

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.12995 OF 2024

Atul Project India Private Limited
having office at 5th Floor,
Trade Avenue, Suren Road,
W. E. Highway, Andheri East,
Mumbai, Maharashtra 400 093

...Petitioner

Versus

1. The State of Maharashtra
Through the Government Pleader,
High Court, Mumbai
2. Joint Sub-Registrar,
Class-II, Borivali no.4
having office at Ground Floor,
Shri Mr House Building,
Station Road, Goregaon (W)
Mumbai No. 400 062
3. Inspector General of
Registration and controller of Stamps,
Maharashtra of
Maharashtra Pune office, Pune-1

...Respondents

Mr. Naresh Jain a/w Neha Anchila, Aarti Debnath & Niharika Patil, for
the Petitioner.

Dr. Birendra Saraf, Advocate General a/w Ms. Jaymala Ostwal,
Additional GP for the Respondent Nos.1 to 3 - State.

CORAM: MADHAV J. JAMDAR, J.
DATED: 05 MARCH 2025

JUDGMENT:

1. Heard Mr. Naresh Jain, learned Counsel for the Petitioner and Dr.
Birendra Saraf, learned Advocate General for the Respondent - State of
Maharashtra.

Impugned order/Circulars/Reliefs sought:

2. By the present Writ Petition filed under Article 226 of the Constitution of India, the challenge is to the legality and validity of the letter dated 13th February 2024 of the Joint Sub-Registrar, Class-II, Borivali No.4, Mumbai Suburban District. The Petitioner has also raised challenge to Circulars dated 22nd December 2011 and 30th November 2013 issued by Inspector General of Registration and Controller of Stamps, State of Maharashtra, Pune. In the alternative it is prayed that, it be declared that said Circulars dated 22nd December 2011 and 30th November 2013 are not applicable to the instruments regularized in Amnesty Scheme. A relief is also sought to the effect that Respondent No.2 - Joint Sub-Registrar, Class-II, Borivali-4 be directed to do registration of Development-cum-Sale Agreement dated 4th October 1987 along with Confirmation Deed, if necessary.

3. By the said letter dated 13th February 2024 of the Joint Sub-Registrar, Class-II, Borivali No.4, Mumbai Suburban District, it has been informed to the Petitioner that, pursuant to said Circular dated 22nd December 2011 read with Circular dated 30th November 2013, a new document be executed after paying the proper stamp duty and by complying with the mandatory requirements of the Registration Act, 1908 (“**Registration Act**”), the same be presented for registration and thereafter the same will be registered.

4. By said Circular dated 22nd December 2011 read with Circular dated 30th November 2013, it is clarified that a new document by paying applicable stamp duty can be registered within the timeline as per the provisions of the Registration Act.

Submissions on behalf of Petitioner:

5. Mr. Naresh Jain, learned Counsel for the Petitioner raised the following contentions:-

i. The Petitioner has participated in the Maharashtra Stamp Duty Amnesty Scheme 2023 (“**Amnesty Scheme**”) and paid the stamp duty on instrument as “Development-cum-Sale Agreement” dated 4th October 1987 under the said Amnesty Scheme.

ii. Learned Counsel relied on the terms and conditions of the said Amnesty Scheme which is produced at Exhibit - E (Page Nos.136 - 142 of the Writ Petition). He pointed out object of the Amnesty Scheme and submitted that the object is to recover the stamp duty pending registration. He submitted that the Amnesty Scheme has been launched under Section 9 of the *Maharashtra Stamp Act, 1958* (“**Stamp Act**”), however, Stamp Authority as well as Registering Authorities both are involved in implementing Amnesty Scheme.

iii. Learned Counsel submitted that after payment of stamp duty as per the Amnesty Scheme, the Petitioner approached the Respondent No.2 i.e. Joint Sub-Registrar, Class-II, Borivali No.4, Mumbai Suburban

District (“**Registering Authority**”) on 31st January 2024 to register the said Agreement. The Registering Authority by impugned Letter dated 13th February 2024, refused to register the said instrument and asked the Petitioner to get executed a fresh document and by paying proper stamp duty on the same to present the same for registration.

iv. Learned Counsel submitted that a person pays stamp duty on an instrument including transaction of immovable property so that he can get the document registered with the Registering Authority. He submitted that as per the Amnesty Scheme even the instruments which have not been presented for registration, though executed between 1st January 1980 to 31st December 2020 were given benefit of the Amnesty Scheme. He submitted that the Petitioner bonafidely acted upon the said Amnesty Scheme launched by the State and paid the stamp duty so that the agreement gets registered. Learned Counsel submitted that a legitimate expectation in general public is created that after payment of the stamp duty under Amnesty Scheme, instrument shall be registered without any further demand of the stamp duty. He submitted that the action of the Registering Authority of asking the Petitioner to get the document freshly executed and payment of stamp duty on such document is totally barred by doctrine of promissory estoppel. He relied on the decision of the Gujarat High Court in *Chitvan Cooperative Housing Society Limited v. State of Gujarat*¹ and more particularly on

¹ Manu/GJ/1329/2017

Paragraph No.5.4 of the said decision. He also relied on the decision of ***Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P.***² and submitted that the letter of the Respondent No.2 is barred by doctrine of promissory estoppel and the doctrine of legitimate expectation. Learned Counsel submitted that although it is the submission of the Respondents that promissory estoppel is not applicable when promisee has committed a breach, Amnesty Scheme is introduced to overcome all such breaches and participation of the Petitioner in the Amnesty Scheme clearly shows that the Petitioner has overcome such breach. Learned Counsel submitted that doctrine of legitimate expectation and doctrine of estoppel shall apply in this case and therefore the instrument executed by the Petitioner in the year 1987 i.e. Development-cum-Sale Agreement dated 4th October 1987 for which stamp duty is paid as per the Amnesty Scheme, no further stamp duty could be demanded irrespective of the fact that any further document is executed to comply with Section 23 of the Registration Act.

v. Learned Counsel submitted that the registration of instrument is refused on the ground that Registering Authority is separate from stamp duty Authority and no promise is made for registration of document in the Amnesty Scheme. He submitted although the Registration Act is a Central Act, power of modification, adoption and implementation of the Registration Act is vested upon the State Government. Learned Counsel

² (1979) 2 SCC 409

submitted that Section 69 of the Registration Act, confers power on the State Government to make rules for various functions of registration. Thus, it is his submission that even the State Authorities has power under the Registration Act to extend the time for registration. Learned Counsel relied on the decision of the Supreme Court in ***S.P. Goel v. Collector of Stamps***³.

vi. Learned Counsel further submitted that the requirement which the registration authorities have informed by impugned communication dated 13th February 2024 that new document be executed by paying applicable stamp duty and the same be presented for registration in the time limit as provided under the Registration Act, is in fact the demand raised for registration under the Stamp Act and therefore it is within the power of the State to direct that no further stamp duty should be demanded on the instruments which have participated in Amnesty Scheme and even if, a new document can be executed and presented for registration, without insisting for payment of stamp duty once again. He submitted that Amnesty Scheme is also implemented by one department of the State Government under the Stamp Act and after paying stamp duty, registration is to be done by same Authority of the State Government acting as registration authority under Registration Act and therefore both authorities are the State Authorities involved in implementing the Amnesty Scheme. Learned Counsel therefore

³ (1996) 1 SCC 573

submitted that in view of participation by the Petitioner in Amnesty Scheme, Registering Authority cannot refuse to do registration of instrument on which proper stamp duty has been paid under the Amnesty Scheme and therefore action of asking the Petitioner to execute fresh document and payment of fresh stamp duty is illegal. He submitted that two arms of the State are speaking in two voices and the same is impermissible. He relied on the decision of the Supreme Court in *Lloyd Electric & Engg. Ltd. v. State of H.P.*⁴ and more particularly on Paragraph No.10 of the same. He also relied on the decision of *WS Retail Services v. State of Karnataka*⁵, and more particularly on Paragraph No.20 of the same. He also relied on the decision in *Pro Sportify P Ltd. v. Pr. Commr. CGST*⁶ and more particularly on Paragraph Nos.12 and 15 of the same.

