AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2219 OF 2017

Gyandev Permeshwar Sadh … Petitioner

V/s.

The State of Maharashtra, through
its Chief Secretary & Others … Respondent

WITH
WRIT PETITION NO.1777 OF 2017

ATUL
GANESH
KULKARNI

Digitally signed by
ATUL GANESH
KULKARNI
Date: 2026.10.14
15:50:15 +0530

Kanchan Rajmal Jain … Petitioner

V/s.

The State of Maharashtra, through
its Chief Secretary & Others … Respondent

WITH
WRIT PETITION NO.991 OF 2017
WITH
CIVIL APPLICATION NO.296 OF 2018

Pushpadevi Bhanwarlal Jain … Petitioner

V/s.

The State of Maharashtra, through
its Chief Secretary & Others … Respondent

WITH
WRIT PETITION NO.3067 OF 2017

Santosh Anaji Patekar & Anr. … Petitioners

V/s.

The State of Maharashtra, through
its Chief Secretary & Others … Respondent

Ms. Ketki Gadkar for the petitioner.
Mr. Y.D. Patil, AGP for respondent Nos.1 to 3-State.

CORAM : AMIT BORKAR, J.

RESERVED ON : OCTOBER 12, 2026

PRONOUNCED ON : OCTOBER 14, 2026

JUDGMENT:

1. Since all these Writ Petitions involve the same questions of law and arise from similar facts, they are being decided by this common Judgment. For convenience, the facts of Writ Petition No. 2219 of 2017 are being considered as the facts of the main matter.

2. By filing these Writ Petitions under Article 226 of the Constitution of India, the Petitioner has challenged the orders dated 23 February 2015 and 31 January 2015 passed by Respondent Nos. 2 and 3, respectively. The order dated 23 February 2015 was passed by Respondent No. 2 pursuant to the order and directions dated 31 January 2015 passed by Respondent No. 3. By these orders, the Petitioner's application seeking a refund of stamp duty paid on the Agreement to Sell, after its cancellation, came to be rejected. According to the Petitioner, the following facts led to the filing of the present Writ Petitions. Under an Agreement to Sell dated 16 March 2012 (hereinafter referred to as “the said Agreement”), the Petitioner agreed to purchase a residential flat bearing No. 5404 in “A” Wing, on the 54th floor, admeasuring 1342 square feet carpet area, in the building known as “Dioro”, New Cuffe Parade, situated at Wadala Truck Terminal, Mumbai 400 022 (hereinafter referred to as “the said Flat”). The terms and

conditions of the purchase were mentioned in the said Agreement. The Agreement was registered on 16 March 2012 with the Sub-Registrar of Assurances at Mumbai-2 under Serial No. BBE2-1749 of 2012. The Petitioner paid stamp duty of Rs.18,60,020/- (Rupees Eighteen Lakhs Sixty Thousand and Twenty only) on the said Agreement.

3. On 14 February 2014, Respondent No. 5 was unable to hand over possession of the said Flat as required under the Agreement. This resulted in disputes between the Petitioner and Respondent No. 5. The parties thereafter held discussions to resolve their disputes. As a result, the Petitioner and Respondent No. 5 executed a Deed of Cancellation dated 14 February 2014. This Deed was registered on 18 February 2014 with the Sub-Registrar of Assurances at Mumbai-4 under Serial No. BBE4-810 of 2014 (hereinafter referred to as "the Deed of Cancellation"). By executing this Deed, the parties cancelled the said Agreement dated 16 March 2012.

4. The Petitioner contends that the purpose for which the said Agreement was executed could not be achieved because possession of the Flat was not handed over. Since the Agreement was cancelled, the Petitioner claims that it became entitled to receive a refund of the entire stamp duty of Rs.18,60,020/- paid on the Agreement. Accordingly, on 23 July 2014, the Petitioner submitted an application to Respondent No. 2 seeking a refund of the stamp duty paid on the said Agreement dated 16 March 2012 (hereinafter referred to as "the Refund Application"). It appears that Respondent No. 2 thereafter forwarded the Refund

Application to Respondent No. 3 for his opinion and decision.

