sale to the developer, the agreement ceases to be a simple license for construction. Instead, it vests in the developer an enforceable interest in the land, rendering the owner duty-bound to complete the ultimate conveyance to the purchasers or their society. The Court aptly noted that such rights are not ordinarily revocable at the sole discretion of the owner and are specifically enforceable in equity. This legal analysis, *mutatis mutandis*, supports the proposition that when a developer is vested with the authority to not only build but also to market and sell the resultant structures,

the transaction partakes the character of a conveyance for stamp duty purposes.

23. It is, therefore, abundantly clear that a development agreement is not to be conflated with a mere contract for services. By means of the legislative amendments brought into effect through Article 5(g-a) of Schedule I, as well as the sweeping scope of Section 2(g), such agreements, in so far as they convey a beneficial and valuable interest in the subject immovable property, stand squarely equated with “conveyance” instruments. The underlying rationale is that the developer’s right to carry out construction and to sell the resultant premises amounts to an immediate transfer of certain rights in land, be it the development rights or attendant possessory interests. Thus, while the original owner may retain title *in name*, a portion of the estate or interest passes to the developer in a legally cognizable manner, thereby attracting conveyance-level stamp duty. The legislative policy plainly aims to plug loopholes and ensure that no conveyance of a significant right in immovable property is able to evade appropriate revenue.

24. The judgments of the Hon’ble Supreme Court, such as the decision in *Shyam Sunder Agrawal (Supra)*, amply buttress this principle. In addressing scenarios where multiple agreements for sale were followed by a formal deed, Their Lordships underscored that the initial agreement that grants possession or a right to obtain possession stands on the same footing as a conveyance for the purpose of levy of stamp duty. Consequently, if the instrument in question provides for a real transfer of rights, including

possession or control of the project land, it must invite duty akin to that chargeable on a conveyance. By virtue of the statutory scheme, the *first* instrument effecting such a transfer—be it styled a “development agreement” or otherwise—becomes the principal document for stamping, leaving any subsequent instrument to be charged only nominally, provided the primary levy has been settled in full.

25. The judgment in the case of *Southern Roadways Ltd. (supra)*, emphasized the settled proposition therein, holding unequivocally that an agent acquires no interest or proprietary rights in the principal’s property merely by virtue of agency. Consequently, upon termination of such agency, the agent cannot assert a possessory right to interfere with the principal’s business activities conducted on the premises owned or controlled by the principal unless specifically provided by the terms of the contract. It was categorically held that the aspect of actual possession of the premises is extraneous and irrelevant for adjudicating the principal’s legal entitlement to continue conducting its business. Moreover, the Court expounded that although the relationship in cases of general agency typically exhibits fiduciary characteristics, the nature and depth of this fiduciary relationship may vary substantially, influenced by the quantum of trust and confidence reposed by the principal in the agent. Further, such variation is also contingent upon the nature and extent of powers conferred upon the agent by express terms of the agency contract, or by implication derived from prevailing law or established business practices.

26. The Division Bench judgment of this Court in the case of *Adityaraj Builders (supra)*, involved the adjudication of stamp duty obligations arising from development agreements executed between cooperative housing societies and developers for redevelopment projects. The Division Bench, in rendering its judgment, clearly held that such development agreements, whereunder redevelopment rights are granted to the developer, must mandatorily attract stamp duty. However, it clarified the distinction by holding that permanent alternative accommodation agreements, separately executed between the individual society members and the developer, need not bear signatures on behalf of the society nor require additional stamp duty assessment under Section 4(1), provided such agreements pertain solely to the reconstructed or rebuilt premises offered in exchange for the previously occupied premises, including any additional area offered gratuitously to the member. To reinforce this principle, the Division Bench relied upon the interpretation provided by this Court in *Prabha Laxman Ghate v. Sub-Registrar and Collector of Stamps (2004 (2) Mh.LJ 665)*, wherein it was distinctly held that in the factual matrix before it, no transfer of ownership or any proprietary interest from the petitioner to the developer had occurred. The petitioner therein retained full ownership of the property, and no document existed evidencing a transfer of right, title, or interest constituting an instrument necessitating stamp duty under the applicable statute.

27. The judgment of the Hon'ble Supreme Court in *Victory Iron Works Limited (supra)*, where the central issue concerned whether

development rights granted in favour of a corporate debtor qualified as "property" within the scope of Section 3(27) of the Insolvency and Bankruptcy Code (IBC). The Supreme Court conclusively held that the arrangement under scrutiny indeed vested in the corporate debtor a bundle of rights, titles, and interests, conferring upon it certain attributes of proprietary rights or ownership interests. The Court observed that the existence of multiple agreements and instruments signified the conferral of substantial proprietary attributes upon the corporate debtor. Consequently, the rights so created constituted "property" under the IBC and thus fell within the ambit of Section 25(2A) thereof, mandating their consideration by the resolution professional during the resolution process. Furthermore, the Supreme Court drew an important distinction, clarifying that mere permissive occupation by a licensee cannot be equated with lawful possession held by a party possessing an actual estate or interest in immovable property. Such mere occupation, devoid of proprietary rights, would not amount to possession recognized in law for creating enforceable rights.