vii. Learned Counsel submitted that the Registration Act is a procedural law and Sections 23 and 25 of the Registration Act should be interpreted liberally. Learned Counsel submitted that harmonious construction is required between the provisions of the Stamp Act and the Registration Act. He submitted that otherwise Amnesty Scheme will become redundant and the same will be a colourable device, if the Registration of the instrument is not allowed after payment of stamp duty in the Amnesty Scheme. He submitted that in that case the entire

4 (2016) 1 SCC 560

5 2017 SCC OnLine Kar 3556

6 2021 SCC OnLine P&H 4639

object of the Amnesty Scheme would be defeated and the Scheme will become redundant. Learned Counsel therefore submitted that limitation of 4 months or 8 months as provided under Sections 23 or 25 will not apply to the documents on which proper stamp duty has been paid under the Amnesty Scheme.

viii. Learned Counsel submitted that it is well acceptable practice that if a document is executed on a particular date and could not be presented for registration within 4 or 8 months of the execution, as the case may be, a fresh document in form of confirmation deed confirming the earlier instrument is presented along with original instrument for registration and such confirmation deed in fact does not create any new rights or obligations. The document is required to be registered along with the confirmation deed. He relied on the decision of this Court in ***Madhu Kachharam Achhra v. Joint Sub Registrar of Assurance Ulhasnagar***⁷, wherein this Court directed the Registrar to register on presentation the deed of confirmation without insisting on payment of any stamp duty as the confirmation deed is not a fresh transaction but is only a confirmation of previously stamped and registered document. He also relied on the decision of this Court in ***Bayview Lounge Pvt. Ltd. v. Collector of Stamps Mumbai***⁸ He therefore submitted that keeping in view the Amnesty Scheme and Sections 23 or 25 of the Registration Act

7 2021 SCC OnLine Bom 11362

8 Writ Petition No.702 of 2021 (Decided on 20/08/2021)

if confirmation deed is to be made, no further stamp duty is liable to be paid on the fresh document confirming the said transaction dated 4th October 1987. He submitted that as proper stamp duty as per the Amnesty Scheme has already been paid on Agreement dated 4th October 1987, on the confirmation deed, at the most stamp duty of Rs.100/- and adjudication fees of Rs.100/- can be levied as per Section 4 of the Stamp Act. Learned Counsel therefore submitted that the Registering Authority be directed to register the document and no fresh stamp duty can be directed to be paid for the same instrument as the stamp duty has been paid in the Amnesty Scheme.

ix. Learned Counsel submitted that alternatively, new document i.e. Confirmation Deed, if required is to be executed to confirm the original transaction, for compliance of Sections 23 or 25 of the Registration Act no further stamp duty should be levied and at the most only Rs.100/- is to be leviable as stamp duty on confirmation deed.

x. Mr. Naresh Jain, learned Counsel therefore submitted that the relief sought in the Writ Petition be granted.

Submissions of Advocate General:

6. Dr. Birendra Saraf, learned Advocate General raised following contentions:-

i. Learned Advocate General submitted that the object of the Stamp Act and Registration Act are totally different. The Stamp Act is a State

legislation enacted in terms of Entry 63 of the State List and Entry 44 of the Concurrent List of the Seventh Schedule of the Constitution of India. The Stamp Act is a fiscal statute enacted to secure revenue for the State on certain classes of instruments. There is no limitation or timeline provided for collection of duty on insufficiently stamped documents as the object of the Act is to collect the duty and penalty thereon. It is submitted that the Registration Act is a Central legislation enacted in terms of Entry 6 in the Concurrent List in the Seventh Schedule to the Constitution of India. The Registration Act has been enacted to prevent fraud and protect the public as it provides for assurance of title over immovable property. The object of the Registration Act is not for securing revenue but maintaining a record of documents of title in public interest. To substantiate these contentions, learned Advocate General relied on the decisions of the Supreme Court in *Hindustan Steel Ltd. v. Dilip Construction Co.*⁹ and *Trideshwar Dayal v. Maheshwar Dayal*¹⁰. He also relied on the decision of the Punjab and Haryana High Court in *Delhi Cloth & General Mills Co. Ltd. v. Chief Commissioner*¹¹.

ii. Learned Advocate General submitted that the Amnesty Scheme was issued under Section 9 of the Stamp Act for the purpose of protecting executors of insufficiently stamped/unstamped documents from the rigors/penal provisions of the Stamp Act. The purpose of the

9 (1969) 1 SCC 597

10 (1990) 1 SCC 357

11 1964 SCC OnLine Punj 130

Amnesty Scheme was to remit or reduce stamp duty and the penalty payable on instruments that were unstamped. Learned Advocate General pointed out the recitals of the Amnesty Scheme and submitted that the purpose of the Amnesty Scheme is to remit or reduce stamp duty and the penalty on the instruments chargeable under the provisions of the Stamp Act.

iii. Learned Advocate General pointed out the consequences of insufficiently stamping of the instruments under the Stamp Act. In that context he pointed out Sections 33, 33A, 34, 40, 46 and 59 of the Stamp Act. Learned Advocate General submitted that the purpose of the Amnesty Scheme was to regularize the insufficiently stamped documents with minimum penalty. He submitted that in the present case penalty of Rs.25,57,800/-was waived off. The scope of Section 9 of the Stamp Act is limited. Relaxation in the stringent time limit for presentation of document provided under the Registration Act cannot be granted under Section 9 of the Stamp Act. Learned Advocate General pointed out Section 9 of the Stamp Act and submitted that there is limited power given to the State Government, in public interest, to reduce or remit prospectively or retrospectively, the duties with which any instrument may be charged. It is submitted that the Scheme contemplated under Section 9 of the Stamp Act could not make purport to confer any benefits or grant any concessions under the Registration

Act.

iv. Learned Advocate General submitted that stringent timelines prescribed under the Registration Act for presentation of the document cannot be extended by the Courts. Learned Advocate General submitted that under Section 23 of the Registration Act no document shall be accepted for registration unless presented within 4 months from the date of execution and Section 25 of the Registration Act provides that in cases of urgent necessity or unavoidable circumstances the delay in presentation of the document can be granted to the extent of additional period of 4 months, subject to payment of fine. It is submitted that under Section 25 of the Registration Act the Sub-Registrar does not have the power to condone the delay in presentation of document for registration beyond the period of 4 months from the date of the execution of the document and the said power is with the Registrar. It is submitted that the Registrar does not have any jurisdiction under Section 25 of the Registration Act to condone the delay beyond the aggregated period of 8 months provided under the said provision. To substantiate the said contention, learned Advocate General relied on the decision of this Court in ***Kisan Laxman Zodage v. Dalsukh Manchand***¹² and also on the decision of the Allahabad High Court in ***Ram Pistons and Rings Ltd. v. State of Uttar Pradesh***¹³. Learned Advocate General

12 1938 SCC OnLine Bom 110

13 2011 SCC OnLine All 1283 : (2012) 1 All LJ 174

submitted that the High Court cannot in exercise of its Writ Jurisdiction extend the statutory period under the Registration Act for presenting a document for registration. It is submitted that the only limited exception recognized by the Courts is where the delay in presenting the document was not attributable to the Petitioner on account of some impossibility or by virtue of an act of Court. The said decisions are premised under the principle that no man can be compelled to perform an impossible act or be punished for the acts of a Court. To substantiate the said contention, Learned Advocate General relied on the decision of this Court in *Akshay Vitta Management and Investment Consultancy Servicees Pvt. Ltd. v. State of Maharashtra*¹⁴ and the decision of the Andhra Pradesh High Court in *G. Kadambari v. District Registrar of Assurances*¹⁵ and more particularly on Paragraph Nos.13 to 20 of the same.

v. Learned Advocate General submitted that insufficiently stamped document could be also presented for registration and the same can be presented within the statutorily prescribed period and therefore there is no limitation for registering a document under the provisions of the Registration Act. It is submitted that presentation of an insufficiently stamped document is a valid presentation under the Registration Act.

vi. Learned Advocate General submitted that if the concerned

14 2015 SCC OnLine Bom 8349 : (2016) 2 Mah LJ 395

15 2008 SCC OnLine AP 921

Agreement dated 4th October 1987 would have been presented within the 4 months of its execution or within a further period of 4 months in case of existence of circumstances contemplated under Section 25 of the Registration Act then in view of insufficient payment of stamp duty the same would have been impounded and the Collector would have compelled the payment of proper duty and penalty and thereafter the document could have been returned to the registering officer. Learned Advocate General submitted that in the present case without any explanation the document is sought to be presented for registration after a period of about 36 years after its execution. It is further submitted that the decisions relied on by the Petitioner are not applicable to the dispute involved in the present Writ Petition. Learned Advocate General pointed out various aspects and submitted that the decisions which the Petitioner has relied are not applicable to the present case.

vii. Learned Advocate General submitted that, in view of the legal position the Petitioner is not entitled for any relief sought in the Petition.