5. Respondent No. 3 decided the Refund Application by an order dated 31 January 2015. Thereafter, Respondent No. 2 passed the impugned order dated 23 February 2015. The application was rejected on the ground that the reasons stated by the Petitioner were inconsistent with Section 48(1) of the Bombay Stamp Act, 1958 (hereinafter referred to as "the said Act"). Being aggrieved by these orders, the Petitioner has approached this Court by filing the present Writ Petition.

6. In Writ Petition No. 1777 of 2017, filed by Kanchan Jain, the Agreement to Sell was executed on 20 March 2012 and registered on 27 March 2012. The relevant particulars are set out in the record at page 1. The parties subsequently realised that there was an inadvertent error in the description of the flat. According to the Petitioner, because of this error, the purchasers requested the Promoter to cancel and rescind the Agreement to Sell. The Agreement was cancelled under a Deed of Cancellation dated 7 April 2014, which was registered on 12 June 2014. The Petitioner thereafter filed an application seeking a refund of stamp duty on 2 August 2014. The application was rejected on the ground that the reason stated for seeking a refund was inconsistent with the proviso to Section 48(1) of the Bombay Stamp Act, 1958.

7. In Writ Petition No. 991 of 2017, filed by Pushpadevi Bhawarlal Jain, the Agreement to Sell was executed and registered on 27 March 2012. The particulars of the transaction are recorded at page 1 of the table. In this case, the parties realised that there

was an inadvertent error in the description of the flat. On account of this error, the purchasers requested the Promoter to cancel and rescind the Agreement to Sell. A Deed of Cancellation dated 7 April 2014 was registered on 16 June 2014. Thereafter, the Petitioner filed an application for refund of stamp duty on 2 August 2014. The application was rejected on the ground that the reason stated for seeking the refund was inconsistent with the proviso to Section 48(1) of the said Act.

8. In Writ Petition No. 3067 of 2017, filed by Santosh Patekar, the Agreement to Sell was executed and registered on 31 December 2011. The particulars of this transaction are recorded at page 2 of the table. In this case, the parties realised that there was an inadvertent error in the description of the flat. The Agreement was thereafter cancelled by a Deed of Cancellation dated 5 December 2013, which was registered on 12 December 2013. The Petitioner filed an application seeking a refund of stamp duty on 21 July 2014. The application was rejected on the ground that the reason stated in the Refund Application was inconsistent with the proviso to Section 48(1) of the Bombay Stamp Act, 1958.

9. Thus, in Writ Petition Nos. 1777 of 2017, 991 of 2017 and 3067 of 2017, the Agreements to Sell were cancelled because the parties had discovered an inadvertent error in the description of the respective flats. In Writ Petition No. 2219 of 2017, the Agreement was cancelled because the Developer was unable to hand over possession of the Flat in accordance with its terms. Although the reasons for cancellation are different, all these Petitioners sought a refund of the stamp duty paid on their

respective Agreements to Sell. Their applications were rejected on the ground that the reasons stated for seeking refund were inconsistent with Section 48(1) of the Bombay Stamp Act, 1958, or the proviso attached to it.

10. The common question arising in these Petitions is whether the applications for refund were liable to be rejected on that ground, having regard to the reasons for cancellation and the applicable provisions of Section 48(1) of the said Act.

11. Ms. Gadkari, learned Advocate appearing for the Petitioner, submits that the impugned orders have been passed without considering the facts stated in the Refund Application. She points out that the Petitioner had specifically stated that the Developer was unable to hand over possession of the Flat and, therefore, the Agreement to Sell dated 16 March 2012 could not be completed. The Petitioner had stated that an amount of Rs.2,06,50,529/- had been paid towards the total consideration of Rs.3,75,46,416/-. She further submits that, because of the failure to hand over possession and at the request of the purchasers, the owner, builder, or promoter had agreed to cancel the Agreement to Sell. According to her, these facts were clearly stated in the Refund Application, but the authorities failed to consider them. Learned Advocate for the Petitioner further submits that Respondent Nos. 2 and 3 accepted that the Refund Application was filed within the period prescribed under Section 48(1) of the said Act. However, they still rejected the application by holding that the reasons stated therein were inconsistent with the provisions of the Act. According to her, the authorities have not held how the reasons given by the Petitioner

were contrary to the said provisions. She, therefore, submits that the impugned orders cannot be sustained in law and deserve to be set aside. She further submits that Section 48(1) must be read along with the proviso attached to it. According to her, when both the main provision and the proviso are read together, it becomes clear that the circumstances stated by the Petitioner fall within the grounds recognised by the said provision for seeking a refund of stamp duty.

