

*Shabnoor*

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11145 OF 2014

Kolte Patil Developers Ltd.

A Company registered under the provisions of the Companies Act 1956 and having its registered office at : 2nd Floor, City Point, Dhole Patil Road, Pune – 411 001.

... Petitioner

V/s.

SHABNOOR
AYUB
PATHAN

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SHABNOOR AYUB
PATHAN
Date: 2026.02.03
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- 1. The State of Maharashtra**
Through its Ministry of Revenue & Forests
- 2. Inspector General of Registration and Controller of Stamps, State of Maharashtra**
- 3. Joint District Registrar Class – I,**
and Collectors of Stamps, Pune City,
1st Floor, Govt. Registry Building,
Fifth Finance Road, Pune – 1.
- 4. Sub-Registrar Class – II Haveli No. VIII**
Plot A/91, Sonai Building, Vishrathwadi,
Lohgaon Road, Pune – 15.

... Respondents

Mr. Girish S. Godbole, Senior Advocate a/w Mr. Shailendra S. Kanetkar, for the petitioner.

Mr. O. A. Chandurkar, Addl. GP a/w Ms. M. S. Srivastava, AGP, for the State – respondent Nos.1 to 3.

CORAM : AMIT BORKAR, J.

RESERVED ON : JANUARY 22, 2026

PRONOUNCED ON : FEBRUARY 3, 2026

JUDGMENT:

1. By the present petition, the petitioner has assailed the order dated 26 May 2014 passed by Respondent No.3, purportedly in

exercise of powers under Section 33A of the Maharashtra Stamp Act, 1958. The challenge is founded on the contention that the impugned order travels beyond the statutory mandate and has been issued without jurisdiction.

2. The relevant facts, which have led to the filing of the present petition, may be stated thus. On 24 February 2004, Voltas Limited executed a Development Agreement in favour of the petitioner. The petitioner asserts that the said instrument constituted a development agreement involving transfer of development rights for a total consideration of Rs.21.80 crores. It is further the petitioner's case that the document was duly stamped in accordance with law and was registered before Respondent No.4.

3. Subsequently, on 23 April 2006, the Auditor General raised an audit objection contending that the Development Agreement was liable to be stamped at 10 percent by treating it as a conveyance. In consequence thereof, Respondent No.3 undertook scrutiny of the document and submitted a report expressing the view that the audit objection was not sustainable. Acting on the said report, Respondent No.3, by order dated 28 August 2006, rejected the audit objection and recorded a finding that proper stamp duty had already been paid. The said order was not challenged by any party and thus attained finality.

4. After a lapse of more than three years, on 14 September 2009, Respondent No.2 directed Respondent No.3 to initiate proceedings under Section 33A of the said Act by accepting the earlier audit objection. Pursuant to this direction, Respondent No.4

issued a notice to the petitioner. The petitioner, by its reply dated 9 November 2009, raised objections both to the initiation of proceedings and to the procedure adopted. Despite the said objections, Respondent No.4, on 10 January 2010, demanded alleged deficit stamp duty of Rs.1,96,20,000 along with interest at the rate of 2 percent per month.

5. Thereafter, on 27 February 2011, Respondent No.2, without initiating proceedings under Section 53A of the said Act against the petitioner, directed Respondent No.3 to recover the alleged deficit stamp duty by placing reliance upon the judgment of this Court in J.D.R. v. M/s Hill Site Construction Co. Pvt. Ltd.

6. Subsequently, on 26 April 2014, on the basis of directions issued by the Inspector General of Registration, Respondent No.2 passed an order levying stamp duty at the rate of 10 percent. It is the petitioner's grievance that the said order was not passed in exercise of powers under Section 32A or Section 39 of the said Act, and therefore lacks statutory foundation. Aggrieved by the said action, the petitioner has invoked the writ jurisdiction of this Court.

7. During the pendency of the petition, the petitioner sought and obtained leave to amend so as to place on record certain subsequent developments. The petitioner produced copies of agreements executed with individual flat purchasers under Section 4 of the Maharashtra Ownership of Flats Act, 1963, in respect of which full stamp duty was paid by the respective purchasers. The petitioner has also placed on record the Deed of Declaration dated

1 December 2008, the Supplementary Deed of Declaration dated 27 March 2011, and a sample Deed of Declaration dated 19 December 2015, to substantiate its case.