Factual Matrix:

7. Before considering the rival submissions, it is necessary to set out certain factual aspects:-

(i) The Petitioner executed an instrument styled as a “Development-

cum-Sale Agreement” dated 4th October 1987 with respect to the immovable property bearing Plot No.D/32, Village Pahadi, Goregaon, Taluka-Borivali admeasuring 4952 sq. mtrs. Admittedly, the said Agreement was never presented for registration as well as not sufficiently stamped.

(ii) The Government of Maharashtra by order/notification dated 7th December 2023 issued under Section 9 of the Stamp Act introduced the Maharashtra Stamp Duty Amnesty Scheme 2023.

(iii) The Petitioner filed an Application on 2nd January 2024 for participation in the said Amnesty Scheme.

(iv) By Order dated 23rd January 2024 of the Collector of Stamps, Borivali, it has been directed that proper stamp duty is Rs.6,39,450/- and the penalty amount is Rs.25,57,800/- and as per the Amnesty Scheme the stamp duty determined is of Rs.3,20,000/- and no penalty is to be paid.

(v) On 23rd January 2024, the Petitioner paid the said stamp duty of Rs.3,20,000/-.

(vi) On 31st January 2024, the Petitioner presented the said Agreement dated 4th October 1987, on which deficit stamp duty has been paid as aforesaid in the Amnesty Scheme, for registration to the Office of the Inspector General of Registration and Controller of Stamps. In the said letter the Petitioner has specifically stated as follows :-

“We, Atul Builders, now registered as M/s Atul Projects India Private Limited, we say we have executed one agreement dated 04/10/1987 (enclosed herewith) and paid full & final consideration as mention therein. That time stamp duty & registration was not able to done due to unavoidable circumstances.

Now due to amnesty scheme for unpaid stamp duty, now we have fully paid stamp duty and penalty as per scheme till today's date. The certificate and receipts duly paid is enclosed herewith. Hence come to know that any document after execution has to be registered within '8' months including 4 months of grace period. So in this case that registration time has lapsed long back, so request you to please inform us what penalty is payable for not presented document in time for registration. So accordingly we pay the penalty and then your department able to register the same as soon as possible. If no other charges/penalty are payable as we have already paid everything under amnesty scheme. On such confirmation you're your side, we are willing to come immediately from registration of the documents. In case according to your office, if any other charges/penalty are payable for registration, then we would like to know the legal basis. Kindly share the legal basis as applicable.”

(Emphasis added)

(vii) By the letter dated 13th February 2024 issued by the Respondent No.2 i.e. Joint Sub-Registrar, Class-II, Borivali No.4, Mumbai Suburban District the said Application dated 31st January 2024 was rejected by directing that the new document be executed, applicable stamp duty be paid and the document be presented for registration within the time prescribed for registration. In the said letter reliance was placed on two Circulars dated 22nd December 2011 and 30th November 2013 issued by Inspector General of Registration and Stamp Controller, State of Maharashtra, Pune. The relevant part of said letter dated 13th February 2024 is as under :-

“विषय - Registration of Agreement dated 04/10/1987

संदर्भ - 1) आपले दिनांक 31/01/2024 रोजीचे पत्र.

2) मा. नोंदणी महानिरीक्षक व मुद्रांक नियंत्रक, महाराष्ट्र राज्य पुणे यांचे कार्यालयाचे पत्र जा.क. क.का.4/प्र.क.617/2011/3008 दिनांक 22/12/2011

3) मा. नोंदणी महानिरीक्षक व मुद्रांक नियंत्रक, महाराष्ट्र राज्य पुणे यांचे कार्यालयाचे पत्र जा.क. क.का.4/प्र.क.617/2011 (भाग-1)/13/2807 दिनांक 30/11/13

महोदय,

उपरोक्त संदर्भाकित विषयानुसार आपले दिनांक 31/01/2024 रोजीचे पत्र या कार्यालयास प्राप्त झाले असून, त्यासोबत दिनांक 04/10/1987 चा दस्तऐवज जोडण्यात आला आलेला आहे. सदर दस्तऐवज मा. मुद्रांक जिल्हाधिकारी, बोरीवली यांचे कार्यालयाकडून मुद्रांकित करण्यात आला आहे. अभय योजनेमध्ये फक्त जुणे दस्त मुद्रांकित करणे करिता अभय योजना असलेने सदर दस्तऐवजाची नोंदणी करणेबाबत आपण विचारणा करण्यात आली आहे.

त्याअनुषंगाने आपणांस कळविण्यात येते की, संदर्भ क्र. 2 व 3 अन्वये नोंदणी संदर्भात मा. नोंदणी महानिरीक्षक व मुद्रांक नियंत्रक, महाराष्ट्र राज्य पुणे यांचे कार्यालयाचे सोबत जोडलेल्या परिपत्रकामध्ये नमूद प्रमाणे नव्याने दस्तऐवज करून यथोचित मुद्रांक शुल्क भरून दस्तातील लिहून देणार व घेणार यांनी दस्त निष्पादन करून तसेच नोंदणी अधिनियम 1908 मधील कायदेशिर तरतुदीची पूर्तता करून दस्त नोंदणीस सादर केल्यास सदर दस्ताची नोंदणी करता येईल.”

(Emphasis added)

English translation of the said letter as provided by the Petitioner is as follows :-

“Sub.: Registration of Agreement dated 04/10/1987

Ref.: 1) Your letter dtd. 31/01/2024.

2) Letter of Hon'ble Inspector General of Registration and Stamp Controller, State of Maharashtra, Pune O.W. No. O.4/M. No. 617/2011/3008, Dated 22/12/2011.

3) Letter of the office of Inspector General of Registration and Stamp Controller, State of Maharashtra Pune O.W. No. O.4/C. No. 617/2011 (Part – 1)/13/2807, Dtd. 30/11/13.

Sir,

As per above referred subject your letter Dtd. 31/01/2024 received to this office, along with it the document Dtd. 04/10/1987 is enclosed. The said document is stamped by the office of Hon'ble Stamp Collector, Borivali. In the Abhay Scheme there is Abhay Scheme only for the stamping the old documents therefore you was enquired about the registration of the said document.

*In that view it is inform you that, **under reference No. 2 and 3 in respect of the registration as per mentioned in the circular enclosed of the office of Hon'ble Inspector General of Registration and Stamp Collector, State of Maharashtra executing fresh document paying the proper stamp duty admitting the deed by the Giving in writing and Taking of the deed also complying the legal provisions of the Registration Act, 1908 if produced the deed for registration then the registration of the said deed can be done.***

(viii) The present Writ Petition has been filed on 6th May 2024 *inter alia* challenging the legality and validity of said order dated 13th February 2024, of said circulars dated 22nd December 2011 and 30th November 2013 issued by the Respondent No.3-Inspector General of Registration and Controller of Stamps, Maharashtra and also seeking further reliefs as set out earlier.

(ix) In the impugned order dated 13th February 2024 there is reference to Circulars dated 22nd December 2011 and 30th November 2013 issued by the Respondent No.3-Inspector General of Registration and Controller of Stamps, Maharashtra. By said Circular dated 22nd December 2011, the Respondent No.3 issued instructions to the Sub-Registrar under the Registration Act, not to register the confirmation or declaration deeds that sought to indirectly register documents which

were annexed to the deed beyond the statutory period prescribed. The said Circular dated 22nd December 2011 has been thereafter modified by Circular dated 30th November 2013, by which it is clarified that a new document by paying applicable stamp duty can be registered within the timeline as per the provisions of the Registration Act.

