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

WRIT PETITION (ST.) NO.93915 OF 2020

1. Macrotech Developers Ltd.

A Company registered under the provisions of Companies Act, 1956 having its registered office at 412, Floor 4, 17G, Vardhaman Chambers, Cawasji Patel Road, Horniman Circle, Mumbai 400 001.

2. Palava Dwellers Private Ltd.

A Company registered under the provisions of Companies Act, 1956 having its registered office at 412, Floor 4, 17G, Vardhaman Chambers, awasji Patel Road, Horniman Circle, Mumbai 400 001.

...Petitioners

Vs.

1. State of Maharashtra

Through the Secretary, Department of Revenue and Forest having its office at Mantralaya, Mumbai 400 032.

2. The Joint Sub-Registrar, Kalyan – 5 having its office at Kalyan Dombivli Municipal Corporation, Shivaji Chowk, Kalyan (West.), Dist. Thane.

3. The Joint Sub Registrar, Class II Bhiwandi having its office at Taluka 2, Kapkneri, Nanmadan Arcade, Opp. State Bank Taluka Bhiwandi, Dist. Thane.

...Respondents

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Nijasure

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Mr. Amogh Singh with Mr. Jeet Gandhi i/b. D.P.Singh for the
Petitioners.

Mr. P.P. Kakade, Government Pleader with K.S. Thorat AGP for
the State.

**CORAM: K.K. TATED &
R.I. CHAGLA, JJ.**

ORDER RESERVED ON 1ST FEBRUARY, 2021.

ORDER PRONOUNCED ON 22nd FEBRUARY, 2021.

O R D E R (*Per R.I. Chagla, J.*)

1. Rule. Rule made returnable forthwith. Heard by consent.
2. The Petitioners have filed this Petition under Article 226 of the Constitution of India seeking directions against the Respondents to grant the Petitioners the benefit of the Government Order dated 29th August, 2020 in payment of stamp duty in addition to the concession in stamp duty provided for in the Regulations for development of Integrated Township Project (for short "the said ITP Regulation") which Regulations, appended to the Government Notification dated 8th March, 2019, have been framed by the Government exercising powers under Section 37 (1AA) (c) of the Maharashtra Regional & Town Planning Act, 1966 (for short "MR & TP").

3. The Petitioners are engaged in the business of real estate and carry out development of various projects at Mumbai, Thane, Kalyan and Bhiwandi including the lands that have been notified as the Integrated Township Projects (ITPs) situated at Kalyan and Bhiwandi. The Respondent No.1 is the State of Maharashtra through the Secretary, Department of Revenue and Forest. The Respondent Nos.2 and 3 are the joint Sub-Registrars of Kalyan and Bhiwandi, Registration Offices within District Thane and performing the duties and responsibilities under the Maharashtra Stamp Act, 1958 as also under the Registration Act, 1908. Respondent Nos.2 and 3 are instrumentalities of the State for the purposes of Article 12 of the Constitution of India and amenable to the writ jurisdiction of this Court.

4. The Respondent No.1 State had issued an order bearing No. Mudrank 2006/UOR.53/CR 536/M-1 dated 15th January, 2008. By this order the stamp duty for agreements and conveyances were reduced by 50% in Special Township Projects (for short "STP").

5. The Government of Maharashtra, Urban Development Department issued a Notification bearing No. TPS-1816/CR-368/16/Part-1/DP-ITP/UD-13 dated 8th March, 2019. By this Notification, Regulations for development of the said ITPs were notified. By these Regulations, the Government had given certain concessions / incentives for development of the said ITPs. One such concession was with respect to the 50% of the stamp duty as otherwise required to be paid under the Mumbai Stamp Act. The said ITP Regulations were brought into force by repealing all the prior Regulations. The STP's had earlier been replaced by the said ITP by an amendment made in the MR & TP ct, 1966 vide Maharashtra Act, 43 of 2014, with effect from 22nd April, 2015. The said ITP Regulations have been approved by the cabinet and have received the assent of the Governor of the State of Maharashtra.

