(2023) 01 BOM CK 0027

Bombay High Court

Case No: Writ Petition No. 8021 Of 2019

Freedom City Ventures		APPELLANT
	Vs	
State Of Maharashtra And Others		RESPONDENT

Date of Decision: Jan. 9, 2023

Acts Referred:

- Maharashtra Stamp Act, 1958 - Section 47, 47(c)(4), 48, 48(3), 50, 51, 52, 52(c), 52A, 52B
- Specific Relief Act, 1963 - Section 31, 32

Citation: (2023) 01 BOM CK 0027

Hon'ble Judges: Abhay Ahuja, J

Bench: Single Bench

Advocate: Preeti Walimbe, Bhushan Walimbe, Sachin H. Kankal

Final Decision: Allowed

Judgement

Abhay Ahuja, J

1. By this petition, the Petitioner seeks to challenge order dated 21 st June, 2014 passed by the respondent no.2-Inspector General of Registration and

Chief Controller of Stamps, Maharashtra State rejecting application dated 24th July, 2013 for refund of stamp duty as being barred by limitation.

2. The brief facts are that Petitioner herein, which is a partnership firm engaged in the business of buying, selling, developing, plotting lands and selling

the same, for the purposes of its business in the year 2013 entered into discussions with some agriculturists, who were desirous of entering into

development agreement with the Petitioner for developing survey no. 31, 35/0, 36/0, 37/1A, 37/2 situated at Mouje Jambhulwada, Tal. Shahapur, Dist.

Thane (the Ã¢â‚¬Å“said propertyÃ¢â‚¬). It has been submitted on behalf of the Petitioner that after negotiations and rounds of discussion, the owners of the

land, in principle, agreed to execute a development agreement for a consideration of Rs. 1,35,62,000/- in favour of the Petitioner. Petitioner, thereafter,

prepared the draft of the development agreement and submitted the same to the office of the respondent no.3- the Joint District Registrar,Thane

Rural, for the purposes of adjudication and determination of the stamp duty that would be payable on the said document. By order dated 30th January,

2013, respondent no.3- the Joint District Registrar, Thane Rural fixed the stamp duty at Rs. 40,78,940/- by calculating the same on the basis of the

ready reckoner price. Pursuant to the said order the Petitioner purchased stamps of Rs. 40,78,940/- on 30th January, 2013, which is evidenced by

Challan bearing No. 0089 dated 30th January, 2013.

3. It is the case of the Petitioner, that subsequently, the Petitioner was informed by the owners that out of 11 co-owners, of the subject property, 5 of

them have refused to enter into the development agreement and therefore, the agreement could not be executed. Since, the owners were not desirous

of executing the agreement, Petitioner had no other option but to cancel his plan to execute the agreement. It is submitted that accordingly, as per the

provisions of Sections 47 and 48 of the Maharashtra Stamp Act, 1958, (the Ã¢â‚¬Å“Maharashtra Stamp ActÃ¢â‚¬), Petitioner submitted an application on

24th July, 2013 to the Joint District Registrar, Thane Rural, for the refund of stamp duty of Rs. 40,78,940/- after deducting the necessary charges. It is

submitted that the Petitioner also filed statement of its partner in support of the application for refund on 24th July, 2013.

4. Ms. Walimbe, learned counsel for the Petitioner submits that since in the statement/application, the partner of the Petitioner firm had mentioned his

name alone, the office of the respondent no.3 raised an objection that since the stamps were purchased in the name of the Petitioner partnership firm

and therefore, the refund application must also be preferred by the same partnership firm and that since in the statement/application in the opening line,

only the name of the partner had been mentioned, the office of the respondent no. 3 had asked the Petitioner to correct the said error. Learned

counsel submits that to avoid technical difficulties, the partner of Petitioner firm had corrected the said application by circling his name and instead of

the same it was mentioned that Ã¢â‚¬Å“I, Freedom City Ventures, through partner Shri Santosh Pandurang NaikÃ¢â‚¬. It is submitted that the said

amendment was duly initialled and signed by the partner of the Petitioner firm on 10th December, 2013. It is further submitted that in support of the

application, the Petitioner also filed a notarised affidavit of the other partner of the partnership firm viz. Shri Sohil Munshi that he shall not have any

objection if the stamp duty amount as prayed in the application is refunded.