12. Ms. Gadkari submits that the authorities have not considered Section 48(1) in its entirety. According to her, the proviso to Section 48(1) of the Bombay Stamp Act, 1958, permits an application for refund to be made within two years from the date of registration of the cancellation deed in cases involving "a dispute regarding the premises concerned...". She contends that the dispute in the present case arose because Respondent No. 5 failed to hand over possession of the Flat, which ultimately resulted in cancellation of the Agreement. Therefore, according to her, there was no inconsistency between the Petitioner's claim and the provisions of Section 48(1) of the said Act. She submits that the authorities ought to have considered the nature of the dispute and the relevant part of the proviso before rejecting the Refund Application. In support of her submissions, Ms. Gadkari relies upon the judgment of the Supreme Court in *Harshit Barish Jain & Another vs. State of Maharashtra & Ors.,* (2025) 3 SCC 365*; Suresh Ramchandra Sancheti & Another vs. State of Maharashtra, through the Department of Revenue & Others,* 2025 SCC OnLine 5198; *and Bano Saiyed Parwaz vs. Chief Controlling Revenue*

Authority and Inspector General of Registration & Controller of Stamps & Others, (2025) 2 SCC 201.

13. On the other hand, Mr. Patil, learned Assistant Government Pleader appearing for the State, opposes the Petition. He submits that Section 48(1) prescribes a period of six months for filing an application for refund of stamp duty. According to him, an extended period of two years is available in certain cases involving an Agreement to Sell on which stamp duty has been paid under Article 25 as a deemed conveyance and which has been registered under the Registration Act, 1908, where the seller refuses to hand over possession. He further submits that the second part of the proviso deals with cases in which a registered Cancellation Deed is executed. However, according to him, such cancellation must be on one of the other four grounds specifically mentioned in that part of the proviso. Those grounds are separate from the issue of failure to hand over possession.

14. Mr. Patil submits that the Petitioner has not satisfied the requirements of the first part of the proviso to Section 48(1). In support of this submission, he has relied upon the following dates and particulars concerning the Refund Application:

(i) Date of execution of the document: 16 March 2012;

(ii) Last date for filing the application within the normal period of six months: 15 September 2012;

(iii) Last date for filing the application within the extended period of two years, as stated by the State: 15 March 2014;

(iv) Date of filing the Refund Application;

(a) Online application: 7 July 2014;

(b) Offline application: 23 July 2014;

(v) According to the State, the application was delayed by 3 months and 21 days.

15. On the basis of these particulars, Mr. Patil submits that the Refund Application was not filed within the prescribed period and that the Petitioner is, therefore, not entitled to the refund claimed.

16. Respondent Nos. 2 to 4 have raised an objection to the present Petition. They submit that the Petitioner has challenged the order dated 31 January 2015 passed by Respondent No. 3 in the refund proceedings on the ground that the authorities failed to consider Section 48(1), particularly the proviso providing for an extended period for filing a refund application. According to them, the proviso applicable at the relevant time prescribed a normal period of six months for making an application for refund of stamp duty. They further submit that, in certain cases involving an Agreement to Sell on which stamp duty was paid under Article 25 as a deemed conveyance and which was registered under the Registration Act, 1908, the period could be extended to two years from the date of the registered Agreement to Sell where the seller refused to hand over possession. However, according to them, the second part of the proviso deals with cancellation of a registered instrument on specified grounds. The grounds mentioned in that part are distinct from the failure to hand over possession. They, therefore, contend that the Petitioner cannot claim the benefit of

the extended period merely because the Agreement was subsequently cancelled. In support of the State's submissions, Mr. Patil relies upon the judgment of this Court in *Bhaskar Ramgonda Patil vs. District Deputy Registrar (Class I),* reported in 2025 SCC OnLine Bom 1075.