6. The Petitioners have stated that they had registered their project "Kunal Espiree – Phase III under the Real Estate (Regulation and Development) Act, 2016 on 1st August, 2017. They have stated that their project falls under the said ITP Regulations. Accordingly, the Petitioners are claiming

concession of 50% of stamp duty under Regulation 13.3 of the said ITP Regulations.

7. It has been stated in the Petition that in and around March, 2020 on account of outbreak of the Covid 19 pandemic, the Government of India took effective measures to prevent the spread of Covid-19 pandemic. The measures taken included nationwide lock down which extended till 30th June, 2020. The Government of India and the Reserve Bank of India formulated financial relief measures, so as to reduce the financial burden that resulted from the nationwide lock down with a view to encourage people to buy houses and alleviate the hardships faced by the real estate industry, the Revenue and Forest Department issued an Order dated 29th August, 2020 granting concession in payment of stamp duty. By the said Order, the stamp duty was reduced by 2% for the State of Maharashtra (excluding Mumbai) for the period from 1st September, 2020 to 31st December, 2020 and by 1.5% for the State of Maharashtra (excluding Mumbai) for the period from 1st January, 2021 to 31st March, 2021. Likewise by the said Order the stamp duty was reduced by 3% for the Mumbai District and Mumbai

Suburban District for the period from 1st September, 2020 to 31st December, 2020 and by 2% for the Mumbai District and Mumbai Suburban District for the period from 1st January, 2021 to 31st March, 2021.

8. Further, by a Notification dated 28th August, 2020 (“Surcharge Exemption Notification”), the surcharge leviable in respect of the instruments was reduced to NIL for the period starting from 1st September, 2020 and ending 31st December, 2020 and surcharge of 0.5% for the period starting from 1st January, 2021 and ending on 31st March, 2021. A tabular statement has been given in paragraph 3.5 of the Petition of the position upto 31st August, 2020, position post 2020 Notification and Surcharge Exemption Notification i.e. 1st September, 2020 to 31st December, 2020 and the position post Notification and Surcharge Exemption Notification i.e. 1st January, 2021 to 31st March, 2021. A tabular statement in paragraph 3.5 of the Petition reads thus:-

(a) Position upto 31st August, 2020

Instrument	Stamp duty payable as per stamp Act	+ Surcharge (if applicable)	Total stamp Duty Payable
Conveyance / Agreement to Sell outside ITPs	5%	1%	6%
Conveyance / Agreement to Sell within ITP (50% concession)	2.5% (50% of 5%)	1%	3.5%

(b) Position post 2020 Notification and Surcharge Exemption Notification i.e. 1st September, 2020 to 31st December, 2020.

Instrument	Stamp duty payable as per stamp Act	+ Surcharge (if applicable)	Total stamp Duty Payable
Conveyance / Agreement to Sell outside ITPs	3%	0%	3%
Conveyance / Agreement to Sell within ITP	1.5% (50% of 3%)	0%	1.5%

(c) Position post 2020 Notification and Surcharge Exemption Notification i.e. 1st January, 2021 to 31st March, 2021.

Instrument	Stamp duty payable as per stamp Act	+ Surcharge (if applicable)	Total stamp Duty Payable
Conveyance / Agreement to Sell outside ITP	3.5%	0.5%	4%
Conveyance / Agreement to	1.75% (50% of 3.5%)	0.5%	2.25%

Sell within ITP			
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9. It is the case of the Petitioners that despite the fact that the Petitioners and / or the purchasers of the units in ITPs are liable to pay stamp duty @ 1.5% upto 31st December, 2020 in the manner provided in tabular statement, the Respondent Nos.2 and 3 have been arbitrarily levying / demanding / charging payment of stamp duty at the rate of 2.5% [(5% (as per Stamp Act) – 50% (as per ITP Regulations)] for Taluka Kalyan and 3% [(5% (as per Stamp Act) – 2% (as per August 2020 Notification)] respectively. The Petitioners have referred to Index No.II issued by Respondent Nos 2 and 3 in respect of agreements to sell executed prior to 1st September, 2020 and for the period thereafter for units in the ITPs, being developed by the Petitioners. Paragraph 3.7 of the Petition reads thus:-

