

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CIVIL APPLICATION (FOR CONDONATION OF DELAY) NO. 1716
of 2024****In F/LETTERS PATENT APPEAL NO. 7032 of 2024****With****F/LETTERS PATENT APPEAL NO. 7032 of 2024****In****R/SPECIAL CIVIL APPLICATION NO. 12372 of 2016****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2024****In F/LETTERS PATENT APPEAL NO. 7032 of 2024****In****R/SPECIAL CIVIL APPLICATION NO. 12372 of 2016**

=====

DEPUTY COLLECTOR & ANR.

Versus

MEERA S. DESAI & ANR.

=====

Appearance:

MS HETAL PATEL AGP for the Applicant(s) No. 1,2

for the Respondent(s) No. 1,2

=====

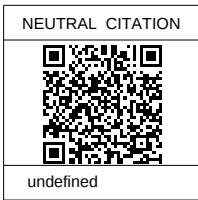
**CORAM: HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE
SUNITA AGARWAL**

and

HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE**Date : 01/05/2024****ORAL ORDER****(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA
AGARWAL)**

1. Heard learned AGP Ms. Hetal Patel for the State
- Appellant

2. This appeal suffers from inordinate and
unexplained delay of 570 days. The learned Single Judge
has allowed the writ petition quashing the show-cause
notices and the order passed by the Stamp Authority on

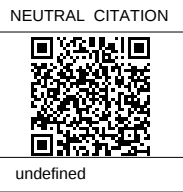


the ground that the notices were issued de hors the provision of Sub-Section (4) of Section 32(A), inasmuch as, no proceedings in any manner can be initiated after the period of six years of the registration of the instrument.

3. The date of execution of the Agreement to Sale is 22.11.2004 with respect to which, show-cause notice has been issued on 21.11.2012.

4. Coming on the merits of the case of the appellant to assail the Order of the learned Single Judge, pertinent is to note that as per the claim of the petitioners, who are purchasers of certain plots developed by the land owner, the Agreement to Sale dated 22.11.2004 was a registered agreement with possession, and the entire stamp duty leviable on the sale consideration had been paid at the time of registration of the agreement. Deed of Conveyance namely the Sale Deed had been executed on 30.05.2005 by the land owner with respect to the said property. The impugned notice dated 21.12.2005, under Section 33 of the Gujarat Stamp Act, 1958, had been issued in a suo motu proceedings leading to passing of the order dated 22.04.2015 to pay deficit stamp duty as well as penalty.

5. Noticing the assertion of the petitioner that the entire stamp duty had been paid at the time of the



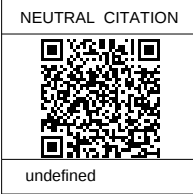
registration of the agreement to sale with possession, we have raised a pointed query to the learned AGP appearing for the State – Appellant as to the deficiency, which was the basis of issuance of Notice dated 21.11.2012.

6. It was argued that no stamp duty was paid by the petitioners at the time of registration of the sale deed and hence, notice cannot be said to be bad.

7. We do not find any substance in the submission of the learned AGP for the simple reason that the stamp duty is leviable on the sale consideration, which is part of the instrument of transfer. In the instant case, the stamp duty was paid at the time of registration of the agreement to sale, as it was with possession.

8. The stamp duty was, thus, not leviable on the sale deed executed pursuant to the agreement to sale with possession as no stamp duty can be twice levied on the sale consideration with respect to one transfer.

9. Reference be made to Article 20 (cc), Explanation 1, which provides for adjustment of the duties leviable on the conveyance, in case of execution of a subsequent conveyance in pursuance to agreement of sale with possession, where stamp duty has been charged at the time of execution of the agreement and reads as under:



*"[(cc) **CONVEYANCE** (not being a transfer charged or exempted under article No. 56) if relating to both movable and immovable property.*

Explanation 1 For the purpose of this Article 161 [and subject to sub-item (a) of item (ii) of clause (f) of article 45], an agreements to sell an immovable property or an irrevocable power of attorney shall, in case of transfer of the possession of such property before, at the time of, or after the execution of such agreement or power of attorney, be deemed to be a conveyance and the stamp duty thereon shall be chargeable accordingly:

Provided that the provisions of section 32 A shall apply mutatis mutandis to such agreement or power of attorney as are applicable to a conveyance:

Provided further that where subsequently a conveyance is executed in pursuance of such agreement of sale, or an irrevocable power of Attorney, the stamp duty, if any, already paid and recovered on the agreement of sale or an irrevocable power of Attorney which is deemed to be a conveyance, shall be adjusted towards the total duty leviable on the conveyance.]"

10. For the above, we do not find any merit in the appeal, both from the point of view of delay as well as on the merit of the claim of the appellant to levy stamp duty on the sale deed dated 30.05.2005. The appeal is **DISMISSED**, accordingly. Consequently, connected Civil Application is dismissed.

(SUNITA AGARWAL, CJ)

(ANIRUDDHA P. MAYEE, J.)

SAHIL S. RANGER