8. In the light of above factual aspects, it is necessary to consider the contentions raised. It is the basic contention of the Petitioner that as the valid stamp duty has been paid on 23rd January 2024 which has been determined under the said Amnesty Scheme by order dated 23rd January 2024 on said Development-cum-Sale Agreement dated 4th October 1987, there is no impediment in registration of the document. It is the submission that in the Amnesty Scheme which has been issued by Order dated 7th December 2023 by the Government of Maharashtra under Section 9 of the Stamp Act, it has been specifically set out that the Government of Maharashtra remits or reduces stamp duty and penalty to the extent as specified in the Schedules appended to the said Circular dated 7th December 2023, which are executed between 1st January 1980 to 31st December 2020, irrespective of whether the instruments are presented for registration thereto or not, subject to the conditions as set out in the said Circular dated 7th December 2023. It is further submitted that as the Petitioner has paid the stamp duty as per the said Amnesty Scheme and as the said Amnesty Scheme specifically

records that the same is applicable to the documents which have been executed from 1st January 1980 till 31st December 2020, it is the submission of Mr. Jain, learned Counsel that it is the legitimate expectation of the Petitioner that the document will be registered after payment of the stamp duty as per the Amnesty Scheme. He submitted that the action of the Registering Authority asking the Petitioner to get executed fresh document by paying fresh stamp duty is hit by the doctrine of promissory estoppel. On the other hand, it is the submission of learned Advocate General that the provisions of the Stamp Act and the Registration Act operates in different fields and therefore payment of stamp duty under the Amnesty Scheme which is under the Stamp Act will have no effect on the time period within which the document is to be presented for registration as provided under the Registration Act.

Reasoning:

9. For appreciating the contentions of Mr. Jain, learned Counsel for the Petitioner and Dr. Birendra Saraf, learned Advocate General, it is necessary to consider the Scheme of both these enactments namely the Stamp Act and the Registration Act, as is relevant for deciding the issue involved in the present Writ Petition.

Scheme of the Registration Act and the Stamp Act:

10. The scheme of the Registration Act and the Stamp Act for the purpose of the issues which have been raised in this Writ Petition, is as

under :-

- (i) The Registration Act is a Central legislation enacted to consolidate the enactments relating to the registration of documents.
- (ii) In ***Delhi Cloth & General Mills*** (supra), the Punjab and Haryana High Court has discussed the scheme of the Registration Act and for that purpose relied on the various observations made in the decision of ***Veerappa Chetty v. Kadiresan Chetty***¹⁶, it has been held that the primary object of registration of instruments is to check forgery and to provide good evidence of the genuineness of written instruments.
- (iii) In the decision of ***Hemanta Kumari Debi v. Midnapur Zamindary Company***¹⁷, while dealing with the Registration Act, it is observed that the purpose of the statute is to provide a method of public registration of documents. After noticing various important provisions of the Registration Act, it has been held that it can be safely concluded from the entire scheme and purpose of the Act that it does not provide for the collection of taxes. It makes provisions in public interest for record of documents and mainly documents of title. A department has to be established and maintained and for that purpose the Act only provides for levy of fees.
- (iii) As far as the Stamp Act is concerned, it is a State legislation. As observed by the Supreme Court in the decision of ***Hindustan Steel***

¹⁶ 20 I.C. 385

¹⁷ AIR 1919 PC 79

(supra), the Stamp Act is a fiscal measure enacted to secure revenue for the State on certain classes of instruments. The stringent provisions of the Act are conceived in the interest of the revenue.

(iv) Thus, the distinction between the objects of these two enactments i.e. Stamp Act and Registration Act is very relevant for deciding the present Writ Petition. The Registration Act makes provisions in public interest for record of documents and mainly documents of title has been enacted to check forgery, prevent fraud, to protect the public and to provide good evidence of the genuineness of written instruments, whereas the Stamp Act is a fiscal statute enacted to secure revenue for the State on certain classes of instruments.

Scope of Amnesty Scheme under the Stamp Act:

11. As the reliefs sought in the present Writ Petition are on the basis of the Amnesty Scheme dated 7th December 2023 [Pages 136 – 142], it is required to consider the Amnesty Scheme in detail. The said Amnesty Scheme is framed by the State Government in exercise of the powers conferred by Clause (a) of Section 9 of the Stamp Act. The said Section 9 reads as under :-

“9. Power to reduce, remit or compound duties

The State Government [if satisfied that it is necessary to do so in the public interest] may, by rule or order published in the Official Gazette,—

(a) reduce or remit, whether prospectively or retrospectively, in the whole or any part of the State the [duties or penalty, if only, or both] with which any

instruments or any particular class of instruments or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable, and

(b) provide for the composition or consolidation of duties in the case of issues by any incorporated company or other body corporate of bonds or marketable securities other than debentures.”

(Emphasis added)

Thus, what is provided by Section 9(a) that power is given to the State Government to reduce or remit, whether prospectively or retrospectively, in the whole or any part of the State, the duties or penalty, if only, or both with which the instruments contemplated under Section 9(a) are chargeable. The State Government is empowered to reduce or remit or compound duties in the public interest.

12. It is required to be noted that under the said Amnesty Scheme, the instruments are classified according to the periods they were executed in the following manner :-

- (i) The instruments which are executed between 1st January 1980 and 31st December 2000. [Schedule-I]
- (ii) The instruments which are executed between 1st January 2001 and 31st December 2020. [Schedule-II]

The reduction in the amount for the period from 1st January 1980 till 31st December 2000 is 100% for the amount of stamp duty of Rs.1 upto Rs.1,00,000/-, and 50% for the amount exceeding Rs.1,00,000/-. As far

as Schedule-II is concerned, the same covers instruments which are executed between 1st January 2001 and 31st December 2020.

13. As far as the present case is concerned, the Development-cum-Sale Agreement is dated 4th October 1987 and therefore the Petitioner's case is covered by Schedule-I of the Amnesty Scheme dated 7th December 2023. The conditions of the said Amnesty Scheme are as follows :-

- “(1) The said Amnesty Scheme-2023 shall be applicable only to the instruments as specified in the Annexure which are executed on any amount of Stamped Paper exclusively sold by the Government approved Stamp Vendors or any agency or any competent authority authorised by the Chief Controlling Revenue Authority in this behalf.*
- (2) Any type of instrument or document which is executed on plain paper without any stamp duty shall not be eligible or accepted for the benefit of remission or reduction in stamp duty or penalty under the said Amnesty Scheme-2023; i.e. unstamped instruments which are executed on plain papers shall not be eligible for any benefit under the said Amnesty Scheme-2023;*
- (3) The applicant shall submit an application in the Form appended hereto, along with original instrument and self-attested copies of supporting documents on or before the last day of the period mentioned in the Schedules appended here to. Such an application shall be made through online system of the Inspector General of Registration and Controller of Stamps, Maharashtra State, Pune.*
- (4) No refund shall be granted where stamp duty or penalty on the deficient portion of duty has already been paid on any of such instruments prior to the date of publication of this Order in the Maharashtra Government Gazette.*

- (5) *The party to the instrument or his successor in title or power of attorney holder may apply for remission or reduction of stamp duty or penalty under this Order.*
- (6) *The applicant shall be required to pay the deficient portion of stamp duty and penalty as per this order within a period of seven days from the date of receipt of the demand notice issued by the concerned Collector of Stamps, failing which the applicant shall not be entitled for the benefits provided under this order.*
- (7) *For the purpose of assessment, the applicant has to submit proper evidence thereof as per requirements in the Annual Statement of Rates and Guidelines issued by the Chief Controlling Revenue Authority, Maharashtra State.*
- (8) *The said instruments, for which action under section 31(4), 32A, 33, 33A or 46 of the said Act has already been initiated or where appeal or review application is pending for decision, before any Court or Authority under the provisions of the said Act, shall be entitled for the benefits under this Order. However, to avail of the benefits under this Order, the applicant shall have to make a fresh application in original in the Form appended hereto:*

Provided that, in case where appeal or review application is pending for decision, before any Court or Authority under the provisions of the said Act, the applicant shall have to unconditionally withdraw the case and submit a declaration to that effect along with application under this Order.”