3.7 From a perusal of the aforesaid Index No. IIs, the following position with regard to the rate of stamp duty charged by the Respondent Nos.2 and 3:-

Instruments executed before 1st September, 2020

Serial No of	Market Value	Stamp Duty	Rate of Stamp
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Instrument	(Rs.)	Paid (Rs.)	Duty including 1% Surcharge
KLN5-4692-2020 Respondent No.2	39,61,000	1,39,000	3.5%
BVD2-3758-2020 Respondent No.4	67,98,475	2,38,000	3.5%

Instruments executed after 1st September, 2020

Serial No of Instrument	Market Value (Rs.)	Stamp Duty Paid (Rs.)	Rate of Stamp Duty including 1% Surcharge
KLN5-5992-2020 Respondent No.2	81,95,000	2,05,000	2.5%
BVD2-5242-2020 Respondent No.3	66,59,586	2,00,000	3%

From the above, it is clear that Respondent No.2 i.e. for Taluka Kalyan has taken into account 50% concession as per the ITP Regulations, but not taken into account the reduction in stamp duty by 2% as per the August 2020 Notification. Similarly, the Respondent No.3 i.e. for Taluka Bhiwandi has taken into account the reduction in stamp duty by 2% as per the August 2020 Notification and not taken into account the 50% stamp duty concession as per the ITP Regulations. Petitioners state that instead of levying the uniform stamp duty at the rate of

1.5%, the Respondent Nos.2 and 3 have been arbitrarily and without any basis been levying stamp duty at higher rates which is contrary to the August 2020 Notification and the ITP Regulations.

10. The Petitioners have stated that they have been informed by the office of the Respondent Nos.2 and 3 that the Petitioners were not entitled to get the benefit of the Order dated 29th August, 2020 together with the said ITP Regulations. Having been denied the benefits of the Order dated 29th August, 2020 together with the said ITP Regulations, Petitioners have filed the present Petition.

11. Mr. Amogh Singh, the learned Counsel appearing for the Petitioners has submitted that the projects of the Petitioners are ITP's and the said ITP Regulations dated 8th March, 2019 are applicable to these projects. This has not been controverted by the Respondents. Under Regulation 13.3 of the said ITP Regulations a concession of 50% of the stamp duty as otherwise required under the Mumbai Stamp Act is to be granted. He has further submitted that the subsequent Order dated 29th August, 2020 issued during the Covid-19 pandemic and in public interest would also be

applicable to the projects of the Petitioners and that the Petitioners are further entitled to the benefit of concession in stamp duty granted by vide order dated 29th August, 2020.

12. The learned Counsel for the Petitioners has submitted that the Respondents have failed to provide the concession in stamp duty to the Petitioners which is required to be provided upon a conjoint reading of the said ITP Regulation 13.3 and Order dated 29th August, 2020. He has drawn this Court's attention to the details of the excess stamp duty charged by the Respondents as mentioned at paragraph 3.7 of the Petition. He has submitted that both the said ITP Regulations as well as Order dated 29th August, 2020 are in the form of beneficial legislation for public interest and thus the Respondents should interpret the same in a way that the benefit is passed on to the general public at large.

13. The learned Counsel for Petitioners has submitted that the Respondent No.2 in its Affidavit in Reply misinterpreted the said ITP Regulations by placing reliance upon the Amendment Order dated 21st December, 2020, amending Order dated 29th August, 2020. Condition No.1 of the

Amendment Order which states that such project proponents/s or purchaser or lesser or lessee of any immovable properties under any user or any subsidiary company of any project proponent/s which has availed remission or reduction as per any other order / policy of the Government of Maharashtra shall not be entitled for remission or reduction of stamp duty under this Order and that since the Petitioners had availed benefits at 50% concession to the entire ITPs project, under the Order / policy of the Government, the Petitioners are not entitled to any concession as claimed by the Petitioners under the said order dated 29th August, 2020. He has submitted that it is evident from the said ITP regulations that the said ITP Regulations are in the nature of a statute having been approved by the Cabinet and received assent of the Governor of State of Maharashtra.