28. The following tests, distilled from the above precedents and reasoning, may be regarded as determinative in ascertaining whether a document is an instrument of conveyance or a development agreement for stamp duty purposes:

Test of Transfer of Title or Interest

(i) The principal test is to ascertain whether the instrument effects a transfer of title or any proprietary

interest in the developer. In an instrument of conveyance, there is either an immediate vesting of ownership or an unequivocal agreement that upon execution, the ownership stands or shall stand transferred.

(ii) By contrast, a development agreement ordinarily envisages that the developer will construct and market the project but the title remains with the owner until a separate deed of conveyance is executed with prospective buyers.

Control and Possession

(i) Another crucial indicator is the degree of control exercised by the owner over the land. If possession is handed over merely for the limited purpose of development—without conferring upon the developer the right to alienate or create third-party rights in its own name—this usually points to a mere development agreement.

(ii) However, if the developer obtains the right to dispose of the property in its own capacity, collect the sale consideration for itself, and thereby stands in the shoes of an owner, it suggests a conveyance under the Stamp Act.

Recitals Concerning Consideration

(i) The recitals regarding the nature of consideration can be telling. If the agreement reflects that the developer has paid a lump sum to the owner in exchange for all development and sale rights, the instrument may be seen as transferring beneficial interest.

(ii) Conversely, if the developer's only "consideration" is the opportunity to construct and earn profit from prospective purchasers, with no immediate purchase of title from the owner, it points more towards a license to develop rather than a conveyance.

Requirement of Separate Conveyance or Sale Deeds

(i) If the instrument itself contemplates that ownership will be conveyed to end purchasers solely by the original owner (or by the owner and developer jointly) in separate sale deeds, it indicates that the original owner retains the fundamental title.

(ii) In cases where the developer unilaterally executes sale deeds with no further recourse to the owner, collecting the entire purchase price, that instrument is more likely to be classified as a conveyance.

Intention of the Parties

(i) While intention is to be gleaned from the terms of the document, extrinsic evidence of the surrounding circumstances can also assist in interpretation. The Court must examine if the arrangement is essentially one of development (where the developer acts as a contractor with a right to share in revenue from the sale of flats/units) or if the developer acquires the property rights with the freedom to deal with the property independently.

29. Applying the aforementioned principles to the facts at hand,

I find that the development agreement dated 21 October 2005 squarely falls within the legal ambit of an instrument of conveyance as envisaged under Article 25 of the Maharashtra Stamp Act. A meticulous reading of the clauses indicates that the owner conferred upon the developer extensive rights, including the exclusive authority to develop and commercially exploit the property. Additionally, the developer was granted the right to deal with and to sell the constructed units to new purchasers, while the owner had already secured the entire monetary consideration. Further, actual possession—at least for development purposes—stood transferred to the developer upon the execution of the agreement, and the developer was contractually bound to discharge all property taxes and related outgoings. Significantly, the contract also permitted the developer to assign or transfer the entirety of its rights, benefits, and entitlements under the agreement without requiring renewed consent from the owner. The profits of the entire development project were to accrue exclusively to the developer, while the owner, for all practical purposes, retained only nominal title pending completion, along with an obligation to convey all its right, title, and interest in the land to either the developer or to the association of purchasers. Moreover, by handing over the original title deeds to the developer, the owner effectively divested itself of the substantial incidents of ownership, thus reinforcing the position that the agreement constituted a present transfer of proprietary interest.

30. In the present matter, whilst the document is labeled a “Development Agreement,” a closer examination reveals that the

developer has been granted an extensive authority—indeed, a right—to occupy the property for construction, to build new structures, and to negotiate their sale. By these very terms, the developer is clothed with a proprietary stake in the project land, one that extends well beyond the ordinary scope of a mere building contract. The jurisprudence of this Court, notably in earlier decisions, has recognized that a contract conferring upon the developer a right to *deal with* or *alienate* newly constructed units is effectively transferring a property interest, though described in the language of “development rights.”

31. It is well settled that, the character of an instrument for the purpose of levy of stamp duty is determined by the substance of the transaction rather than its form. The legal test is whether, through the agreement, there is a present transfer of a right, title, or interest in immovable property so as to bring it within the sweep of the definition of a "conveyance." The guiding judicial precedents, have laid down that if the agreement vests in the grantee a bundle of rights approximating those of an owner, particularly the right to further transfer, develop, or deal with the property, the same shall be considered a conveyance for the purposes of stamp duty. In the present case, the developer's comprehensive rights—coupled with the owner's receipt of the entire consideration and the handover of actual possession—cannot be characterized merely as a "development arrangement" falling outside the purview of a conveyance.

32. Consequently, it would defeat both the spirit and letter of the Stamp Act if the document under scrutiny were to be held as

anything other than a conveyance. In my considered opinion, the authorities have justly concluded that the instrument dated 21 October 2005 stands duly adjudicated as a "conveyance" under Article 25 of the Maharashtra Stamp Act.

33. Thus, it follows that the authorities constituted under the Maharashtra Stamp Act have legitimately and correctly classified the instrument dated 21 October 2005 as a conveyance under Article 25 of the Act.

34. For all the foregoing reasons, I do not find any merit in the writ petition, which accordingly stands dismissed. There shall be no order as to costs.

(AMIT BORKAR, J.)