(Emphasis added)

14. Perusal of the said Amnesty Scheme clearly shows that the same is in consonance with the object of the Stamp Act. As already noted above, the Stamp Act is a fiscal statute enacted to secure revenue for the State on certain classes of instruments. In the public interest, the Government of Maharashtra has issued the Amnesty Scheme by

exercising power under Section 9 of the Stamp Act for the purpose of remitting or reducing the stamp duty and penalty. It is important to note that the Applicant shall be required to pay the deficient portion of stamp duty and penalty as per the Amnesty Scheme within a period of seven days from the date of receipt of the demand notice issued by the concerned Collector of Stamps, failing which the applicant shall not be entitled for the benefits provided under the Amnesty Scheme. Thus, the Amnesty Scheme has been issued to secure revenue for the State. For the purpose of ensuring that proper stamp duty is paid on the instruments various provisions have been made in the Stamp Act.

Provisions of Stamp Act - To secure Revenue for the State:

15. Section 33 of the Stamp Act provides that subject to the provisions of Section 32-A, every person, having by law or consent of parties authority to receive evidence and every person in charge of a public office, before whom any instrument chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall if it appears to him that such instrument is not duly stamped, impound the same, irrespective whether the instrument is or is not valid in law. Thus, it is clear that while exercising power under Section 33 of the Stamp Act, the Authority exercising that power is empowered to impound the instrument irrespective whether the instrument is not valid in law. The said Section 33 of the Stamp Act makes it very clear that

the said provision is made to secure revenue for the State. The said provision is made in furtherance of the object of the Stamp Act which is a fiscal statute and the purpose of the same is to secure revenue for the State. In fact, it is also relevant to note Section 33-A of the Stamp Act, which is concerning impounding of instruments after registration. Section 33-A of the Stamp Act provides that when through mistake or otherwise any instrument which is not duly stamped is registered under the Registration Act, the Registering Officer may call for the original instrument from the party and, after giving the party an opportunity of being heard and recording the reasons in writing and furnishing a copy thereof to the party, impound the same. Thus, the said provision also makes it very clear that the purpose of the Stamp Act is only to secure revenue for the State.

16. Section 34 of the Stamp Act provides that, instruments not duly stamped are inadmissible in evidence and it further provides that any such instrument shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable and a penalty at the rate of 2 per cent of the deficient portion of the stamp duty. There are certain other provisions made in the Stamp Act to ensure that proper stamp duty is paid. Thus, it is clear that all these provisions are made to secure revenue for the State.

17. Section 46 of the Stamp Act provides that all duties, penalties and

other sums required to be paid under the said Act, may be recovered by the Collector by distress and sale of the immovable property of the person from whom the same are due as an arrears of land revenue. Execution of any instrument with the intention to evade the duty, is an offence under Section 59 and on conviction for every such offence be punished with rigorous imprisonment for a term which shall not be less than one month but which may extend to six months and with fine which may be extended to five thousand rupees.

18. Thus, it is clear that to secure revenue for the State which is the object of the Stamp Act, various provisions are made in the Stamp Act to further the said objective.

Stringent timelines provided under Registration Act for presentation of documents to the Registering Authority- To check forgery, to provide good evidence of the genuineness of the written instruments and to protect the Public Interest.

19. As far as the Registration Act is concerned, the important Sections which are relevant for the present Writ Petition, are found in Part IV of the Registration Act. Section 23 is concerning time for presenting documents. The said Section 23 reads as under :-

“23. Time for presenting documents.—Subject to the provisions contained in sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution:

Provided that a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final.”

(Emphasis added)

Thus, it is clear that it is specifically provided in Section 23 that no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution.

20. Thus, it is very clear that outer limit is provided of four month for presentation of the document to the Registration Officer. Section 25 of the Registration Act makes provision where delay in presentation is unavoidable. Said Section 25 reads as under :-

“25. Provision where delay in presentation is unavoidable.—

(1) If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in [India] is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration fee, such document shall be accepted for registration.

(2) Any application for such direction may be lodged with a Sub- Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.”

(Emphasis added)

Thus, it is clear that the initial period of 4 months as provided by Section 23 can be extended by further period of 4 months under Section

25 in the cases which are covered under Section 25.

21. It is also important to note Section 26 of the Registration Act, which reads as under :-

“26. Documents executed out of [India].—When a document purporting to have been executed by all or any of the parties out of [India] is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the registering officer, if satisfied—

(a) that the instrument was so executed, and

(b) that it has been presented for registration within four months after its arrival in [India], may, on payment of the proper registration fee, accept such document for registration.”

(Emphasis added)

Thus, what is provided is that when a document is executed out of India, the same is required to be presented to the Registering Officer within 4 months after its arrival in India.

22. Thus, analysis of all these provisions under the Registration Act makes it clear that under the Registration Act, 4 months is the maximum period provided for presenting the document for registration as per Section 23 which can be extended for further period of 4 months where the facts as contemplated under Section 25 of the Registration Act are existing.

23. In this context, it is also important to note Section 23-A of the Registration Act, which has been inserted by Act 15 of 1917. As per Section 23-A, a document requiring registration has been accepted for

registration by a Registrar or Sub-Registrar from a person not duly empowered to present the same and has been registered, any person claiming under such document may, within four months from his first becoming aware that the registration of such document is invalid, present such document or cause the same to be presented, in accordance with the provisions of Part VI of the Registration Act for re-registration in the office of the Registrar of the district in which the document was originally registered.

24. Thus, it is very clear that under the Registration Act very stringent timelines are prescribed for presentation of document and that the officer exercising power under the Registration Act does not have power to condone delay in presentation of document for registration beyond the period of 4 months from the date of the execution of document. The Registrar has discretion to condone the delay not exceeding 4 months, if the case is made out under Section 25 of the Registration Act.

25. Thus, it is required to note that the provisions made under the Registration Act, providing for stringent timelines, are required to be understood from the object of the Registration Act. The said object is to prevent fraud and protect the public as the same provides for assurance of title over immovable property. It is very clear that the object of the Registration Act is not for securing revenue but maintaining a record of documents of title in public interest. The stringent timelines prescribed

under the Registration Act for presentation of document have been made to prevent fraud and protect the public.

26. In view of the stringent timelines provided under the Registration Act, it is required to appreciate the submissions of learned Advocate General that the High Court cannot in exercise of its Writ Jurisdiction extend the statutory period under the Registration Act for presenting a document for registration. Learned Advocate General has submitted that the only limited exception recognized by the Court is where the delay in presenting the document was not attributable to the Petitioner and the delay has occurred on account of some impossibility or by virtue of an act of Court. Learned Advocate General submitted that the said decisions are premised on the principle that no man can be compelled to perform an impossible act or be punished for the acts of a Court. Learned Advocate General is right in submitting that there is no limitation registering a document under the provisions of the Registration Act, if it is presented within the statutorily prescribed period. It is submitted that the presentation of insufficiently stamped document is a valid presentation under the Registration Act.

Whether the document on which full stamp duty has been paid as per the provisions of the Stamp Act under the Amnesty Scheme can be permitted to be registered under the Registration Act, even if the stringent timelines provided under the Registration Act, have not been

complied with:-

27. In view of the above discussion of the object of the Registration Act and the Stamp Act, it is necessary to consider the case of the Petitioner that the document on which full stamp duty has been paid as per the provisions of the Stamp Act under the Amnesty Scheme can be permitted to be registered under the Registration Act, even if the stringent timelines provided under the Registration Act, have not been complied with.

28. It is the main submission of Mr. Jain, learned Counsel for the Petitioner that a person pays stamp duty on an instrument involving transaction of immovable property so that he can get the document registered with Registering Authority. Even in the Amnesty Scheme also the instrument not presented for registration though executed between the period of 1st January 1980 to 31st December 2020, is permitted to get advantage of the Amnesty Scheme. He submitted that the Petitioner bonafidely acted under the Amnesty Scheme launched by the State and paid the stamp duty so that the Agreement gets registered. He submitted that, in fact, a legitimate expectation is created in the general public that after paying stamp duty under the Amnesty Scheme, instrument shall be registered without any further demand of stamp duty. Asking a fresh stamp duty on the fresh document confirming the same transaction is totally barred by doctrine of promissory estoppel.