14. The learned Counsel for the Petitioners has further submitted that on the bare perusal of the Amendment Order dated 21st December, 2020, the conditions stipulated therein are applicable to the instruments or documents of lease of any immovable property being executed for the period

exceeding twenty nine years or in perpetuity. The documents on which the Petitioners are claiming concession are instruments of sale of immovable property. Therefore, the amendment order dated 21st December, 2020 is not applicable to the case of the Petitioners. In any event assuming that the amendment order is applicable to the Petitioners then also the conditions in the amendment order cannot take away the concession of 50% granted under the said ITP Regulation 13.3 which is in the nature of a statutory right and cannot be taken away by a mere order passed by Revenue and Forest Department. The condition would only be applicable to an "order or policy" of the State of Maharashtra and not to the said ITP Regulations which are in the nature of a statute. He has therefore submitted that the rit Petition should be allowed and the Petitioners should be granted concession as prayed for in the Petition as well as refund of the excess stamp duty paid by the Petitioners till now.

15. Mr. P.P. Kakade, learned Government Pleader appearing for the Respondents has submitted that the Petitioners are not entitled to the concession in stamp duty

provided for in the Order dated 29th August, 2020. He has placed reliance upon the Affidavit of Suhas Vitthal Jadhav, the Joint Sub-Registrar, Class – II, Kalyan No.5 on behalf of Respondent No.2. He has submitted that the Government of Maharashtra had issued Amendment Order dated 21st December, 2020, whilst exercising powers conferred under Clause (a) of Section 9 of the Maharashtra Stamp Act, 1958 thereby amending the Government of Maharashtra order / notification dated 29th August, 2020 issued by the Revenue and Forest Department, Mantralaya, Mumbai. By the said amendment, the earlier GR / Notification dated 29th August, 2020 was amended by way of insertion, additions and notifying conditions and stating Explanation.

16. The learned Government Pleader has drawn the Court's attention in particular to paragraph 3(f) of the said Affidavit in Reply, which reads thus:-

f) I say that as per the added conditions through amendment, being condition No.1 clearly states that any such project proponent/s which has availed the remission or reduction as per any other Order or Policy of the Government of Maharashtra shall not be entitled for remission or reduction of stamp duty under this Order,

therefore, since the Petitioner has already availed the benefits @ 50% concession to the said entire ITP project, the Petitioner shall not be entitled to any of the further concession as claimed by the Petitioners as under the Government Resolution / Notification dated 29th August, 2020.

17. The learned Government Pleader has submitted that since the Petitioners had availed the benefit at 50% concession for the ITP projects, the Petitioners are not entitled to any further concession as claimed by them under the Government Resolution / Notification dated 29th August, 2020. He has submitted that the Petitioners have not availed prior adjudication facility available under Section 31 of the Bombay Stamp Act, in order to know the exact quantum of stamp duty chargeable and payable on the intended instrument before execution and presentation for registration. He has thus submitted that the Petitioners are not entitled to claim further concession under the Government Resolution / Notification dated 29th August, 2020, which had been issued purely as a temporary measure in view of the Covid-19 pandemic situation. He has thus submitted that the correct stamp duty has been levied on the Petitioners projects and which has been stated in paragraph 4 of the said Affidavit in Reply, which reads thus :-

4. I say that, as stated hereinabove after applying the provisions of the 2008 G.R./ Notification issued by the State Government, 50% concession to the stamp duty payable is granted to the Petitioner. Thereby, from the period 01.09.2020 to 31.12.2020 out of total 5% of the stamp duty, the applicable stamp duty payable after 50% concession is 2.5%. Secondly, for the current period i.e. 01.01.2021 to 31.03.2021 out of total 5% stamp duty, by applying 50% concession, the total stamp duty payable is 2.5% + 0.5% being local body tax (L.B.T.), therefore, applicable tax payable for the current period is 3%.