5. Thereafter, the respondent no. 3 after considering the application and the documents filed in support thereof forwarded the papers with his opinion

to allow the grant of refund to the office of the Deputy Inspector General of Registration, Konkan Division, Thane.

6. Vide communication dated 31st January, 2014, the Deputy Inspector General of Registration, Konkan Division, Thane forwarded the case papers of

the Petitioner to the respondent no.2-The Chief Controlling Revenue Authority, Maharashtra State, Pune, with his opinion to allow the grant of refund

of Rs. 36,71,046/-remaining after deducting 10% of the amount as per rules as the refund amount involved in the case was more than Rs. 10 lacs as

per the then prevailing provisions of the Maharashtra Stamp Act. The respondent no.2 numbered the refund case as no 11/2014.

7. However, the respondent no.2 has by order dated 21st June, 2014, refused to grant refund of stamp duty to the Petitioner on the ground of non-

compliance of the provisions of sub-Section (3) to Section 48 of the Maharashtra Stamp Act, holding that since the correction in the application in the

name of the applicant as being Freedom City Ventures through its partner Shri Santosh Pandurang Naik was made on 10th December, 2013 the

application was therefore filed beyond the limitation period of six months under the provision of Section 48(3) of the Maharashtra Stamp Act and

therefore time barred.

8. Being aggrieved and dissatisfied by the order dated 21st June 2014 passed by the respondent no.2, the Petitioner has approached this court seeking

the following principal reliefs:-

Ã¢â‚¬Å“a. This HonÃ¢â‚¬â„¢ble Court be pleased to call for records and proceedings and after examining the legality, propriety and validity, be pleased to

quash and set aside the Order dated 21.6.2014(Exh. Ã¢â‚¬Å“EÃ¢â‚¬) passed by the Respondent No.2 and further be pleased to allow the application dated

24.7.2013 filed by the Petitioner for refund of the stamp duty;

9. Ms. Walimbe, learned counsel for Petitioner submits that since the correction dated 10th December, 2013 was pursuant to objection raised by

Respondent no. 3 and the same was corrected pursuant thereto, the original date of filing of application would be material and not the date of

correction. And, therefore, the application for refund is within the time limit prescribed in Section 48(3) of the Maharashtra Stamp Act. Learned

counsel would submit that there is no denial that the stamps worth Rs. 40,78,940/- have been purchased. She submits that the Respondent No.3 as

well as the Deputy Inspector General of Registration have recommended refund. That the State cannot claim revenue on a transaction that has not

been executed and in any event the State is duty bound to refund the stamp duty under Section 52 of the Maharashtra Stamp Act. Ms. Walimbe,

learned counsel for Petitioner relies upon the decision of this Court in the case of M/s S. K. Realtors and another Vs. The Inspector General of

Stamps and Controller of Stamps, Maharashtra State, Pune and another, (2016) SCC OnLine Bom 14536, to submit that the purpose behind

incorporating Section 48 of the Maharashtra Stamp Act is to ensure that in cases where transaction is not executed or cancelled before execution,

then the State is not entitled to claim revenue for execution of the said document and the State is under an obligation to refund the said amount and

cannot resort to profiteering on the basis of document which is not executed. Learned counsel therefore urges this Court to interfere and quash the

impugned order dated 21st June, 2014 passed by Respondent No.2.

10. On the other hand, Mr.Kankal, learned AGP vehemently opposes the submissions made on behalf of the Petitioner and supports the impugned

order dated 21st June, 2014 and relies upon affidavit in reply dated 24th August, 2015 filed on behalf of Respondent No.3.