29. To substantiate the said contention, Mr. Jain, learned Counsel for the Petitioner relied on the decision of ***Chitvan Cooperative Housing Society Limited*** (supra). More particularly, he relied on Paragraph No.5.4 of the same, which reads as under :-

“5.4 The present case thus stand on its distinct footing that the petitioner was granted benefit of the Amnesty Scheme. The Deputy Collector had assessed the stamp duty and after giving remission under the Amnesty Scheme, accepted the amount. The necessary certificate was issued and the proceedings under Section 32A were closed. The authorities, including the Chief Controlling Revenue Authority, were thereafter estopped from demanding further amount on any ground whatsoever when they themselves had treated the petitioner under the Amnesty Scheme and the necessary certificate about the payment of stamp duty was issued. It was not permissible in law for the authority to resile therefrom under the purported exercise of powers under Section 53A of the Act, the authority having given the benefit of the Amnesty Scheme.”

30. For appreciating the decision of the Gujarat High Court in the said decision of ***Chitvan Cooperative Housing Society Limited*** (supra), it is necessary to consider Paragraph Nos.3 and 3.1, wherein the factual position is set out. The said Paragraph Nos.3 and 3.1 read as under :-

“3. The petitioner purchased land and the sale document in respect of the transaction was presented on 13th February, 1997 at Serial No.565 with the office of Sub Registrar, Ahmedabad - 3 (Memnagar). The Deputy Collector, Stamp Duty Valuation, in view of the market value, assessed the deficit stamp duty to be Rs.01,01,400/-. It appears that the Amnesty Scheme was offered by the Government. The case of the petitioner fell within the parameters of the Scheme and the document of sale of the petitioner was liable to be subjected to the duty under the Amnesty Scheme. Accordingly the petitioner was given benefit of the Scheme and was asked to pay amount of Rs. 50,700/- plus penalty of Rs. 250/- plus

further penalty of Rs. 500/-. The petitioner paid the said amount as per the benefit under the Amnesty Scheme under Challan No.963 on 30th June, 2006. A copy of Challan evidencing the payment is on record. The Deputy Collector, Stamp Duty Valuation, closed the proceedings thereupon. On the same date, the document was registered.

3.1 It appears that after the said event happened on 30th June, 2006, respondent No.2-Chief Controlling Revenue Authority, issued notice to the petitioner on 20th November, 2010. Thereafter the respondent No.2 stated that market value of the property under the sale deed of the petitioner was higher and the petitioner was called upon to pay the additional amount of stamp duty of Rs. 02,85,520/-. The respondent No.2-Chief Controlling Revenue Authority passed order dated 19th December, 2011 maintaining the demand, which is the impugned order.”

(Emphasis added)

Thus, it is clear that as far as this decision is concerned, the factual position shows that the document was presented on 13th February 1997 to the Registering Authority and the Deputy Collector, Stamp Duty Valuation, has assessed the deficit stamp duty of Rs.1,01,400/-. It appears that, by taking benefit of the Amnesty Scheme the Petitioner in the said Petition has paid stamp duty of Rs.50,700/- plus penalty of Rs.250/- plus further penalty of Rs.500/-. Thereafter, the Authorities under the Stamp Act issued notice under Section 53A calling upon the said Petitioner to pay an additional amount of stamp duty of Rs.2,85,520/-. In that context, the Gujarat High Court in said Paragraph No.5.4, has observed that once the Petitioner is granted benefit of Amnesty Scheme, the Chief Controlling Revenue Authority was thereafter estopped from demanding further amount on any ground

whatsoever. Thus, this decision is not relevant for the purpose of deciding the present case. In the present case, the impugned Order is passed by the Registering Authority exercising jurisdiction under the Registration Act, whereas in the said decision of Gujrat High Court the impugned order was passed by the authorities exercising power under the Stamp Act.

Contention Regarding Legitimate Expectation and Promissory Estoppel:

31. Mr. Jain, learned Counsel for the Petitioner relied on the decision of the Supreme Court in *Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P.*¹⁸ and more particularly on Paragraph Nos.18, 19, 22, 23, 24 and 25, wherein the Supreme Court has considered the doctrine of promissory estoppel. The said Paragraphs read as under :-

“18. There has so far not been any decision of the Supreme Court of the United States taking the view that the doctrine of promissory estoppel cannot be invoked against the Government. The trend in the State courts, of late, has been strongly in favour of the application of the doctrine of promissory estoppel against the Government and public bodies “where interests of justice, morality and common fairness clearly dictate that course”. It is being increasingly felt that “that the Government ought to set a high standard in its dealings and relationships with citizens and the word of a duly authorised Government agent, acting within the scope of his authority, ought to be as good as a Government bond”.

19. *When we turn to the Indian law on the subject it is heartening to find that in India not only has the doctrine of promissory estoppel been adopted in its fullness but it has been recognized as affording a cause of action to the person to whom the promise is made. The requirement of consideration has not been allowed to stand in the way of*

18 (1979) 2 SCC 409 : 1978 SCC OnLine SC 373

enforcement of such promise. The doctrine of promissory estoppel has also been applied against the Government and the defence based on executive necessity has been categorically negated. It is remarkable that as far back as 1880, long before the doctrine of promissory estoppel was formulated by Denning, J., in England, a Division Bench of two English Judges in the Calcutta High Court applied the doctrine of promissory estoppel and recognised a cause of action founded upon it in the Ganges Manufacturing Co. v. Sourujmull [(1880) ILR 5 Cal 669 : 5 CLR 533] . The doctrine of promissory estoppel was also applied against the Government in a case subsequently decided by the Bombay High Court in Municipal Corporation of Bombay v. Secretary of State [(1905) ILR 29 Bom 580 : 7 Bom LR 27].

22. ...

23. ...

24. ...

The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution..... If the Government does not want its freedom of executive action to be hampered or restricted, the Government need not make a promise knowing or intending that it would be acted on by the promisee and the promisee would alter his position relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual. The law cannot acquire legitimacy and gain social acceptance unless it accords with the moral values of the society and the constant endeavour of the Courts and the legislature, must, therefore, be to close the gap between law and morality and bring about as near an approximation between the two as possible. The doctrine of promissory estoppel is a significant judicial

contribution in that direction. But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it. When the Government is able to show that in view of the facts as have transpired since the making of the promise, public interest would be prejudiced if the Government were required to carry out the promise, the Court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and alter his position and the public interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies. It would not be enough for the Government just to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour it..... If the Government wants to resist the liability, it will have to disclose to the Court what are the facts and circumstances on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether those facts and circumstances are such as to render it inequitable to enforce the liability against the Government. It is only if the Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government. The Court would not act on the mere ipse dixit of the Government, for it is the Court which has to decide and not the Government whether the Government should be held exempt from liability. This is the essence of the rule of law. The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court would insist

on a highly rigorous standard of proof in the discharge of this burden. But even where there is no such overriding public interest, it may still be competent to the Government to resile from the promise “on giving reasonable notice, which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position” provided of course it is possible for the promisee to restore status quo ante. If, however, the promisee cannot resume his position, the promise would become final and irrevocable. Vide Emmanuel Avodeji Ajaye v. Briscoe [(1964) 3 All ER 556 : (1964) 1 WLR 1326].

25. ...

“Public bodies are as much bound as private individuals to carry out representations of facts and promises made by them, relying on which other persons have altered their position to their prejudice. The obligation arising against an individual out of his representation amounting to a promise may be enforced ex contractu by a person who acts upon the promise : when the law requires that a contract enforceable at law against a public body shall be in certain form or be executed in the manner prescribed by statute, the obligation may be if the contract be not in that form be enforced against it in appropriate cases in equity.”

...

“If our nascent democracy is to thrive different standards of conduct for the people and the public bodies cannot ordinarily be permitted. A public body is, in our judgment, not exempt from liability to carry out its obligation arising out of representations made by it relying upon which a citizen has altered his position to his prejudice.”

This Court refused to make a distinction between a private individual and a public body so far as the doctrine of promissory estoppel is concerned.”