18. The learned Government Pleader has accordingly submitted that the Petition be dismissed.

19. Having considered the rival submissions, it appears to be an undisputed fact that the Petitioners projects have been considered to be ITP projects and entitled to concession in stamp duty as provided for in the said ITP Regulations. It is further apparent from the Notification issued by the Government of Maharashtra, Urban Development Department dated 8th March, 2019 that the term Special Township Project ("STP") had been replaced by the said ITP by an amendment made in the MR & TP Act, 1966 vide Maharashtra Act, 43 of 2014 with effect from 22nd April, 2015. As per the Notification, the Government of

Maharashtra exercising its power conferred by sub section (1AA) (c) of Section 37 of the MR & TP Act, 1966 accorded sanction to the proposed modification with certain changes and replaced all the existing Regulations for Development of ITP for Special Planning Authorities / Area Development Authorities excluding Municipal Councils and Municipal Corporations (kept in abeyance) by the new set of Special Regulations for Development of ITP appended at Annexure A to the said Notification. These Regulations appear to have been approved by the Cabinet and have received the assent of the Governor of the State of Maharashtra under these Regulations, Regulation 13.3 is relevant which reads as under:-

13.3. Concession in Stamp Duty :- For the purchase of land by project proponent for township area or for the first transaction from Project Proponent/s to Purchaser of any unit under any user from approved Master Layout Plan or subsequent building plan under this Regulation, concession of 50% of stamp duty as otherwise required under the Mumbai Stamp Act, shall be granted. This concession will be available only at one stage i.e. either at the time of land purchase or at the time of sale of units. Also, if the project proponent assigns the rights to his own subsidiary companies for the running of the Amenities in such Township

project as per the approved plan in such cases concession of 50% of stamp duty as otherwise required under the Mumbai Stamp Act, shall be granted.

20. Under Regulation 13.3, there is concession of 50% of stamp duty which shall be granted to the said ITP's. Since it is an admitted position that the Petitioners project was considered as an ITP, they were entitled to such concession of 50% of stamp duty otherwise required to be paid under the Maharashtra Stamp Act.

21. It is necessary to note that by the Order dated 29th August, 2020 issued by the Revenue and Forest Department, Government of Maharashtra further concession in stamp duty was to be granted during the prevailing Covid-19 pandemic situation. The Order dated 29th August, 2020 is reproduced as under:-

ORDER

MAHARASHTRA STAMP ACT,

***No. Mudrank-2020/CR.No.136/M-I-(Policy), ---
In exercise of the powers conferred by clause
(a) of Section 9 of the Maharashtra Stamp Act
(LX of 1958) (herein after referred to as 'the***

said Act'.) and in supersession of the Government Order, Revenue and Forests Department, No. Mudrank-2020/CR No.136/M-1 (Policy), dated the 28th August, 2020, issued in this behalf, the Government of Maharashtra, being satisfied that it is necessary to do so in the public interest, hereby reduces the stamp duty by Three per cent, in Mumbai District and Mumbai Sub-Urban District and by Two per cent, in Rest of the State of Maharashtra for the period starting from 1st of September 2020 and ending on 31st of December 2020 and by Two per cent, in Mumbai District and Mumbai Sub-Urban District and by One and half per cent, in Rest of the State of Maharashtra, for the period starting from 1st January, 2021 and ending on 31st March, 2021, as otherwise chargeable under clause (b) of Article 25 of Schedule – 1 appended to the said Act, on the instrument of Conveyance or Agreement to sell of any immovable property.



**By order and in the name of
the Governor of Maharashtra
PRITAMKUMAR V JAWALE
Desk Officer to Government.**

22. From the said Order, it is apparent that the said order was issued in public interest. The concession given in the stamp duty was by way of relaxation in the given circumstances of the Covid-19 pandemic. The concession of stamp duty was on instruments of conveyances or

agreements to sell any immovable properties. The stamp duty was relaxed by 3% in Mumbai District and Mumbai Suburban District and 2% in the rest of the State of Maharashtra for the period from 1st September, 2020 and ending on 31st December, 2020 and by 2% in Mumbai District and Mumbai Suburban District and by 1.5% in rest of the State of Maharashtra for the period starting 1st January, 2021 and ending on 31st March, 2021 as otherwise chargeable under Clause (b) of Article 25 of Schedule 1 appended to the Maharashtra Stamp Act.