8. Mr. Godbole, learned Senior Advocate appearing for the petitioner, submitted that the instrument was registered on 24 February 2004, whereas the impugned order came to be passed on 26 April 2014. According to him, the order is clearly beyond the period of limitation prescribed under the relevant provisions of the said Act. He contended that once Respondent No.3 had, by order dated 28 August 2006, rejected the audit objection and held that proper stamp duty had been paid, and the said order had attained finality, it was not open to Respondent No.2 to direct initiation of proceedings under Section 33A. He further submitted that no proceedings under Section 53A were initiated within the permissible period. In such circumstances, the direction issued by Respondent No.2 to proceed under Section 33A is wholly without jurisdiction.

9. Placing reliance on the unreported judgment of this Court in *Sony Mony Electronics Limited v. State of Maharashtra and another (Writ Petition No.2757 of 2012, decided on 7 August 2025)*, he submitted that the period of six years prescribed under Section 53A contemplates not only initiation of proceedings but also passing of a final order within six years from the date of issuance of the certificate under Section 32 of the said Act. He submitted that any action beyond the said period is barred by limitation.

10. Inviting attention to the scheme of Section 33A, he submitted that the power to initiate proceedings under the said provision is conferred upon the Registering Officer alone. In the present case, the Registering Officer was the Sub Registrar, Class II, Haveli No. VIII, Lohgaon Road, Pune, namely Respondent No.4. However, the impugned order has been passed by the Joint District Registrar, Class I and Collector of Stamps, Pune City, Respondent No.3. According to him, Respondent No.3 was not the Registering Officer in respect of the instrument and, therefore, lacked jurisdiction to pass the impugned order.

11. He further submitted that after execution of the Development Agreement, individual flat purchasers entered into agreements under Section 4 of the Maharashtra Ownership of Flats Act, 1963 and paid full stamp duty on such agreements. These agreements, according to him, formed part of the same composite transaction. In that view of the matter, Respondent No.3 could not have demanded deficit stamp duty by treating the Development Agreement as a conveyance.

12. Referring to the relevant clauses of the Development Agreement, he submitted that the document itself contemplates execution of a formal conveyance at a subsequent stage. He urged that when the parties have expressly provided for execution of a future conveyance, the instrument in question cannot be construed as a conveyance for the purpose of levy of stamp duty.

13. In reply, Mr. Chandurkar, learned Additional Government Pleader for the respondents, drew attention to various clauses of

the instrument, particularly the recitals which record that the owner had agreed to sell and transfer the property to the petitioner. He submitted that the consideration agreed upon was a lump sum amount of Rs.21,80,00,000 and that no further amount remained payable by the petitioner to the owner.

14. He further submitted that the recitals disclose that the owner had clear and marketable title to the property. The agreement, according to him, confers wide powers upon the petitioner, including authority to receive compensation, awards and refunds, to mortgage or otherwise deal with the constructed premises, and to receive sale consideration from prospective purchasers.

15. On this basis, he contended that the instrument, in substance, transfers right, title and interest in the property in favour of the petitioner. The petitioner, according to him, is entitled to deal with the property in its own right and to independently collect sale consideration as a developer. He submitted that the expression Registering Officer must receive a broad interpretation so as to include officers exercising powers under the Maharashtra Stamp Act, particularly when the said expression has not been specifically defined under the Act.

16. In support of his submission that the instrument amounts to a conveyance and not a mere development agreement, he relied upon the unreported decision of this Court in *Suhas Damodar Sathe v. State of Maharashtra and another* (Writ Petition No.8030 of 2017, decided on 11 March 2025). He further submitted that the petitioner has an efficacious alternative statutory remedy by

way of revision under the provisions of the said Act and, on that ground also, the writ petition is liable to be dismissed.

ANALYSIS

The effect of the 2006 order rejecting the audit objection:

17. The order dated 28 August 2006 passed by Respondent No.3 records a clear finding that the instrument in question had been properly stamped and that the audit objection was not sustainable. This finding was rendered after scrutiny of the document and consideration of the objection raised by the audit authority. The effect of such a determination cannot be ignored. Under the scheme of the Maharashtra Stamp Act, an endorsement by the competent authority carries legal consequences.