REASONS AND FINDINGS:

17. I have heard the learned Advocate for the Petitioners and the learned Assistant Government Pleader for the State. The main issue in these Petitions is whether the Petitioners can be refused refund of stamp duty after cancellation of their Agreements to Sell, on the ground that the reasons for cancellation are not covered by Section 48(1) of the Bombay Stamp Act, 1958, or that they did not apply within the time given by law.

18. First, it is necessary to see that the facts in all the Writ Petitions are not fully the same. In Writ Petition No. 2219 of 2017, the Agreement to Sell dated 16 March 2012 was cancelled because the Developer could not give possession of the Flat. In Writ Petition Nos. 1777 of 2017 and 991 of 2017, the Agreements to Sell were cancelled after the parties found that there was an accidental mistake in the description of the flats. In Writ Petition No. 3067 of 2017, the Agreement to Sell was cancelled because the description of the flat was wrongly given. Therefore, the reason for cancellation in every Petition must be looked at separately. But all the Petitioners are asking for refund of stamp duty paid on Agreements to Sell which were later cancelled. Because of this common point, the common question of law can be decided by this

common Judgment.

19. The Petitioners say that after their Agreements to Sell were cancelled for the reasons stated in their applications, the authorities had to consider whether their cases were covered by Section 48(1) of the Act and the proviso which was in force at that time. According to them, the authorities rejected their applications by only saying that the reasons for cancellation were not as required by law. They did not explain why the reasons given by the Petitioners were not covered by that provision. Therefore, the Petitioners say that the authorities did not consider the facts or the real meaning of Section 48(1) before rejecting their refund claims.

20. The State, on the other hand, says that the time limit fixed by law must be followed. According to the State, an application for refund was normally required to be made within six months. A longer period can be given only if the case comes under the conditions stated in the proviso. The State says that failure to give possession and cancellation of an agreement for other reasons mentioned in the proviso are two different situations. The Petitioners cannot get the benefit of the longer period only because their Agreements to Sell were cancelled.

21. In view of these arguments, this Court has to look at the words used in Section 48(1), the dates of the Agreements to Sell and cancellation deeds, and the judgments of the Supreme Court relied upon by the Petitioners. The matter cannot be decided only by looking at the dates of the original Agreements to Sell. It is necessary to see which part of the proviso applies to the claim of

each Petitioner.

22. Section 48(1) of the Bombay Stamp Act, 1958, as reproduced in paragraph 15 of *Harshit Harish Jain*, gives the time within which an application for refund can be made. The relevant part of the proviso, as quoted by the Supreme Court, reads as follows:

> "Provided that where an agreement to sell immovable property, on which stamp duty is paid under Article 25 of Schedule I, is presented for registration under the provisions of the Registration Act, 1908 and if the seller refuses to deliver possession of the immovable property which is the subject-matter of such agreement the application may be made within two years of the date of the instrument [or where such agreement is cancelled by a registered cancellation deed on the grounds of, dispute regarding the premises concerned, inadequate finance, financial dispute in terms of agreed consideration, or afterwards found to be illegal construction or suppression of any other material fact, the application may be made within two years from the date of such registered cancellation deed."

23. From these words, it can be understood that the proviso deals with two different situations. The first part applies where an Agreement to Sell, on which stamp duty is paid under Article 25 of Schedule I, is presented for registration, but the seller refuses to give possession of the property. In such a case, the application can be made within two years from the date of the instrument. The second part applies where the Agreement to Sell is cancelled by a registered cancellation deed for any of the reasons mentioned in that part. In such a case, the two years are to be counted from the date on which the cancellation deed is registered.

24. Both these parts cannot be read as if the period begins from the same date in every case. If a claim is made under the second part, the registration date of the cancellation deed becomes relevant. Therefore, the State had to see whether each Petitioner fulfilled the conditions given in that part of the proviso. The period could not be counted only from the date of the original Agreement to Sell without first considering what kind of claim was made.