23. The Petitioners appear to be aggrieved, in view of they not having been granted the benefit in the stamp duty as provided under Order dated 29th August, 2020. The Petitioners project otherwise been considered as ITP's and entitled to the benefit of 50% concession under the said ITP Regulations. The non grant of the benefit of stamp duty as per the Order dated 29th August, 2020, appears to be from the Respondents reliance on condition No.1 of the Amendment Order dated 21st December, 2020 issued by the Government of Maharashtra, which states that, any such project proponent/s which have availed the remission or

reduction as per any other Order or policy of the Government of Maharashtra shall not be entitled for remission or reduction of stamp duty under this order. The Conditions and Explanation in the Amendment Order dated 21st December, 2020 which are relevant reads thus:-

Conditions –

(1) The project proponent/s or purchaser or lessor or lessee of any immovable property under any user or any subsidiary company of any project proponent/s which has availed the remission or reduction as per any other order or policy of the Government of Maharashtra shall not be entitled for remission or reduction of stamp duty under this order.

(2) No refund shall be granted where full or proper stamp duty has already been paid by any of the project proponent/s or purchaser or lessor or lessee of any immovable property under any user or any subsidiary company of any project proponent/s, prior to the date of publication of this order in the Maharashtra Government Gazette.

Explanation –

(1) The benefit of stamp duty reduction provided by this Order shall apply only to the instrument or document/s of lease of any immovable property being executed for the

period exceeding twenty nine years or in perpetuity.

24. The learned Government Pleader has placed reliance upon an earlier order issued by Government of Maharashtra dated 15th January, 2008 which had granted concession of 50% of stamp duty otherwise, chargeable under clause (b) and (d) of Article 25 of Schedule - I appended to the Maharashtra Stamp Act on the instruments of Agreement or conveyances relating to the sale of property located in the area notified as Special Township Project. It has been submitted by the learned Government Pleader that the earlier order dated 15th January, 2008 issued by the Government of Maharashtra falls under the term Order mentioned in Condition No.1 of the Amendment Order dated 21st December, 2020 and that the Petitioners having availed of said concessions under the order are not entitled to further remission or reduction of stamp duty under the subsequent order dated 29th August, 2020 as amended. It is further contended that the said ITP Regulations would also be treated as an Order of the Government of Maharashtra. The only change being that ITP has replaced the STP by amendment to the MR & TP Act, 1966 vide Maharashtra Act,

43 of 2014 with effect from 22nd April, 2015. Otherwise, the same concession of 50% of Stamp Duty has been granted to the said ITP's as had been granted to the STP's under the previous order.

25. We have considered the said ITP Regulations which are appended as annexure A to the notification dated 8th March, 2019 issued by the Government of Maharashtra, Urban Development Department. These Regulations are clearly statutory Regulations having received the assent of the Governor of Maharashtra as well as approved by Cabinet. Regulation 13.3 of the said ITP Regulation grants concession of 50% of stamp duty as otherwise required under the Maharashtra Stamp Act can in no circumstance be considered to be merely an order of the Government of Maharashtra. Thus, the order or policy of the Government of Maharashtra mentioned in Condition 1 of the Amendment Order dated 21st December, 2020 cannot include the said ITP Regulations which are statutory Regulations framed by the Government exercising powers conferred by subsection (1AA) (C) of Section 37 of the MR & TP Act, 1966. Hence, we find much substance in the submission of Mr. Singh for the

Petitioners that the conditions in the said Amendment Order of the State of Maharashtra cannot take away the statutory rights conferred by the Regulation 13.3 granting concession of 50% in stamp duty to the said ITP's. We further find from the explanation to the Amendment Order dated 21st December, 2020 that it pertains to an amendment to the said Order dated 29th August, 2020 in so far as it extends the benefit of the stamp duty reduction provided by this order to apply only to the instrument or document/s of lease of any immovable property being executed for the period exceeding 29 years or in perpetuity.