(Emphasis added)

32. Learned Advocate General relied on Paragraph Nos.27 and 28 of the decision of *Motilal Padampat Sugar Mills Co. Ltd.* (supra). By

relying on the said Paragraphs, it is the submission of the learned Advocate General that where the Government owes a duty to the public to act in a particular manner, and here obviously duty means a course of conduct enjoined by law, the doctrine of promissory estoppel cannot be invoked for preventing the Government from acting in discharge of its duty under the law. Reliance is placed on the observations of the Supreme Court that the doctrine of promissory estoppel cannot be applied in teeth of an obligation or liability imposed by law. It is submitted that the doctrine of promissory estoppel cannot be availed to permit or condone a breach of the law.

33. In view of the observations of the Supreme Court on which Mr. Jain, learned Counsel, has relied, wherein it is specifically held that the doctrine of promissory estoppel has also been applied against the Government and that a party who has acting in reliance on a promise made by the Government, altered his position, is entitled to enforce the promise against the Government, even though the promise is not in the form of a formal contract as required by Article 299 and that Article does not militate against the applicability of the doctrine of promissory estoppel against the Government, it is required to be noted that as contended by the learned Advocate General, the non stamping of the instrument with proper stamp duty in terms of the provisions of the Stamp Act entailed the following consequences:-

(i) As per Section 33 of the Stamp Act, if the agreement which is produced before the Authority contemplated under Section 33 and is not duly stamped, the Authority is empowered to impound the same. In fact, even after registration of the instrument also power is given under Section 33-A of the Stamp Act to impound the instrument if it is not duly stamped.

(ii) Section 34 of the Stamp Act provides that instruments not duly stamped is inadmissible in evidence.

(iii) Section 46 of the Stamp Act provides that all duties, penalties and other sums required to be paid under this Act, may be recovered by the Collector by distress and sale of the movable property of the person from whom the same are due as an arrear of land revenue. Execution of any instrument with the intention to evade the duty is an offence under Section 59.

34. Thus, it is clear that, if proper stamp duty is paid on the instrument governed by the provisions of the Stamp Act, then the above consequences are avoided. It is required to be noted that both the Acts i.e. Stamp Act and Registration Act in different spheres and as noted earlier the object of both the Acts is different. The object of the Stamp Act is to secure revenue for the State. Thus, there is no limitation or timeline provided for collection of duty on insufficiently stamped documents, as the object of the Act is to collect the duty and penalty

thereto. Thus, as per the Amnesty Scheme, in fact, the promise which has been given by the State Government is that if the proper stamp duty as per the Amnesty Scheme is deposited within the time limit provided in the Amnesty Scheme, then by exercising power under Section 9, the State Government may reduce, remit or compound prospectively or retrospectively, in the whole or any part of the duties or penalty on the instruments. Thus, as the Amnesty Scheme is issued under Section 9, the promise, if any, given by the Amnesty Scheme is to the effect that as provided in the Amnesty Scheme the stamp duty is reduced or remitted or compounded and the same has the effect of protection from the consequences under the Stamp Act.

35. The decision of *Chitvan Cooperative Housing Society Limited* (supra), on which Mr. Jain, learned Counsel has relied, is required to be appreciated from the above context and in the light of consequences which a person who has not paid stamp duty under the provisions of Stamp Act may suffer. Even the decision of the Supreme Court in *Motilal Padampat Sugar Mills Co. Ltd.* (supra) regarding promissory estoppel is also required to be appreciated from this context. The observations of the Supreme Court is that a party who has, acting in reliance on a promise made by the Government, altered his position, is entitled to enforce the promise against the Government, even though the promise is not in the form of a formal contract as required by Article

299. Thus, if any promise is to be culled out from the Amnesty Scheme under Section 9 of the Stamp Act as well as the Scheme of the Stamp Act, the promise is that once under the Amnesty Scheme proper stamp duty as determined is paid within the time limit as granted by the order passed under the Amnesty Scheme, for the purpose of the Stamp Act the said document/instrument will be treated as on which proper stamp duty has been paid and for the purpose of Sections 33, 34, 40, 46 and 59, the same will be considered as the document on which the proper stamp duty has been paid.

36. Mr. Jain, learned Counsel for the Petitioner also relied on the decision of the Supreme Court in ***State of Jharkhand v. Brahmputra Metallics Ltd.***¹⁹ to support his submission regarding applicability of doctrine of promissory estoppel and legitimate expectation. More particularly, he relied on Paragraph Nos.20, 25, 27, 37 and 42 of the said decision. However, the discussion with respect to the decision in ***Motilal Padampat Sugar Mills Co. Ltd.*** (supra) is also applicable to the said decision.

37. It is the submission of Mr. Jain, learned Counsel that by the impugned Order dated 13th February 2024, the Petitioner has been asked to get execute a new document by paying appropriate stamp duty and then present the same for registration within the time prescribed under Registration Act, after complying with all the legal requirements.

¹⁹ (2023) 10 SCC 634

He submitted that by the impugned Order what is sought to be directed to be done by the Petitioner is to again pay the stamp duty. He submitted that the same is impermissible as the Petitioner has paid the appropriate stamp duty as per the provisions of the Stamp Act. He therefore submitted that by the impugned Order the Authorities under the Registration Act has directed the Petitioner in effect to pay stamp duty which is not impermissible and the said demand is illegal. However, it is required to be noted that the said contention would have been correct if the Authorities under the Registration Act or if for that matter under the Stamp Act would have directed the Petitioner to pay the stamp duty on the subject document i.e. document of Development-cum-Sale Agreement dated 4th October 1987.

38. However, what the Registration Authorities has directed that as the Petitioner wanted to get the said document dated 4th October 1987 registered, in view of the specific provisions of Section 23 read with Section 25 of the Registration Act which prescribes strict timeline for presentation of document, the Registering Authorities have informed the Petitioner that the same could not be registered and further asked the Petitioner to execute a new document and after payment of proper stamp duty present the same for registration. The Circulars which are annexed to the said Letter dated 13th February 2024 are dated 22nd December 2011 and 30th November 2013. Thus, what is contemplated

is that a new document will be executed and the same will be presented to the Registering Authorities within time limit prescribed by the Registration Act.

39. It is the submission of Mr. Jain, learned Counsel that once the stamp duty is paid under the Amnesty Scheme, no further stamp duty is required to be paid even on such new document, assuming that the said new document is necessary. However, the said submission that payment of stamp duty will apply only to the said Development-cum-Sale Agreement dated 4th October 1987 and the same will not apply to the registration of a fresh document, is not legal and it is very clear that the Scheme of the Stamp Act and the Scheme of the Registration Act are totally different and distinct. Under the Registration Act, strict timelines are given for presentation of document.

40. As already noted herein above, the Registration Act has been enacted to prevent fraud and protect the public as it provides for assurance of title over immovable property. The object of the Registration Act is not for securing revenue but maintaining a record of documents of title in public interest. Thus, allowing registration of the document dated 4th October 1987 which has been presented for the first time for registration on 31st January, 2024 i.e. after about 37 years, cannot be allowed in view of specific timelines provided in Section 23 read with Section 25 of the Registration Act. It is very clear that the said

strict timelines are provided just to prevent fraud and protect the public as the purpose of the Registration Act is to maintain record of documents of title in public interest. Thus, by no stretch of imagination, payment of stamp duty under the Amnesty Scheme will have the effect of altering the strict timelines provided under the Registration Act for presentation of documents.

41. Dr. Birendra Saraf, learned Advocate General is right in contending that there is no power to condone delay in presentation of document for registration beyond the period of 4 months from the date of execution of the document as per Section 23 of the Registration Act and the said period can be at the most extended by further period of 4 months by the Registrar in exercise of power under Section 25 of the Registration Act. He is right in submitting that the High Court cannot in its Writ Jurisdiction extend the statutory period under the Registration Act for presenting a document for registration.