11. He submits that though the stamps were purchased on 30th January, 2013 pursuant to an adjudication and an application for refund of the same

was filed on 24th July, 2013, by one of the partners of the Petitioner, the application on behalf of Petitioner was only made on 10th December, 2013,

that too by voluntarily changing the name of applicant to the name of Petitioner, which is beyond the period of six months stipulated in Section 48(3) of

the Maharashtra Stamp Act and although there is no provision to amend, alter, change and modify the name of applicant in the Maharashtra Stamp

Act and which is also contrary to Section 52-B of the Maharashtra Stamp Act. Learned AGP submits that neither the statutory period of six months

can be extended nor is the date of inserting the name of Petitioner would relate back to the date of the original application. He would submit that the

language of Sections 48(3) as well as Section 52 (c) of the Maharashtra Stamp Act clearly stipulates application for refund to be made within six

months from the date of purchase of stamp. That beyond six months, the application, as in the facts of this case, would be time barred. And once the

application is time barred, the Respondent authority has no power to grant refund.

12. Learned AGP refers to paragraphs 8 and 10 of the affidavit in reply and submits that not only the purchaser of stamp and the applicant are

different persons, but the Petitioner has failed to prove that he has filed the claim for refund within the period of limitation and therefore, the Petition

be dismissed.

13. Learned AGP submits in the alternative that in the event this Court is inclined to set aside the impugned order, then the Petition be remanded to the

Respondent No.2 for fresh consideration.

14. I have heard Ms. Walimbe, learned counsel for the Petitioner and Mr. Kankal, learned AGP for Respondents and with their able assistance, I

have perused the papers and proceedings and considered the rival contentions. It must be noted that when on 22nd December, 2022, this matter was

heard and arguments concluded, parties/counsel were given liberty to file judgments by the first week of January, 2023. However, it appears that no

further judgments, except as tendered by counsel for Petitioner during the course of hearing have been submitted and this Court is proceeding on that

basis.

15. Before proceeding further, it would be useful to set out the relevant provisions of the Maharashtra Stamp Act.

16. Section 47 of the Maharashtra Stamp Act provides for allowance for spoilt stamps. The said Section provides that the Collector may on application

made within the period prescribed in Section 48 and if he is satisfied as to the facts make allowance for impressed stamps spoiled in the cases

mentioned therein. For the sake of convenience, the said Section set out as under:-

Ã¢â‚¬Å“47. Allowance for spoiled stamps Subject to such rules as may be made by the State Government as to the evidence to be required, or the inquiry

to be made, the Collector may on application, made within the period prescribed in section 48, and if he is satisfied as to the facts, make allowance for

impressed stamps spoiled in the cases hereinafter mentioned, namely:Ã¢â‚¬

(a) the stamp on any paper inadvertently and undesignedly spoiled, obliterated or by error in writing or any other means rendered unfit for the purpose

intended before any instrument written thereon is executed by any person;

(b) the stamp on any document which is written out wholly or in part, but which is not signed or executed by any party thereto;

(c) the stamp used for an instrument executed by any party thereto whichÃ¢â‚¬

(1) has been afterwards found by the party to be absolutely void in law from the beginning;

(1A) has been afterwards found by the Court, to be absolutely void from the beginning under section 31 of the Specific Relief Act, 1963;

(2) has been afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended;

(3) by reason of the death of any person by whom it is necessary that it should be executed, without having executed the same, or of the refusal of

any such person to execute the same, cannot be completed so as to effect the intended transaction in the form proposed;

(4) for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the

purpose for which it was intended;

(5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-

acceptance of any office thereby granted, totally fails of the intended purpose;

(6) becomes useless in consequence of the transaction intended to be thereby effected by some other instrument between the same parties and

bearing a stamp of not less value;

(7) is deficient in value and the transaction intended to be thereby effected had been effected by some other instrument between the same parties and

bearing a stamp of not less value;

(8) is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is

executed and duly stamped:

Provided that, in the case of an executed instrument, except that falling under sub-clause (1A), no legal proceeding has been commenced in which the

instrument could or would have been given or offered in evidence and that the instrument is given up to be cancelled, or has been already given up to

the Court to be cancelled.