26. Though the Respondents, in para 6 of their Affidavit in Reply dated 20.01.2021 raised objection that the matter pertains to the Single Bench, the said issue was not argued by the learned AGP. In any case, it is to be noted that as per the present roster, the matter pertains to the Division Bench. Not only that by this petition under Article 14 and 226 of the Constitution of India, the Petitioners are challenging the action of the Respondents Officer in not providing the benefits of Order bearing No.Mudrank-2020/C.R.No.136/ M-1(Policy) dated 29.08.2020 issued by the Revenue and

Forest Department, State of Maharashtra under the Maharashtra Stamp Act reducing the stamp duty on the instrument on conveyance and/or agreement for sale on immovable property along with benefits as per the Notification dated 08.03.2019 issued by the Government of Maharashtra, Urban Development Department, Mantralaya, Mumbai – 400032 for Integrated Township Project. Therefore, the objection raised in the Affidavit in Reply, is not maintainable.

27. We are of the view that the benefit in stamp duty granted by Order dated 29th August, 2020 would be applicable to the said ITPs of the Petitioners and that any restricted meaning given to the said Order by placing reliance on the Amendment Order dated 21st December, 2020 is not acceptable. The Amendment Order dated 21st December, 2020 show that the benefit of stamp duty in the said Order is applicable only to the instrument / documents/s of lease of any immovable property and not to an Instrument of Conveyance or any other agreement to sell of any immovable property. Hence we had called upon Government Pleader by order dated 29th January, 2021 to explain

whether it is applicable to sale deeds and other documents or not. On next hearing he submitted that benefit in stamp duty is given to Instrument of Conveyances, other agreements of sale of immovable property also.

28. The Petitioners are thus entitled to concession in stamp duty on its instruments of conveyances or agreements to sell its immovable property under the Order dated 29th August, 2020 in addition to the concession in stamp duty granted by Regulation 13.3 of the said ITP Regulations. This would be clear from the conjoint reading of the said order dated 29th August, 2020 and said the ITP Regulations.

29. The position post Order dated 29th August, 2020 i.e. the period from 1st September, 2020 to 31st December, 2020 and the subsequent period from 1st January, 2021 to 31st March, 2021 taking into account the Surcharge Exemption Notification, would read as under:-

Position post 2020 Notification and Surcharge Exemption Notification i.e. 1st September, 2020 to 31st December, 2020

Instrument	Stamp Duty Payable as per	+ Surcharge (if applicable)	Total Stamp Duty Payable
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	Stamp Act		
Conveyance / Agreement to Sell outside ITP	3%	0%	3%
Conveyance / Agreement to Sell within ITP	1.5% (50% of 3%)	0%	1.5%

Position post 2020 Notification and Surcharge Exemption Notification i.e. 1st January, 2021 to 31st March, 2021.

Instrument	Stamp Duty Payable in Terms of Maharashtra Stamp Act, 1958	+ Surcharge (if applicable payable)	Total Stamp Duty payable
Conveyance / Agreement to Sell outside ITP	3.5%	0.5%	4%
Conveyance / Agreement to Sell within ITP	1.75% (50% of 3%)	0.5%	2.25%

30. Accordingly, the following order is passed :-

a. It is declared that the Petitioners are entitled to the benefits of Order bearing No.Mudrank-2020/C.R.No.136/ M-1(Policy) dated 29.08.2020 issued by the State of Maharashtra under the Maharashtra Stamp Act and subsequent orders granting concession in payment of stamp duty on the instrument of conveyance or

agreement to sell of any immovable property in addition to the benefits already granted as per the Notification dated 08.03.2019 issued by the Government of Maharashtra, Urban Development Department, Mantralaya, Mumbai – 400032 for Integrated Township Project.

b. If any excess stamp duty is levied by the Respondent and recovered from the Petitioner or their purchasers without giving benefit of Order bearing No.Mudrank-2020/ C.R.No.136/ M-1(Policy) dated 29.08.2020 issued by the State of Maharashtra and benefit of Integrated Township project, the Petitioner shall provide to the Respondents a statement of their claim of excess stamp duty within four weeks from the date of receipt of the certified copy of this order and if such claim is made, the Respondents to refund the said excess stamp duty within four weeks from the date of receipt of application, failing which they will have to pay interest @ 12% p.a.

c. Rule is made absolute accordingly.

d. No order as to costs.

(R. I. CHAGLA J.)

(K.K.TATED, J.)