25. The dates available on record show when the cancellation deeds were registered and when the refund applications were made. In Writ Petition No. 2219 of 2017, the cancellation deed was registered on 18 February 2014 and the Refund Application was made on 23 July 2014. In Writ Petition No. 1777 of 2017, the cancellation deed was registered on 12 June 2014 and the Refund Application was made on 2 August 2014. In Writ Petition No. 991 of 2017, the cancellation deed was registered on 16 June 2014 and the Refund Application was made on 2 August 2014. In Writ Petition No. 3067 of 2017, the cancellation deed was registered on 12 December 2013 and the Refund Application was made on 21 July 2014.

26. From these dates, it is clear that all the refund applications were made within two years from the registration of the respective cancellation deeds. This fact has to be considered. If the Petitioners are relying on the second part of the proviso, their applications cannot be rejected only by counting two years from the dates of the original Agreements to Sell.

27. The State has referred to certain dates to say that the Refund Application in Writ Petition No. 2219 of 2017 was filed late. According to the State, the original Agreement to Sell was executed on 16 March 2012, the normal six-month period ended on 15 September 2012, and the extended period of two years ended on 15 March 2014. The State has compared these dates with the application made in July 2014 and says that there was delay. However, this calculation does not deal with the Petitioner's claim under the second part of the proviso. In this Petition, the cancellation deed was registered on 18 February 2014 and the Refund Application was made on 23 July 2014. If the provision allowing two years from the registration of the cancellation deed is applied, the application was made within time. Therefore, the calculation made by the State from the date of the original Agreement to Sell cannot, by itself, be a reason to reject the claim under the separate part of the proviso.

28. One more point has to be considered. The State has taken the view that cancellation of an Agreement to Sell is not enough to bring a case under the proviso. It is true that every cancellation does not give a right to refund. The proviso gives certain reasons on which a person can claim this benefit. Therefore, the reason for cancellation in each Petition must be checked to see whether it comes within the grounds mentioned in the law. Simply making a cancellation deed is not enough. But, at the same time, an application cannot be rejected only because the authorities do not accept the reason given by the Petitioner. They must examine the actual dispute and the words used in the proviso before taking

such a decision.

29. In Writ Petition No. 2219 of 2017, the Agreement to Sell was cancelled because the Developer could not give possession of the Flat as agreed. The record shows that a dispute arose because possession was not given, and after that the parties made and registered a Deed of Cancellation. The Petitioner has stated that a substantial part of the sale consideration had already been paid. Even after making this payment, the Petitioner could not get possession as promised under the Agreement. Finally, the transaction was cancelled. This is not a case where the purchaser completed the transaction, obtained rights in the property and then raised a dispute only about the amount of stamp duty payable. Here, the transaction itself came to an end. The Petitioner is asking for refund of the stamp duty paid on that cancelled transaction. These facts are important while considering the claim under Section 48(1).

30. The position in Writ Petition Nos. 1777 of 2017, 991 of 2017 and 3067 of 2017 is different in one respect. In these Petitions, the Agreements to Sell were cancelled because the parties found an accidental mistake in the description of the respective flats. According to the Petitioners, after they came to know about the mistake, the purchasers requested the Promoter to cancel the Agreements to Sell. An error in the description of a flat does not give a right to refund just because the parties cancelled the agreement. The reason required by law must be shown from the facts. However, when the dispute is about the description or identification of the premises mentioned in the Agreement to Sell,

the authorities must consider whether it comes within the words "dispute regarding the premises concerned". The claim cannot be rejected without looking at what the mistake was and how it affected the description of the premises in the agreement.

31. In these three Petitions, the Petitioners have not said that they completed the purchase and later asked for refund of excess stamp duty because they disagreed with the market value of the property. Their case is that the Agreements to Sell were cancelled after a mistake was found in the description of the flats. The authorities had to consider whether the mistake related to the premises themselves and whether the cancellation came under the proviso. The fact that the mistake was accidental does not, by itself, mean that the claim cannot be covered by the provision. What has to be seen is the real nature of the dispute and why the agreement was cancelled.

32. The principles laid down by the Supreme Court in *Harshit Harish Jain*, are relevant to these cases. In paragraph 17, the Supreme Court held:

> "In our view, this contention carries substantial weight. The High Court laid undue emphasis on the registration date without fully appreciating that the appellants' accrued right to claim a refund arose the moment the cancellation deed was validly executed. The legislative scheme governing the earlier proviso to Section 48(1) of the Act, contemplated a broader two-year window. Constricting that window retroactively, merely because registration happened post-amendment, unduly defeats a vested cause of action."

