

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

R/SPECIAL CIVIL APPLICATION NO. 12372 of 2016
[On note for speaking to minutes of order dated 22/06/2022 in
R/SCA/12372/2016]

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MEERA S. DESAI W/O SHAILESHBHA DESAI THROUGH POA NITIN
YOGESHCHANDRA TIRVEDI & 1 other(s)
Versus
DEPUTY COLLECTOR & 1 other(s)

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Appearance:

MR AADITYA P DAVE FOR NANAVATI ASSOCIATES(1375) for the
Petitioner(s) No. 1,2
MR SAHIL TRIVEDI, AGP for the Respondent(s) No. 1
NOTICE SERVED BY DS for the Respondent(s) No. 2

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CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA
Date : 06/07/2022
ORAL ORDER

Learned advocate Mr.Aaditya Dave has filed the note for speaking to minutes with regard to refund of the amount, which is already deposited by the petitioner before the revisional authority. He has submitted that the petitioner had deposited 25% of the stamp duty deficit amount, which is recorded in the order dated 19.03.2016.

In this view of the matter, the following directions shall be added in the order dated 22.06.2022.

“The revisional authority shall refund the amount of 25% of the deficit stamp duty deposited by the petitioner after due verification.”

Rest of the order remains intact. The note for speaking to minutes stands disposed of accordingly. Registry to issue fresh writ/order accordingly.

(A. S. SUPEHIA, J)

ABHISHEK/1



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R/SPECIAL CIVIL APPLICATION NO. 12372 of 2016**

MEERA S. DESAI W/O SHAILESHBHAI DESAI THROUGH POA NITIN
YOGESHCHANDRA TIRVEDI & 1 other(s)

Versus

DEPUTY COLLECTOR & 1 other(s)

Appearance:

MR ROHAN LAVKUMAR WITH MR ADITYA DAVE FOR NANAVATI
ASSOCIATES(1375) for the Petitioner(s) No. 1,2

MR SAHIL TRIVEDI, AGP for the Respondent(s) No. 1

NOTICE SERVED BY DS for the Respondent(s) No. 2

CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA

Date : 22/06/2022

ORAL ORDER

1. **Rule.** Learned AGP waives service of notice of rule for the respondent-State.

2. At the outset, learned advocate Mr.Rohan Lavkumar appearing for the petitioners has submitted that the issue is squarely covered by various decisions of this Court. He has placed reliance on the judgment dated 01.04.2009 passed in Letters Patent Appeal No.1275 of 2006.

3. In this writ petition, the petitioner is assailing the show cause notice dated 21.11.2012, the order dated 22.04.2015 and further, the order dated 19.03.2016 passed in the revision application of the petitioner.

4. It is the case of the petitioners that the entire issue has been taken up by the respondent authority after passage of more than 8 years from the date of execution of agreement to sell dated 22.11.2004 since the petitioners were issued the notice dated 21.11.2012. As per the report of the Auditor General, the amount of stamp paid on the document dated 22.11.2004 is deficient. The petitioners were asked to pay stamp duty of Rs.31,62,667/- and penalty.

5. Learned advocate Mr.Lavkumar has submitted that the initiation of such proceedings itself is null and void as per the provisions of Section



32A(4) of the Gujarat Stamp Act, since no proceedings even in any manner can be initiated after a period of 6 years.

6. This Court has perused the affidavit-in-reply filed by the respondent authorities, wherein the aforesaid facts are not disputed and it is established fact that the show cause notice has been issued on 21.11.2012 for the agreement to sell dated 22.11.2004, which is after a passage of more than 8 years.

9. At this stage, it would be apposite to refer to the observations made by the Coordinate Bench of this Court in the aforesaid decision dated 13.09.2006 passed in Special Civil Application No.3926 of 2006 and allied matters, which reads thus:-

"In view of the aforesaid judgments and provision of sub-section (4) of section 32-A of the Act, 1958, the impugned order is hereby quashed as the same is time barred. The document in question was executed on 17th September, 1997, whereas, the Notice was issued on 22nd July, 2004 by the respondent authority (Annexure "D" to the memo of the petition) and, therefore, there is a clear breach of section 32-A(4) of the Act, 1958, which imposes a limitation of 6 years. Thus, except this matter, rest of the matters are hereby remanded for afresh decision by Deputy Collector/ Collector, Stamp Duty Valuation Organisation."

10. Thus, the impugned notice as well as the order passed by the respondent authorities are without jurisdiction and *de hors* the provisions of sub-section (4) of Section 32A of the Act, and hence, this Court, while exercising the powers under Article 226 of the Constitution of India can set aside the same. The Apex Court in the case of Radha Kirshan Industries Vs. State of Himachal Pradesh and others, 2021 SCC OnLine SC 334, has summarized the principles governing the exercise of writ jurisdiction by the High Court in the presence of an alternate remedy. The Apex Court has observed thus:-

"28. The principles of law which emerge are that:



(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where

(a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution;

(b) there has been a violation of the principles of natural justice;

(c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law."

11. The case of the petitioners will fall under exception (c) as reproduced hereinabove. In view of the above, this petition is allowed. The impugned show case notice dated 21.11.2012 as well as the order dated 22.04.2015, are hereby quashed and set aside. As the consequence thereof, the respondent No.3 is directed to return the original sale deed No.9327 dated 22.11.2004 to the petitioner within a period of 04 (four) weeks from the date of receipt of the writ of this order. Rule is made absolute. Direct Service is permitted.

(A. S. SUPEHIA, J)

ABHISHEK/10