Explanation.Ã¢â‚¬"The certificate of the Collector under section 32 that the full duty with which an instrument is chargeable has been paid is an

impressed stamp within the meaning of this section.Ã¢â‚¬â€‹

(emphasis supplied)

17. As can be seen from Section 47(c)(4), one of the circumstance mentioned therein is the instance of a stamp used for an instrument executed by

any party thereto which for want of the execution thereof by some material party and his inability or refusal to sign the same, is in fact incomplete and

insufficient for the purpose for which it was intended.

18. As can be seen from the facts of this case, that Petitioner herein had in the year 2013 entered into some discussions with agriculturists, desirous of

entering into a Development Agreement with the Petitioner for developing the said property at Shahapur in village Jambhulwada, who, after

negotiations and discussions had agreed to execute a development agreement in favour of Petitioner, where after Petitioner had also prepared draft of

the development agreement and had the same adjudicated by the Respondent No.3-Joint District Registrar, Thane Rural, for payment of stamp duty at

Rs. 40,78,940/- but subsequently since five out of the eleven co-owners of the said property had refused to enter into the said development agreement,

the agreement could not be executed. Therefore, although the Petitioner was ready to go ahead with the transaction but since some of the co-owners

refused to proceed further, Petitioner had no option other than to cancel the plan. Therefore, the case of the Petitioner appears to be covered under

the circumstance mentioned in Section 47 (c) (4) of the Maharashtra Stamp Act as the stamped development agreement could not be executed by the

five co-owners as they refused to sign the same. In other words, the stamps were spoiled stamps.

19. Section 48 provides for the procedure or the manner and the time line within which the refund can be claimed in respect of the circumstances set

out in Section 47. For the sake of convenience Section 48 is set out as under:-

Ã, Ã¢â‚¬Å“48. Application for relief under section 47 when to be made

The application for relief under section 47 shall be made within the following period, that is to say, Ã¢â‚¬

(1) in the cases mentioned in clause (c) (5), within six months of the date of the instruments:

Provided that where an agreement to sale of immovable property on which stamp duty is paid under Article 25 of the SCHEDULE I, is registered

under the provisions of the Registration Act, 1908 and thereafter such agreement is cancelled by a registered cancellation deed for whatsoever

reasons before taking the possession of the property which is the subject matter of such agreement, within a period of five years from the date of

execution of the agreement to sale, then the application for relief may be made within a period of six months from the date of registration of

cancellation deed;

(2) in the case when for unavoidable circumstances any instrument for which another instrument has been substituted cannot be given up to be

cancelled, the application may be made within six months after the date of execution of the substituted instrument.

(3) in any other case, within six months from the date of purchase of stamp.Ã¢â‚¬â€‹

20. There are three situations mentioned in Section 48 covering the circumstances in Section 47 and the period within which application has to be

made in respect of the said three situations. In cases mentioned in Clause (c) (5), the application for relief of a refund of stamp duty under Section 47

has to be made within six months of the date of the instruments. In case when for unavoidable circumstances any instrument for which another

instrument has been substituted cannot be given up to be cancelled, the application can be made within six months after the date of the execution of

the substituted instrument. In any other case, the application is to be made within a period of six months from the date of purchase of the stamp. The

facts of the present case appear to fall under Section 48(3) viz. any other case. Therefore, the period of limitation for making an application would be

within six months from the date of purchase of the stamp.

21. Pursuant to adjudication order dated 30th January, 2013 by the Respondent No.3, fixing the stamp duty of the development agreement at Rs

40,78,940/-, stamp duty of the said amount was purchased in the name of Petitioner viz. M/s Freedom City Ventures and admittedly, the Petitioner

executed the development agreement with intention to obtain rights to develop the property on the same date viz. 30th January, 2013. As five

executants amongst the vendors refused to execute the said document, the stamp became useless and spoiled. Thereafter, an application for refund of

the said stamps was filed in the office of the Collector of Stamps, Thane Rural, on 24th July, 2013, which is within a period of six months as prescribed

in Section 48 (3) of the Maharashtra Stamp Act. Although originally this application for refund of stamp duty was preferred by one of the partners of