33. The Supreme Court has held that it is important to consider which law applied when the cancellation deed was executed and the claim for refund arose. A claim should not be rejected by applying the changed time limit without considering the earlier provision and the facts of the case. In the present Petitions, the cancellation deeds and refund applications were made in 2013 and 2014. The amendment referred to in *Harshit Harish Jain* was made on 24 April 2015. The claims in these Petitions arose before that amendment. Therefore, the authorities had to consider the applications under the provision which applied to those claims. The later amendment could not be applied in a routine manner to reject applications which were made within the period allowed under the earlier proviso.

34. The Supreme Court has considered the question of delay in paragraph 19 of *Harshit Harish Jain*. It observed:

> "Even if one were to hold that the appellants' claim is examined under the amended six-month period, we are of the considered opinion that a mere technical delay should not, by itself, extinguish an otherwise valid claim. The scheme of stamp duty refund provisions is designed to ensure fairness when the underlying transaction is rescinded for bona fide reasons. The appellants were compelled to cancel the purchase due to the developer's inability to deliver timely possession, and were in no way remiss or at fault."

35. This finding shows that the purpose of the refund provision has to be kept in mind when deciding the time limit. The State can certainly enforce the limitation period fixed by law. But the correct period must be applied to the facts and to the provision which

actually applies. An application cannot be rejected by ignoring the longer period given under the proviso. A cancelled transaction cannot be treated as if the transaction was completed and the purchaser was only asking for refund of excess stamp duty.

36. In paragraph 20 of the same judgment, the Supreme Court further observed:

> "Denying a legitimate refund solely on technical grounds of limitation, especially when the timing of registration fell close to the legislative amendment, fails to strike the equitable balance ordinarily expected in fiscal or quasi-judicial determinations. A measure of discretion or consideration for good faith conduct is not alien to statutory processes that safeguard citizens from unjust enrichment by the State."

37. These observations do not mean that every application made after the limitation period must be allowed. The authority must first find out which time limit applies, consider the reason for cancellation and then decide whether the claim is justified. In the present cases, the applications were made within two years from the respective dates of registration of the cancellation deeds. The State cannot ignore this fact and reject the claims only by relying on the six-month period or by counting the longer period from a date which does not apply to the claim.

38. The judgment in *Bano Saiyed Parwaz*, supports the need to examine these claims in their proper legal position. The Supreme Court, while relying upon *Committee-GFIL v. Libra Buildtech (P) Ltd.*, (2015) 16 SCC 31, reproduced the following observation of the Bombay High Court in *Kaluram Sitaram (Firm) v. Union of*

India, 1953 SCC OnLine Bom 39:

> "19. … we have often had occasion to say that when the State deals with a citizen it should not ordinarily rely on technicalities, and if the State is satisfied that the case of the citizen is a just one, even though legal defences may be open to it, it must act, as has been said by eminent Judges, as an honest person."

39. The Supreme Court in *Committee-GFIL* observed that the expiry of limitation may prevent a person from using a legal remedy, but it does not take away the right itself. In *Bano Saiyed Parwaz*, the Supreme Court applied these principles to a claim for refund of stamp duty. It held that a genuine claim should not be rejected only on technical grounds when the applicant acted bona fide and was otherwise entitled to the refund.

40. These judgments do not mean that the Court can ignore a limitation period fixed by law in every case. They do not remove the requirement that the person asking for refund must satisfy the grounds mentioned in the Act. However, these judgments make it clear that the State should not retain stamp duty by raising only a technical objection where the transaction was cancelled for a genuine reason, the claim is covered by the applicable provision and the application was made within the period allowed by law.

41. In the present cases, the Petitioners are not asking for refund only because they believe that they paid excess stamp duty on a completed transaction. Their case is that the Agreements to Sell were cancelled for the reasons mentioned in their applications. In Writ Petition No. 2219 of 2017, the Developer failed to give

possession. In the other three Petitions, the agreements were cancelled after mistakes were found in the description of the flats. These facts are different from cases where the transaction was completed and the dispute is only about the value of the property or the correct Article of the Stamp Act.

