AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14348 OF 2016

1. **Ludhani Estate Private Limited**,
   503, Business Point, M.V. Road,
   Western Express Highway,
   Andheri, Mumbai 400 069
2. **CJR Realty Private Limited**,
   a company incorporated and registered under the Companies Act, 1956 and having its office at 503, Business Point, M.V. Road, Western Express Highway,
   Andheri, Mumbai 400 069 ... **Petitioners**

Vs.

1. **The Chief Controlling Revenue Authority**, State of Maharashtra,
   Pune
2. **The Deputy Inspector General of Registration and Deputy Collector of Stamps**, Konkan Coordinate, Thane
3. **The Collector of Stamps**,
   Thane ... **Respondents**

Mr. Amrut Joshi with Ms. Radhika Kulkarni i/by Ms. Deepa Kamath for the petitioners.

Mrs. Mamta S. Srivastava, AGP for respondent Nos.1 to 3-State.

CORAM	**: AMIT BORKAR, J.**
RESERVED ON	**: AUGUST 3, 2026.**
PRONOUNCED ON	**: AUGUST 4, 2026**

JUDGMENT:

1. By this writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the order dated 4 April 2016 passed by respondent No.1 in Appeal No.108 of 2015 (District Court Rural). By the said order, respondent No.1 dismissed the appeal as not maintainable by holding that the petitioners had no legal right or locus to file the appeal.

2. According to the petitioners, the facts leading to the present writ petition are as follows. On 27 December 2012, Enigma and Evershine, being the joint owners of the property, granted development rights to Evershine CJR Joint Venture, which was a joint venture of the petitioners. An undated Development Agreement was executed for development of Avenue A 5 having an area of 2,11,295 square feet. The agreement was submitted before respondent No.3 for adjudication. The stamp duty was assessed at Rs.1,36,53,600/-, and the petitioners paid the said amount. However, possession of the property was never handed over, and the Development Agreement was not presented for registration. Thereafter, on 20 February 2013, the parties executed a Deed of Cancellation cancelling the first Development Agreement because of uncertainty in the real estate market and delay in starting the project. Subsequently, on 26 February 2013, the petitioners applied for refund of the stamp duty under Section 48(i) of the Stamp Act before respondent No.3. The application was registered as Refund Case No. R/42/13. According to the petitioners, the stamps used for the first Development Agreement had become "spoiled stamps" within the meaning of Section 47 of the Stamp Act. The refund application was forwarded to respondent No.2 and then to the Inspector General of Registration, Pune.

3. On 12 April 2013, after cancellation of the first Development Agreement, Enigma and Evershine executed another Development Agreement in favour of M/s. Sumit Pragati Shelters LLP by granting development rights in respect of the same property. In this agreement, the petitioners were shown only as confirming parties. The document was submitted for adjudication, stamp duty of Rs.1,44,75,000/- was assessed and paid, and the agreement was registered as Document No.3337 of 2013. On 18 May 2015, respondent No.3 rejected the petitioners' refund application dated 26 February 2013. The reason given was that the petitioners had allegedly received consideration twice, once under the Deed of Cancellation and again under the second Development Agreement.

4. In February 2016, the petitioners filed an appeal before respondent No.1 under Section 53(1A) of the Stamp Act against the order rejecting the refund. They filed their written submissions in support of the appeal. By order dated 4 April 2016, respondent No.1 upheld the decision of respondent No.3. Respondent No.1 held that the petitioners had no locus standi to file the appeal. Aggrieved by the said order, the petitioners have filed the present writ petition.

5. Mr. Joshi, learned Advocate appearing for the petitioners, submitted that respondent No.1 failed to properly consider the provisions of Section 47 of the Stamp Act, which permits refund in cases of spoiled stamps. He submitted that after execution of the

Deed of Cancellation, the original Development Agreement never came into effect and the transaction between the petitioners and Enigma did not materialise. Therefore, according to him, the stamp purchased for the undated Development Agreement dated 27 December 2012 became a spoiled stamp under Section 47 of the Stamp Act. In such circumstances, the petitioners became entitled to seek refund of the stamp duty paid. He submitted that respondent No.1 committed an error in refusing to accept this legal position.

6. Mr. Joshi further submitted that under the undated Development Agreement, Enigma, and Evershine, as joint owners of the property, had agreed to grant development rights in respect of Avenue A 5 to the petitioners through their joint venture, namely Evershine CJR Joint Venture. As per the agreement, the petitioners paid the agreed consideration to Enigma. He pointed out that the Deed of Cancellation dated 20 February 2013 does not contain any clause showing receipt or return of consideration. According to him, after cancellation of the first agreement, Enigma and Evershine entered into a fresh Development Agreement with Sumit Pragati Shelters LLP on 12 April 2013, in which the petitioners were merely confirming parties. Therefore, there was no question of the petitioners receiving payment twice. He submitted that, in fact, the petitioners received consideration only once, and this is reflected from their bank statements.