18. Section 32 of the Act confers power upon the Collector to certify that an instrument is duly stamped or not chargeable with duty. Once such certification is made, the statute declares that the instrument shall be deemed to be duly stamped or not chargeable, as the case may be. This deeming fiction enables the instrument to be received in evidence, acted upon and registered without further impediment on the question of stamp duty. The legislative intent is that a commercial transaction must attain certainty. Parties are entitled to rely on the endorsement of the statutory authority. Third parties dealing with the property are also entitled to proceed on the footing that the instrument has been duly examined and certified.

19. The finality attached to such endorsement is not final. The Act itself provides a provision for correction of error by way of

Section 53A. Section 53A confers a revisional jurisdiction upon the Chief Controlling Revenue Authority. It enables the authority, notwithstanding a prior certification under Sections 32, 39 or 41, to call for the instrument and examine whether proper duty has in fact been levied. If the instrument has been charged with less duty, or has been erroneously held not chargeable, the authority may order recovery of the deficit duty. The provision is provided to address mistakes, whether factual or legal, in the earlier certification process.

20. Importantly, the power under Section 53A is not without time limit. The legislature has expressly provided that such power must be exercised within a period of six years from the date of the Collector's certificate. This limitation recognises that although revenue interests must be protected, transactions involving immovable property require certainty. Parties arrange their affairs on the basis of official endorsements. The Act therefore strikes a balance by allowing revision, but only within a precribed limitation period.

21. When this statutory framework is applied to the present case, the starting point for computation is the date on which the relevant certificate or final endorsement was made. If the order dated 28 August 2006 amounts in substance to a certification under Section 32 that the instrument was duly stamped, the six year period would expire in August 2012. Any exercise of revisional power under Section 53A must therefore be located within that period.

22. The record shows that a direction was issued on 14 September 2009 and a demand notice followed in January 2010. These events occurred within six years of August 2006. On a plain reading, they cannot be rejected solely on the ground of limitation. However, the impugned order of recovery is dated 26 April 2014. That date falls well beyond August 2012. It represents an attempt to give effect to a revisional determination beyond the six year period prescribed by Section 53A.

23. It is clear from the record, the order dated 28 August 2006 operated as a final adjudication of the audit objection and a declaration that proper stamp duty stood paid. No appeal or revision was preferred against that order within the statutory period. It therefore attained finality in law. Once such finality attached, the authorities could not disregard it and revive the same issue at their discretion.

24. If the State sought to reopen the matter, it was bound to act strictly within the four corners of the Act. The permissible modes are provided under the Act. In a case of undervaluation based on market value, recourse could be had to Section 32A in accordance with its procedure and time limits. In a case where an instrument not duly stamped had been registered through mistake, the Registering Officer could exercise powers under Section 33A in the manner prescribed. Most importantly, if the earlier certification was alleged to be erroneous, the revisional jurisdiction under Section 53A could be invoked within six years from the date of certification. Beyond these statutory modes, there is no residuary power to reopen a concluded determination.

25. Therefore, any attempt to reopen the issue of stamp duty liability after the 2006 order had attained finality must withstand scrutiny on two counts. First, the authority invoking power must be one competent under the specific provision relied upon. Second, the action must be taken within the limitation and modes laid down by the statute. In the absence of compliance with these requirements, the reopening would be contrary to the scheme of the Act.

The role and limits of Section 33A:

26. Section 33A introduces a mechanism to address a particular situation, namely, where an instrument which is not duly stamped has nevertheless been registered under the Registration Act. The provision recognises that errors may occur at the stage of registration. It therefore authorises the Registering Officer to call for the original instrument and to impound it, after affording an opportunity of hearing to the concerned party and after recording reasons in writing. The power is thus corrective in character. It operates post registration, but it is closely connected with the act of registration itself.

27. The language employed in Section 33A is clear and deliberate. It vests the power in the “Registering Officer.” That expression cannot be read without context. In the statutory scheme, the Registering Officer is the authority who exercises powers under the Registration Act in relation to a particular document. It is that officer who receives the instrument, scrutinises it for compliance, endorses registration and preserves it in official

records. The power to impound under Section 33A flows from this act of registering officer. The officer who handled the document at the stage of registration is entrusted with the authority to correct an error relating to stamping which may have escaped notice at that stage.