42. The State has relied upon the judgment in *Bhaskar Ramgonda Patil*. This judgment needs to be considered. In paragraph 24, this Court made a difference between a transaction which was cancelled and a transaction which was completed and resulted in the acquisition of development rights. The Court observed:

> "However, in a case where the transaction has the effect of vesting of rights in respect of the land in favour of the purchaser/developer, it would not be open for this Court to go against the spirit of provisions of Section 50 of the Stamp Act which prescribes limitation of six months (now extended to one year) for filing application for refund of excess stamp duty."

43. The Court further observed in paragraph 27 that a difference must be made between cancelled or non-fructified transactions, where refund of the whole stamp duty is claimed, and completed transactions, where refund of excess stamp duty is asked for because of a dispute about the valuation, nature of the transaction or the correct Article of the Stamp Act.

44. In *Bhaskar Ramgonda Patil*, the developer had obtained development rights and later asked for refund of alleged excess stamp duty paid on completed transactions. The Court held that the principle applicable to cancelled transactions could not be used

to avoid the time limit fixed by law for seeking refund of excess stamp duty on a completed transaction. The present Petitions are different. The Agreements to Sell were cancelled. In Writ Petition No. 2219 of 2017, possession was not given. In the other Petitions, the agreements were cancelled because mistakes were found in the description of the flats. The material before this Court does not show that the Petitioners completed the transactions and continued to keep the rights obtained under the Agreements to Sell, while raising a dispute only about the amount of stamp duty. Therefore, the difference held in *Bhaskar Ramgonda Patil* supports examining these cases as claims arising from cancelled transactions and not as ordinary claims for refund of excess stamp duty on completed transactions.

45. The State has said that the grounds mentioned in the second part of the proviso are different from failure to give possession. To this extent, the State is correct. The first and second parts of the proviso deal with different situations. A case where the seller refuses to give possession has to be considered under the first part. A case based on a registered cancellation deed has to be considered under the second part, and one of the grounds mentioned there must be satisfied. But this difference does not mean that all the applications can be rejected without examining them separately. In Writ Petition No. 2219 of 2017, failure to give possession is specifically stated. The registered cancellation deed and the later refund application are on record. In Writ Petition Nos. 1777 of 2017, 991 of 2017 and 3067 of 2017, the reason for cancellation is an error in the description of the premises. The

question is whether this dispute comes within the expression "dispute regarding the premises concerned". The authorities could not decide this question only by saying that the reasons were not consistent with Section 48(1).

46. I am unable to accept that the Petitioners should be denied relief only because the State says that the limitation period must be strictly followed. There is no dispute that the time limit fixed by law must be followed. But strict following of limitation means that the correct period must be applied to the correct facts. It does not mean that the part of the proviso allowing two years from registration of a cancellation deed on the stated grounds can be ignored. The dates on record show that all four refund applications were made within two years from registration of their respective cancellation deeds. The orders under challenge do not show that this fact was considered along with the reasons for cancellation. Therefore, the applications cannot be rejected only because the original Agreements to Sell were made more than six months before the refund applications.

47. It is necessary to consider whether these matters should be sent back to the authorities to decide again. In my view, this is not required. The relevant dates are available on record. The reasons for cancellation are stated in the applications, and there is no material to show that these reasons were disputed on facts. The principles relating to refund claims arising from cancelled transactions have been held by the Supreme Court in *Harshit Harish Jain* and *Bano Saiyed Parwaz*. The difference between a cancelled transaction and a completed transaction has been held

by this Court in *Bhaskar Ramgonda Patil*. These matters have remained pending for several years. If they are sent back only for looking at the same dates and reasons again, there will be further delay without any useful result. The issues can be decided on the material already available before this Court.

48. In Writ Petition No. 2219 of 2017, the Agreement to Sell was cancelled because the Developer failed to give possession. The Refund Application was made within two years from registration of the cancellation deed. The claim is covered by the substance of the proviso dealing with failure to give possession and cancellation of the agreement on the stated ground. Therefore, the rejection of the application cannot stand. The Petitioner is entitled to refund of stamp duty of Rs.18,60,020/- paid on the cancelled Agreement to Sell. In Writ Petition Nos. 1777 of 2017 and 991 of 2017, the Agreements to Sell were cancelled because of an accidental mistake in the description of the respective flats. The cancellation deeds were registered on 12 June 2014 and 16 June 2014, respectively, and the Refund Applications were made on 2 August 2014. Both applications were made within two years from registration of the cancellation deeds.