7. He further submitted that respondent No.1 ought to have appreciated that none of the parties had disputed the validity of the cancellation of the first Development Agreement. According to him, respondent No.1 could not question or replace the decision taken by the parties to terminate their agreement. He further argued that no development rights under the first agreement had ever been transferred to the petitioners. Therefore, the stamp used for that agreement had become a spoiled stamp, making the petitioners entitled to refund of the stamp duty.

8. Mr. Joshi submitted that even if, for the sake of argument and without admitting it, it is assumed that the petitioners received consideration twice, the conclusion reached by respondent No.1 would still be incorrect. According to him, the transactions related to development of property and were not financial transactions. It is not disputed that no development rights were transferred under the first agreement. He submitted that even if any amount was received under the second agreement, it would not create or validate any rights under the first agreement. At the highest, such payment could only be for the petitioners acting as confirming parties in the second agreement. He pointed out that the second Development Agreement was adjudicated for stamp duty and respondent No.1 has never held that such adjudication was incorrect. Therefore, even assuming that the petitioners had received consideration under both transactions, that circumstance would not affect the nature of the first instrument or their right to claim refund of the stamp duty paid on it. According to him, the finding recorded by respondent No.1 refusing refund is wholly unreasonable.

9. In support of his submissions, Mr. Joshi relied upon the decisions in *Bano Saiyed Parwaz vs. Chief Controlling Revenue*

Authority and Others, (2025) 2 SCC 201; *Sanman Trade Impex Private Limited vs. State of Maharashtra and Others,* 2004 SCC OnLine Bom 747; *Satyam Construction vs. Chief Controlling Revenue Authority and Others,* Writ Petition No.241 of 2015 decided on 3 September 2025; *and Qwick Supply Chain Private Limited vs. Chief Controlling Revenue Authority and Others,* Writ Petition No.9140 of 2018 and Writ Petition No.10255 of 2018 decided on 3 September 2025.

10. On the other hand, Mrs. Srivastava, learned AGP appearing for the respondents, submitted that the petitioners have placed on record an endorsement or certificate dated 12 April 2013. She pointed out that at internal page 19 of the document there is a reference to a Memorandum of Understanding dated 16 April 2012. According to her, under the said MOU, petitioner Nos.1 and 2 had received certain development rights in respect of the property covered by the undated Development Agreement. She further submitted that by the endorsement or certificate, those very rights were assigned in favour of Sumit Developers. She therefore submitted that the petitioners should be directed to produce the MOU dated 16 April 2012 on record so that the respondents can deal with its contents.

11. She further submitted that petitioner Nos.1 and 2 had initially entered into a development arrangement relating to the very same property which later became the subject matter of the registered Development Agreement dated 12 April 2013 bearing Registration No.3337 of 2013 in the office of the Joint Sub Registrar, Vasai No.3. According to her, there are several important differences between the undated Development Agreement submitted for adjudication under Section 31 of the Stamp Act and the registered Development Agreement dated 12 April 2013. She pointed out that the parties to the two documents are different, as the petitioners were developers in the first document but only confirming parties in the second document. She submitted that the first document was presented for adjudication under Section 31 by petitioner No.1, whereas the second document was registered without seeking adjudication. She further pointed out that although both documents relate to the same property, the consideration mentioned in the second agreement is higher. She submitted that while the first agreement makes no reference to any document or loan transaction, the second agreement refers to the MOU dated 16 April 2012 and mentions the loan obtained by the owners from HDFC Bank. Lastly, she submitted that the first agreement was followed by a notarised Deed of Cancellation dated 20 February 2013, whereas no such cancellation document exists in relation to the second Development Agreement.

12. Relying upon these documents, Mrs. Srivastava submitted that although the petitioners cancelled the undated Development Agreement and are claiming refund of the stamp duty paid on it, they had acquired development rights from the original owners under the arrangement. According to her, those very rights were transferred in favour of Sumit Pragati Shelters LLP under the Development Agreement dated 12 April 2013 in which the petitioners were confirming parties. She relied upon paragraph (xvi) of the registered Development Agreement, which states that under the Memorandum of Understanding dated 16 April 2012, the owners agreed to grant development rights over FSI of 2,11,295 square feet to the confirming parties for a total consideration of Rs.27,30,72,000. It further records that the confirming parties paid Rs.20 crores before execution of the MOU and the balance amount of Rs.7,30,72,000/- through two post dated cheques dated 7 December 2012. The paragraph records that the parties had approved a draft Development Agreement, agreed to execute it after adjudication and payment of stamp duty, and that the owners had handed over vacant and peaceful possession of Avenue A 5 to the confirming parties with authority to carry out development and sell flats and shops under the Maharashtra Ownership Flats Act, 1963.