Petitioner viz. Shri Santosh Pandurang Naik, however, since the stamps were originally purchased in the name of Petitioner, according to Petitioner

the office of Respondent No. 3 indicated the said error, which error came to be corrected on 10th December, 2013 by mentioning, Ã¢â‚¬Å“I, Freedom

City Ventures, through partner Shri Santosh Pandurang Naik.Ã¢â‚¬ It appears that in support of the said application, Petitioner also filed a notarized

affidavit of the other partner of Petitioner viz. Shri Sohil Munshi that he shall not have any objection if the stamp duty amount as prayed in the

application was refunded. These facts are not disputed by the learned AGP except to say relying upon the affidavit in reply that the name of applicant

was voluntarily changed to the name of Petitioner.

22. Even the fact that Respondent No. 3, after considering the application and the documents filed in support thereof, forwarded the refund application

alongwith with other papers with his opinion to allow the grant of refund to the office of the Deputy Inspector General of Registration, Konkan

Division as well as the communication dated 31st January, 2014 by the Deputy Inspector General of Registration, forwarding the case papers to the

Respondent No.2-Inspector General and Chief Controlling Revenue Authority of Maharashtra State with his opinion to allow the refund of Rs.

36,71,046/- remaining after deducting 10% of the amount as per rules, is not disputed. However, the learned AGP contends that the date of filing of

the correct application made by Petitioner, which has been held to be time barred in view of Section 48 (3) of the Maharashtra Stamp Act is 10th

December, 2013, the date on which the name of Petitioner was added to the application and not the date of the original application which is of 24th

July, 2013.

23. A perusal of a copy of the said application at Exh.D, page 17, to the writ petition, indicates that the application has been corrected by circling the

name of the partner and instead of the same it has been mentioned above that circled name, Ã¢â‚¬Å“I, Freedom City Ventures, through partner Shri

Santosh Pandurang Naik,Ã¢â‚¬ instead of simply Ã¢â‚¬Å“I, Santosh Pandurang Naik.Ã¢â‚¬ Admittedly, this correction has been made on 10th December, 2013.

It is after this correction that the Respondent No. 3 has forwarded the papers with his opinion to allow grant of refund to the office of the Deputy

Inspector General of Registration, Konkan Division, Thane. Not only that, the Deputy Inspector General of Registration, Konkan Division, Thane has

on 31st January, 2014 i.e. after the correction of the error forwarded the case papers of Petitioner to Respondent No. 2 with his opinion to allow the

grant of refund of Rs. 36,71,046/-stating that since the amount of refund involved was more than 10 lacs, therefore, the papers were being forwarded

to Respondent No. 2 for necessary action. However, despite the favourable recommendations from the lower authorities the application of Petitioner

has come to be rejected vide order dated 21st June, 2014 on the ground that the original application was made by Shri Satosh Pandurang Naik on 24th

July, 2013, whereas the name of Petitioner was, after certain corrections on 10th December, 2013, added in the said application. Therefore,

considering that the application on behalf of Petitioner was made only on 10th December, 2013, the Respondent No. 2 passed an order under Section

52-A of the Maharashtra Stamp Act, rejecting/dismissing the claim of refund of stamp duty being barred by limitation.

24. At this stage, it would also be worthwhile to refer to Section

52 of the Maharashtra Stamp Act, which is usefully quoted as under:

Ã¢â‚¬Å“52. Allowance for stamps not required for use When any person is possessed of a stamp or stamps which have not been, spoiled or rendered unfit

or useless for the purpose intended, but for which he has no immediate use, the Collector shall repay to such person the value of such stamp or stamps

in money, deducting therefrom such amount as may be prescribed by rules made in this behalf by the State Government, upon such person delivering

up the same to be cancelled, and proving to the CollectorÃ¢â‚¬â„¢s satisfaction -

(a) that such stamp or stamps were purchased by such person with a bona fide intention to use them; and

(b) that he has paid the full price thereof; and

(c) that they were so purchased within the period of six months next preceding the date on which they were so delivered:

Provided that, where the person is a licensed vendor of stamps, the Collector may, if he thinks fit, make the repayment of the sum actually paid by the

vendor without any such deduction as aforesaid.Ã¢â‚¬â€‹

25. This provision obliges the State Government to repay to a person the value of stamps in money where a person is possessed of a stamp which has

not been spoiled or rendered unfit or useless for the purpose intended but for which he has no immediate use, when the said stamps are delivered to

the Collector for cancellation and also proving to the Collector satisfaction that such stamps were purchased by the person with a bonafide intention to

use them and that he had paid the full price thereof and that they were so purchased within the period of six months next preceding the date on which

they were so delivered for cancellation to the Collector. Even this Section 52 limits the period to six months.

26. It is not in dispute that the original application for refund of stamp duty was made on 24th July, 2013 by one of the partners of the Petitioner,

although the stamp duty was originally purchased in the name of the partnership firm viz the Petitioner. It is also not in dispute that on 10th December,

2013 Petitioner had filed the statement with changes in name as to M/s Freedom City Ventures, through partner Shri Santosh Pandurang Naik. It has

been contended on behalf of the Respondent that there is no provision under the Maharashtra Stamp Act for making any amendments or alterations or

changes or modification to the name of the applicant in the application for refund of stamp duty. It has been submitted that such an action would be

contrary to the provisions of Section 52-B of the Maharashtra Stamp Act. Section 52-B of the Maharashtra Stamp Act is therefore quoted as under:-

Ã, Ã¢â,¬Å“52B. Invalidation of stamps and saving Notwithstanding anything contained in sections 47, 50, 51 and 52,Ã¢â,¬

(a) Any stamps which have been purchased but have not been used or in respect of which no allowance has been claimed on or before the day

immediately preceding the date of commencement of the Bombay Stamp (Amendment) Act, 1989 (hereinafter referred to as Ã¢â,¬Å“the commencement

dateÃ¢â,¬) and the period of six months from the date of purchase of such stamps has not elapsed before the commencement date, may be used before a

period of six months from the date of purchase of such stamps is completed, or delivered for claiming the allowance under the relevant provision of

this Act; and any stamps not so used or so delivered within the period aforesaid shall be rendered invalid.

(b) Any stamps which have been purchased on or after the commencement date but have not been used, or no allowance has been claimed in respect

thereof, within a period of six months from the date of purchase thereof, shall be rendered invalid.Ã¢â,¬â€‹

27. This is a non-obstante provision which clearly provides that notwithstanding anything contained in Sections 47, 50, 51 and 52, any stamps which

have been purchased but have not been used or in respect of which no allowance has been claimed within a period of six months from the date of

purchase or an allowance has not been claimed within the provisions of this Act, such stamps shall be rendered invalid. Section 52-B requires stamps

to be used within six months of its purchase and where not used or for failure to apply for allowance, in either case entails consequences as provided

in sub- section 2 of the stamps being rendered invalid.

28. In my view, the absence of any provision to amend, alter, change or modify the name of the applicant in the application for claiming refund of

stamp duty should not come in the way of making a bonafide correction as long as there is no express statutory prohibition to do so. In fact, the

authority to correct ministerial errors is an inherent power vested in every authority. This is not a case where some unconnected person has preferred

an application. It is not unheard of that persons who may not have complete knowledge of procedures may make applications which applications are

then checked or scrutinized for any errors and then those errors or objections are duly corrected. It also happens in the filings made in the various

courts of our country including this Court. It is not in dispute that Shri Santosh Pandurang Naik was a partner of the Petitioner. This is a case where

erroneously the application was made, though, in time but in the name of partner, which error or objection was corrected and the correct name of the

applicant i.e. the PetitionerÃ¢â‚¬â„¢s name in whose name the stamps were bought was inserted. In my view, the error was a bona fide error. Therefore,

the averment of the Respondents that the partner of Petitioner has voluntarily changed the name of applicant to M/s Freedom City Ventures, through

its partner Shri Santosh Pandurang Naik in the absence of any allegation of tampering with the record or mala fides cannot be used to time bar the

application. It is also not in dispute that the stamps were purchased which is evidenced by the challan referred to above. The provisions of the