49. The dispute, as stated by the Petitioners, relates to the description of the premises themselves. There is no finding that the transactions were completed and that the Petitioners continued to keep the rights obtained under the agreements. Considering these facts, the claims come within the purpose of the proviso relating to a dispute regarding the premises concerned. Therefore, the rejection of these applications cannot be upheld.

50. In Writ Petition No. 3067 of 2017, the Agreement to Sell was cancelled because of an accidental mistake in the description of the flat. The cancellation deed was registered on 12 December 2013, and the Refund Application was made on 21 July 2014. This application was made within two years from registration of the cancellation deed. For the reasons already stated, the dispute about the description of the premises has to be considered under the expression "dispute regarding the premises concerned". On the facts placed before this Court, the rejection of the Refund Application cannot be upheld.

51. It must be made clear that this decision does not mean that stamp duty has to be refunded whenever the parties cancel an agreement. A person asking for refund must satisfy the requirements of the provision which applies to the case. A claim for refund of excess stamp duty on a completed transaction cannot be treated as a claim arising from cancellation of the transaction. The judgment in *Bhaskar Ramgonda Patil* makes this difference clear. The Petitioners succeed because their Agreements to Sell were cancelled for the reasons stated, the refund applications were made within two years from registration of the cancellation deeds, and the authorities rejected the applications without applying the relevant part of Section 48(1).

52. For these reasons, I hold that the orders rejecting the Refund Applications cannot be allowed to continue. The rejection is not in accordance with the proper meaning of Section 48(1) and its proviso, as held by the Supreme Court in *Harshit Harish Jain* and *Bano Saiyed Parwaz*. The difference held in *Bhaskar Ramgonda*

Patil does not defeat the claims because the present cases relate to cancelled Agreements to Sell and not completed transactions where only the amount of excess stamp duty is in dispute.

53. Since the refund claims were rejected and the amounts have remained with the State, the Petitioners shall be entitled to simple interest at the rate of 6% per annum on the respective refundable amounts the date of the impugned orders, until actual payment. This direction follows the approach adopted by the Supreme Court in *Harshit Harish Jain*, where simple interest at 6% per annum was directed on the stamp duty amount which had been wrongly retained by the State.

54. If the amounts directed to be refunded, together with the interest stated above, are not paid within eight weeks, the unpaid amount shall carry simple interest at the rate of 12% per annum after expiry of that period until payment. The refund shall be made directly to the respective Petitioners. They shall not be required to start fresh proceedings before the revenue authorities to receive the amounts.

55. In view of the foregoing discussion and for the reasons recorded hereinabove, the following order is passed:

(a) The Writ Petitions are allowed;

(b) The impugned orders rejecting the Refund Applications filed by the Petitioners are quashed and set aside;

(c) Respondent Nos. 2 and 3 are directed to refund the stamp duty paid on the respective Agreements to Sell, along

with interest at the rate of 6% per annum, calculated from the date of the impunged orders until the date of actual payment;

(d) In Writ Petition No. 2219 of 2017, the principal amount of stamp duty to be refunded shall be Rs.18,60,020/-. In the other Writ Petitions, the principal amount shall be the stamp duty actually paid on the respective Agreements to Sell, as borne out by the record;

(e) The refund, together with the aforesaid interest, shall be paid within eight weeks from the date of production of an authenticated copy of this Judgment;

(f) In the event the refund amounts, together with the interest stated above, are not paid within eight weeks from the date of this Judgment, the unpaid amount shall carry further simple interest at the rate of 12% per annum from the expiry of the said period until actual payment;

(g) The refund shall be paid directly to the respective Petitioners, without requiring them to initiate fresh proceedings before the revenue authorities;

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

(i) There shall be no order as to costs

(j) In view of disposal of the writ petitions, all pending interim applications stand disposed off.

(AMIT BORKAR, J.)