28. The submission that any revenue authority exercising powers under the Stamp Act may invoke Section 33A does not accord with the plain text of the provision. The statute does not use a expression such as “Collector” or “any officer authorised.” Instead, it identifies a specific officer. When the legislature chooses precise language, the Court cannot expand its scope by implication. Provision under fiscal statutes must be strictly construed. If the power is conferred on a designated authority, it must be exercised by that authority alone, unless the statute expressly provides for delegation.

29. Further, Section 33A prescribes that Registering Officer must call for the original instrument, grant an opportunity of hearing, record reasons in writing and furnish a copy thereof to the party. This reflects the legislative intent that impounding is a serious step affecting property rights of a citizen. The officer exercising such power must therefore have direct connection with the registration of the instrument and must act within the area contemplated by the provision.

30. In the present case, it is not disputed that the instrument was registered before Respondent No.4, who was the competent Sub Registrar having territorial and subject matter jurisdiction.

Respondent No.3, though a revenue authority, was not the Registering Officer in relation to that instrument. If the impugned action is sought to be justified as an exercise of power under Section 33A, it cannot be sustained when undertaken by an officer who did not occupy the position of Registering Officer for that document.

31. It is true that superior revenue officers may issue administrative directions or exercise supervisory control. However, supervisory control does not amount to exercise of statutory power. The power to impound under Section 33A attaches to the office that performed or was required to perform the act of registration. It cannot be assumed by another officer merely on the ground of hierarchy in the context of service law. Any such assumption would amount to exercising a power without legal authority.

32. Therefore, in the absence of express statutory authorisation enabling Respondent No.3 to act in the capacity of Registering Officer for the instrument in question, the invocation of Section 33A by Respondent No.3 would be without jurisdiction. An order passed in such circumstances cannot be validated by reference to departmental circulars.

Alternative remedy under the statute:

33. The respondents have urged that the petitioner ought to have pursued the alternative statutory remedy of revision available under the Act and that, on this ground alone, the present writ petition should not be entertained. This submission requires

careful consideration. The rule regarding exhaustion of alternative remedies is well settled. It is a rule of prudence and self restraint. It is not a rule that limits the jurisdiction of this Court under Article 226. The power of judicial review remains intact. The question is one of discretion.

34. In the present case, the petitioner has already invoked the writ jurisdiction of this Court. Rule has been issued. The matter has been heard at length. The challenge raised is not confined to a mere error in appreciation of facts or interpretation of clauses. The challenge strikes at the root of jurisdiction. The petitioner contends that the authority acted beyond the period of limitation prescribed by the statute and that the impugned action was undertaken by an officer lacking statutory competence.

35. Where an order is alleged to be without jurisdiction, or where the action is ex facie barred by limitation, the existence of an alternative remedy does not operate as a bar to the exercise of writ jurisdiction. A statutory revision presupposes that the order impugned has been passed by a competent authority acting within the scheme of the Act. If the very foundation of jurisdiction is in question, compelling the petitioner to pursue a revision would amount to requiring it to submit to a process which, according to its case, is fundamentally flawed.

36. It is also relevant that this Court has already entertained the petition and issued rule. The matter has progressed beyond the preliminary stage. To relegate the petitioner at this stage would neither serve the interests of justice nor promote judicial economy.

The issues raised are pure questions of law concerning interpretation of statutory provisions and their application to undisputed dates and events. They can be effectively adjudicated in the present proceedings.

37. For these reasons, I am of the view that the respondents' reliance on the availability of an alternative statutory remedy does not preclude this Court from examining the challenge on merits. Where the impugned action is taken by an authority lacking jurisdiction, judicial review under Article 226 remains available.

38. For the reasons stated above the writ petition is partly allowed.

(i) The order dated 26 April 2014 passed by Respondent No.3 in respect of the Development Agreement dated 24 February 2004 is quashed and set aside.

(ii) The amount deposited by the petitioner in this Court shall be permitted to be withdrawn by the petitioner along with accrued interest, if any.

(iii) Rule is made absolute in the above terms.

39. There shall be no order as to costs.

40. Pending interlocutory applications stand disposed of.

(AMIT BORKAR, J.)