Maharashtra Stamp Act are to facilitate execution of documents. There are provisions which also provide for various situations when the stamps

which have been purchased cannot be used or are spoiled due to want of execution or a failure for the transaction to go through. Obviously, there

should be a limitation period on the claim for an allowance or for refund of stamp duty as the State funds cannot be kept in a limbo for an uncertain

period. However, this is not a case where the application for refund of stamp duty has been made beyond the period of limitation. The application for

refund of stamp duty was made on 24th July, 2013, which is within the period of six months from the date of purchase of the stamp as well as the date

of execution viz. 30th January, 2013, which is well within the period of limitation prescribed in Section 48(3) of the Maharashtra Stamp Act.

29. Correction/removal of objections in any proceeding before a Court or an authority does not render proceeding time barred, particularly when the

objection does not alter the nature of the proceeding. In this case, it is an admitted fact that Petitioner had purchased the stamps and it is only a

ministerial act that PetitionerÃ¢â‚¬â„¢s partnerÃ¢â‚¬â„¢s name was voluntarily corrected to include the PetitionerÃ¢â‚¬â„¢s name. Naturally, therefore, removal of

such objection would relate back to the date of the original application.

30. Having held that the application for refund was be made within the period of six months as prescribed in Section 48(3) of the Maharashtra Stamp

Act, the question of extending the period of six months would not arise.

31. It is also not disputed that under Section 52-B of the Maharashtra Stamp Act, the stamps will be rendered invalid, if they have not been used or no

allowance has been claimed, in respect thereof, within a period of six months from the date of purchase. But as held above, the application for refund

has been made within a period of six months i.e., an allowance has been claimed within a period of six months and therefore, Section 52-B of the

Maharashtra Stamp Act would not come in the way of such an application although the stamps may be rendered invalid as not used.

32. This Court in the case of M/s S. K. Realtors and Anr Vs Inspector General of Stamps and Controller of Stamps (supra) has while considering a

case involving refund of stamp duty and interpreting Section 48 of the Maharashtra Stamp Act has in paragraph 10 observed as under:-

Ã¢â‚¬Å“10. The purpose behind incorporating section 48 of the Maharashtra Stamp Act is clearly to ensure that in cases where transaction is not

executed, or cancelled before execution, then the State is not entitled to claim revenue for execution of the said document, and the State, therefore, is

under an obligation to refund the said amount. The State, therefore, in our view, cannot resort to profiteering on the basis of a document which is not

executed. The Dy. Inspector General of Stamps, Pune was not justified on relying on the circular issued by the Department, which stated that

application has to be made online. It is not in dispute that the Petitioners had not opportunity to make application online, since the server was not

working, and therefore, he could not make application online. The Jt. District Registrar-I and Stamp Collector in his report has accepted this

position.Ã¢â‚¬â€‹

33. Even Section 52 as mentioned above requires the State Government to repay the value of stamps in money in case the stamps are not used and

given to Collector for cancellation.

34. There is no doubt in the facts of the present case that the stamp duty of an amount of Rs. 40,78,940/- has been purchased by the Petitioner, which

has not been used as the development agreement was not executed in view of the five co-owners refusing to execute the same. The State exchequer

has received this amount. Going by the aforesaid decision, the State is under an obligation to refund the said amount as per rules on the basis of a

document which is not executed. In this case also the application has, as observed, been made in time and the State would be obliged to refund the

same, as per rules.

35. In the circumstances, the impugned order dated 21st June, 2014 holding the application for refund of stamp duty to be time barred requires to be

set aside and is hereby set aside.

36. The Respondent no. 2- Chief Controller of Stamps, Maharashtra State, is directed to consider the PetitionerÃ¢â‚¬â„¢s application for refund afresh in

the light of the aforesaid discussion and to pass a reasoned speaking order within a period of two months from today after affording an opportunity of

hearing to the Petitioner.

37. Writ Petition stands allowed in the above terms. Parties to bear their own costs.