13. Mrs. Srivastava, therefore, submitted that the above recital shows that under the MOU dated 16 April 2012 the parties had agreed to first obtain adjudication of the draft Development Agreement for payment of stamp duty. According to her, instead of following that agreed procedure, the parties proceeded to register the Development Agreement dated 12 April 2013.

14. She lastly submitted that the conduct of the parties is inconsistent with the terms contained in the various documents. According to her, the Development Agreement dated 12 April 2013, the MOU, the undated Development Agreement certified by respondent No.3 on 27 December 2012 and the Deed of Cancellation contain contradictory recitals. She further submitted that neither petitioner Nos.1 and 2 nor Sumit Pragati Shelters LLP or the original owners ever sought adjudication of the

Development Agreement dated 12 April 2013 or of the MOU. According to her, these circumstances support the stand taken by the respondents in rejecting the petitioners' claim for refund.

REASONS AND ANALYSIS:

15. After hearing both sides and after going through record, dispute is whether stamp duty paid on first Development Agreement became refundable because transaction did not happen within meaning of Sections 47 and 48 of the Maharashtra Stamp Act. Another issue arises whether respondent authorities were justified in refusing refund by saying that petitioners had no locus and that they had received consideration two times.

16. Petitioners have taken stand that first Development Agreement never came into working in manner intended between parties. According to them, though adjudication was completed and stamp duty was paid, actual possession of property never came to them. Afterwards, parties executed Deed of Cancellation. Therefore, according to petitioners, instrument became a "spoiled stamp" within meaning of Section 47(c)(5). On other side, respondents submitted that petitioners had received valuable rights under arrangements including Memorandum of Understanding dated 16 April 2012. According to respondents, those rights were later transferred in favour of subsequent developer. Therefore, according to them, first transaction cannot be said to have failed.

17. This Court is unable to accept finding recorded by respondent No.1 that appeal was not maintainable because petitioners had no locus. It is admitted position that petitioners approached authority for adjudication, paid stamp duty and sought refund of same amount. Rejection of refund application affected their legal rights. Therefore, they cannot be said to be strangers to proceedings. In these circumstances, finding that petitioners had no locus standi does not appear to be sustainable.

18. Next question which requires consideration is whether first Development Agreement can be treated as an instrument which failed of its intended purpose. For deciding this issue, admitted facts become important. There is no dispute that first Development Agreement was cancelled by execution of registered Deed of Cancellation. There is no dispute that parties entered into altogether another Development Agreement in favour of different developer. Therefore, first Development Agreement admittedly was not carried further after its cancellation.

19. Petitioners have asserted that possession of property was never handed over under first Development Agreement. Respondents could not place any material before this Court showing that possession was delivered under that agreement. Though respondents relied upon recitals contained in subsequent Development Agreement and Memorandum of Understanding, those recitals by do not establish that rights contemplated under first Development Agreement had come into existence and were worked out.

20. The Coordinate Bench of this Court in *Sanman Trade Impex Pvt. Ltd.* has explained scope of Section 47(c)(5). In paragraph 8, it held that where instrument "fails of the intended purpose", such case would come within clause (c)(5). Thereafter, in paragraph 10, the Coordinate Bench observed:

> "The term 'Spoiled stamps' has not been defined either under the said Act or in the said Rules. However, section 47 describes the instances under which the stamps can be said to have been spoiled…"

21. The Coordinate Bench further observed:

> "...in case the person agreeing to sell the property executes an instrument in that regard, on acceptance of consideration and after the execution of the instrument in that regard, fails to deliver the possession of the property agreed to be sold the stamp paper on which the instrument is drawn can be considered to have been rendered spoiled…"

22. The above observations make legal position clear. Merely because document was executed, it cannot decide issue. Real matter which needs examination is whether purpose for which document was executed was ever achieved. If intended transaction could not move ahead and remained incomplete, then provisions of Section 47(c)(5) may become applicable depending upon facts of that case.

23. Again, in paragraph 12, the Coordinate Bench observed:

> "Once the transferor fails to comply with the conditions in the agreement for sale and to deliver the possession of the property, obviously the instrument is rendered ineffective and useless…"

24. This principle gives reply to objection raised by respondents. If agreement could not reach its intended object because important obligations under agreement remained unperformed, instrument may become useless even though parties had executed it. Therefore, while deciding petitioners' claim for refund, authorities were required to examine whether first transaction had achieved purpose for which it was executed or whether it became ineffective because essential obligations under that agreement remained unperformed.