42. Mr. Jain, learned Counsel for the Petitioner has strongly relied on the decision of the Supreme Court in ***S.P. Goel*** (supra). More particularly, he relied on Paragraph Nos.11 to 14, 17, 18, 22 and 23. In said decision of ***S.P. Goel*** (supra), the challenge was to the Judgment and Order dated 18th May 1995 passed by the National Consumer Redressal Commission, New Delhi, where the complaint of the Appellant under the *Consumer Protection Act, 1986* was dismissed on

the ground that the District Consumer Forum as also the State Commission had no jurisdiction to adjudicate upon the claim Petition filed by the Appellant to the effect that there was deficiency of service on the part of the Respondent in not registering the document or issuing certified copy thereof in spite of full registration charges having been paid. The factual position in the dispute before the Supreme Court in ***S.P. Goel*** (supra) is set out in Paragraph Nos.3 to 6. The dispute is concerning registration of will. Section 23 of the Registration Act prescribing stringent timeline of 4 months specifically exclude the document of will. Thus, the dispute in the said decision of ***S.P. Goel*** (supra), is totally different. The factual aspects in the present matter is that the document which has been executed on 4th October 1987 is presented for registration for the first time on 31st January, 2024 i.e. after about 37 years. The question concerning that the document is presented for registration after strict timeline provided for the Registration Act is not before the Supreme Court in ***S. P. Goel*** (supra). The Supreme Court was considering whether refusal to register a document of will amount to deficiency of service. Thus, the above observations of the Supreme Court are required to be appreciated from that perspective.

43. In fact, the Supreme Court has relied on Section 1 of the ***Judicial Officers' Protection Act, 1850***, wherein it is provided that no Judge,

Magistrate, Justice of the Peace, Collector, or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction. It has been observed that, apart from that, reliance is placed on Section 86 of the Registration Act, which provides that no Registering Officer shall be liable to any suit, claim or demand by reason of anything in good faith done or refused in his official capacity. It has been further observed that the said Section 86 provides that complete protection to the Registering Officer for things done bonafide by him under the Act. Thus, the Supreme Court has upheld the decision of the National Consumer Redressal Commission, New Delhi, which has held that the District Consumer Forum as also the State Commission had no jurisdiction to adjudicate upon the claim of a person that as his document is not registered, he is seeking relief under the Consumer Protection Act, 1986, claiming himself to be the consumer. Thus, it is clear that the dispute in said ***S.P. Goel*** (supra) is totally different, and not connected with the dispute which is raised in the present Writ Petition.

44. Reliance is also placed on the decision of the Supreme Court in ***Lloyd Electric & Engg. Ltd. v. State of H.P.***²⁰ by Mr. Jain, learned Counsel for the Petitioner. In the said decision, the question was whether the concessional rate of Central Sales Tax offered as per the

²⁰ (2016) 1 SCC 560

Industrial Policy of the State of Himachal Pradesh can be violated, and whether the State Government can levy the tax against its own policy. Thus, even the said decision, and observations in Paragraph Nos.9 and 10 on which Mr. Jain, learned Counsel has relied, are not applicable to the present case.

45. Reliance on the decision of ***Bayview Lounge Pvt. Ltd.*** (supra) is also not applicable to the present case. The said Writ Petition has been only admitted and the implementation of the Order dated 8th January 2021 impugned in the said Writ Petition, has been stayed. Thus, nothing has been decided in the said decision. In any case, perusal of the said order clearly shows that the entire dispute is arising out of the provisions of the Stamp Act and the provisions of the Registration Act are not at all involved. Accordingly, reliance of the Petitioner on said ad-interim/interim order is also not relevant.

46. Mr. Jain, learned Counsel has also relied on the decision of the Division Bench of this Court in ***Madhu Kachharam Achhra v. Joint Sub Registrar of Assurance Ulhasnagar***²¹. However, in the said decision, the document is already registered and the original copy of the said Sale Deed is not traceable in the Office of the Joint Sub-Registrar of Assurances, Ulhasnagar and therefore prayer sought in the Writ Petition is to trace original Sale Deed dated 30th September 1983, registered under Serial No.2874/1983 in the Office of the Sub-Registrar of

²¹ Writ Petition No.1068 of 2021 (Decided on 17/11/2021)

Assurances, Ulhasnagar. In the peculiar facts and circumstances, the Division Bench issued the following directions :-

*“10. The three Petitioners agree and undertake that all three will be present before the Sub-Registrar of Assurances and will sign the necessary document or deed of confirmation submitted by the Petitioners and that they will do so within a period of two weeks from today. The Sub-Registrar is ordered and directed to immediately register on presentation the deed of confirmation without insisting on payment of any additional stamp duty. **This is not a fresh transaction but is only a confirmation of a previously stamped and registered document.**”*

(Emphasis added)

Thus, it is clear that in the peculiar facts and circumstances of that case direction was issued as the document in question was already stamped and registered.

47. It is required to be noted that the High Court cannot in its Writ Jurisdiction extend the statutory period under the Registration Act for presentation of a document for registration. However, the only limited exception is where the delay in presenting the document was not attributable to the Petitioner on account of some impossibility or by virtue of an act of Authority. The said decisions are premised under the principle that no man can be compelled to perform an impossible act or be punished for the acts of a Authority. The said principle is squarely applicable to the Division Bench decision of this Court in the case of ***Madhu Kachharam Achhra*** (supra) on which Petitioner has relied. In

that case, the document is not only a registered document but also stamped document. However, original document is not to be found in the record and therefore in the peculiar facts and circumstances, the directions have been given. The said decision will have no application to the present case.

Conclusions:

48. In view of above discussion following conclusions are recorded:-

- (i) The Registration Act makes provisions in public interest for record of documents and mainly documents of title. The same has been enacted to check forgery, prevent fraud, to protect the public and to provide good evidence of the genuineness of written instruments.
- (ii) The Stamp Act is a fiscal measure enacted to secure revenue for the State on certain classes of instruments. The stringent provisions of the Act are conceived in the interest of the revenue.
- (iii) The purpose of the Amnesty Scheme issued by exercising power under Section 9 of the Maharashtra Stamp Act is in consonance with the object of the Stamp Act i.e. to secure revenue for the State.
- (iv) The object of the Registration Act is not for securing revenue but maintaining a record of documents of title in public

interest. The stringent timelines prescribed under the Registration Act for presentation of document have been made to prevent fraud and to protect the public.

(v) The non stamping of the instrument with proper stamp duty, in terms of the provisions of the Maharashtra Stamp Act, entailed the following consequences:-

(a) As per Section 33 of the Stamp Act, if the agreement which is produced before the Authority contemplated under Section 33 and is not duly stamped, the Authority is empowered to impound the same. In fact, even after registration of the instrument also power is given under Section 33-A of the Stamp Act to impound the instrument if it is not duly stamped.

(b) Section 34 of the Stamp Act provides that instruments not duly stamped is inadmissible in evidence.

(c) Section 46 of the Stamp Act provides that all duties, penalties and other sums required to be paid under this Act, may be recovered by the Collector by distress and sale of the movable property of the person from whom the same are due as an arrear of land revenue. Execution of any instrument with the intention to evade the duty is an offence under Section 59.

(vi) Once under the Amnesty Scheme proper stamp duty as determined is paid within the time limit as granted by the order passed under the Amnesty Scheme, for the purpose of the Stamp Act the said document/instrument will be treated as on which proper stamp duty has been paid and for the purpose of Sections 33, 34, 40, 46 and 59, the same will be considered as the document on which the proper stamp duty has been paid. The same has no effect on the stringent time line provided under the Registration Act for presentation of the documents for registration.

(vii) The High Court cannot in its Writ Jurisdiction extend the statutory period under the Registration Act for presentation of a document for registration. However, the only limited exception is where the delay in presenting the document was not attributable to the Petitioner and the same is on account of some impossibility or by virtue of an act of Authority. The said decisions are premised under the principle that no man can be compelled to perform an impossible act or be punished for the acts of a Authority.

(viii) The object of the Registration Act is not for securing revenue but maintaining a record of documents of title in public interest. Thus, allowing registration of the subject document dated 4th October 1987 which has been presented for the first time for registration on 31st January, 2024 i.e. after about 37 years, cannot

be allowed in view of specific timelines provided in Section 23 read with Section 25 of the Registration Act. It is very clear that the said strict timelines are provided to prevent fraud and protect the public as the purpose of the Registration Act is to a maintain record of documents of title in public interest. The payment of stamp duty under the Amnesty Scheme will have no effect of altering the strict timelines provided under the Registration Act for presentation of documents.

49. Accordingly, no case is made out for grant of relief to the Petitioner. The Writ Petition is dismissed, however, with no order as to costs.

50. This order was dictated in Open Court on earlier dates and completed today.

[MADHAV J. JAMDAR, J.]