25. Respondents relied upon Development Agreement dated 12 April 2013 and on recital contained in Memorandum of Understanding dated 16 April 2012. According to respondents, petitioners had received development rights under arrangement and afterwards those very rights were assigned in favour of Sumit Pragati Shelters LLP. Therefore, according to respondents, first transaction cannot be treated as failed one and because of that petitioners are not entitled to get refund of stamp duty.

26. Recital relied upon by respondents records that development rights were agreed to be granted and that possession was allegedly delivered under Memorandum of Understanding. At first reading, these recitals may create some doubt about exact factual position. However, merely because such recitals are found in document, entire controversy cannot come to end. Their legal effect is still required to be examined on basis of surrounding facts and applicable provisions of law. At the same time, this Court notices that respondents have not passed any order examining legal effect of Memorandum of Understanding. Impugned order proceeds on assumption that petitioners received consideration twice and therefore refund was not permissible. Authorities have not recorded any finding that first Development Agreement had been acted upon so as to exclude applicability of Section 47(c)(5). Therefore, basis of impugned order appears to be different from submissions now advanced before this Court.

27. According to petitioners, Deed of Cancellation does not contain any recital showing return of consideration. Petitioners further submitted that second Development Agreement was adjudicated and registered. According to them, whatever amount was received under second transaction was only because they were shown as confirming parties. Petitioners have relied upon their bank statements to contend that there was no double receipt of consideration. On the other hand, respondents submitted that all transactions should not be seen separately. According to them, entire chain of transactions is required to be looked together and if background is considered, petitioners had in fact derived benefit under both arrangements.

28. In opinion of this Court, even if it is assumed only for purpose of argument, that petitioners received some financial benefit under later transaction, still that circumstance does not satisfy requirement under Section 47(c)(5). Provision nowhere speaks whether consideration was received once or twice. What provision requires examination is whether instrument "fails of the intended purpose."

29. The Coordinate Bench has held in paragraph 14 of *Sanman Trade Impex Pvt. Ltd.* as under:

> "Clause (c)(5) of section 47 nowhere distinguishes between agreement of sale and the deed of sale. It applies to all instruments... What it provides is that the instruments should be rendered ineffective and unenforceable in the sense that the purpose for which it was executed should 'fail'."

30. Thus, enquiry is not directed towards accounting entries between parties or financial adjustment made by them. Real enquiry under law is whether instrument became ineffective because purpose for which it was executed never came into existence. Respondents pointed out various differences between first Development Agreement and second Development Agreement. It is true that parties shown in both agreements are not identical. Amount of consideration is different. References to documents and loan arrangements are not same. However, these differences, instead of supporting respondents, prima facie indicate that arrangement was given up and parties entered into altogether fresh arrangement. Such circumstances cannot be said to be inconsistent with case of petitioners that original transaction had failed before achieving its intended object. This Court finds support from judgment in *M/s. Satyam Construction*. In paragraph 6, this Court observed:

> "There is no dispute to the position that the transaction of Development Agreement dated 2 June 2011 has failed."

31. Again, paragraph 8 records:

> "under Section 47(c)(5), refund of stamp duty can be sought if the transaction fails the intended purpose…"

32. Thereafter, paragraphs 10 and 11 of the said judgment explain that right to claim refund flows from Section 47 itself, whereas Section 48 merely prescribes period of limitation within which such right is required to be exercised. Therefore, once ingredients of Section 47 are satisfied, Section 48 only regulates period within which remedy can be claimed. It neither creates the right nor takes away that right. Therefore, submissions advanced by respondents regarding subsequent Development Agreement, alleged transfer of rights and allegation of double consideration deserve consideration. However, these circumstances do not answer principal requirement, namely, whether first Development Agreement had achieved purpose for which it was executed or whether it had failed and become ineffective within meaning of Section 47(c)(5). That issue still remains central and requires determination while examining legality of the impugned order.

33. Respondents have not disputed that Deed of Cancellation was in fact executed. Their main objection is that petitioners had obtained certain rights under arrangements and had allegedly received consideration. Therefore, according to respondents, refund cannot now be granted. In opinion of this Court, these circumstances by are not enough to avoid requirement of examining whether first instrument had achieved purpose for which it was executed. Real enquiry under Section 47(c)(5) is not whether some later arrangement came into existence. Real enquiry is whether intended purpose of first instrument failed. The judgment of the Supreme Court in *Bano Saiyed Parwaz* paragraph 12 holds that High Court committed error in rejecting refund application only because it was filed before execution of cancellation deed and observed that such view was:

> "contrary to the requirements stipulated by Sections 47 and 48"

34. Therefore, Supreme Court did not approve technical interpretation of refund provisions. Instead, it preferred interpretation which gives effect to Sections 47 and 48 rather than defeating object of those provisions only on technical grounds. Again, paragraph 15 of the judgment states:

> "The legal position is thus settled in Libra Buildtech... that when the State deals with a citizen it should not rely on technicalities…"

35. Further, while reproducing paragraph 29 of *Libra Buildtech* in paragraph 14, the Supreme Court approved following observation:

> "...when the State deals with a citizen it should not rely on technicalities…"

36. In the opinion of this Court, above observations apply with full force to present matter. Once State has received stamp duty on an instrument which afterwards became ineffective because intended transaction could not be completed, authorities are expected to examine real substance of transaction. Refund cannot be refused merely by taking technical objections if requirements of statute are otherwise satisfied.

37. Respondents argued that petitioners ought to have produced Memorandum of Understanding dated 16 April 2012. Such submission may have some relevance while understanding factual background. However, impugned order does not contain any detailed adjudication regarding legal effect of said Memorandum of Understanding. Validity of administrative or quasi judicial order has to be examined on reasons recorded in that order. Fresh reasons advanced before this Court cannot improve validity of impugned order.

38. This Court notices that second Development Agreement was adjudicated, and separate stamp duty was admittedly paid on that document. This circumstance shows that subsequent Development Agreement was treated by authorities as an independent instrument for purposes of stamp duty. Once authorities accepted separate adjudication and separate payment of stamp duty on later agreement, refusal of refund relating to instrument only because another agreement came into existence becomes difficult to sustain unless it is shown that provisions of Section 47 are not attracted.

39. Petitioners have prayed for grant of interest on refund amount. The Supreme Court in *Poornima Advani* explained concept of interest. In paragraph 14, while quoting *Karnataka Bank v. RMS Granites (P) Ltd.*, the Supreme Court observed:

> "Interest is not a penalty or punishment at all, but it is the normal accretion on capital."

40. Further, paragraph 15 states:

> "when a person is deprived of the use of his money to which he is legitimately entitled, he has a right to be compensated…"

41. Again, paragraph 18 reiterates that a person deprived of use of money:

"has a right to be compensated for the deprivation, call it by any name."

42. Above principles make legal position clear. If money belonging to one person remains with another without lawful justification, payment of interest is not by way of punishment. It is only compensation because person could not use his own money during that period. After considering entire material available on record, provisions and binding precedents together, this Court is of opinion that principal reasoning adopted by respondent No.1 cannot be sustained. Finding that petitioners had no locus standi is not legally sustainable because petitioners had paid stamp duty and sought refund. Finding regarding alleged receipt of consideration twice cannot by decide applicability of Section 47(c)(5). Admitted execution of Deed of Cancellation, non-performance of first Development Agreement and subsequent execution of another independent Development Agreement together indicate that original instrument did not achieve purpose for which it had been executed. Therefore, petitioners' claim required consideration in light of Sections 47 and 48 as interpreted in *Sanman Trade Impex Pvt. Ltd.*, *Bano Saiyed Parwaz* and *M/s. Satyam Construction*. However, impugned orders do not examine controversy from that legal angle. They proceed on grounds of alleged absence of locus standi and alleged receipt of consideration twice. Those are not decisive tests under Section 47(c)(5). Consequently, refusal of refund on reasons recorded in impugned orders cannot be sustained in law.

43. In view of the foregoing discussion, and upon overall assessment of the material record, the following order is passed:

(i) The Writ Petition is allowed;

(ii) The order dated 4 April 2016 passed by respondent No.1 in Appeal No.108 of 2015 (District Court Rural), as well as the order dated 18 May 2015 passed by respondent No.3 rejecting the petitioners' application for refund of stamp duty, are quashed and set aside;

(iii) Respondent No.3 shall refund the stamp duty paid by the petitioners in respect of the first Development Agreement within a period of eight weeks from the date of receipt of a copy of this judgment;

(iv) The petitioners shall be entitled to interest on the refundable amount at the rate of 6% per annum from the date of expiry of eight weeks after filing of the refund application till the date of actual payment;

(v) If the amount is not refunded within the period stipulated in clause (iv) above, the amount remaining unpaid shall carry interest at the rate of 9% per annum from the expiry of the said period until actual realization;

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

(vii) There shall be no order as to costs.

(AMIT BORKAR, J.)