Reserved On : 30/07/2026
Pronounced On : 02/09/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 8957 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE NIRZAR S. DESAI

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Approved for Reporting	Yes	No
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M/S HIMGIRI CORPORATION

Versus

OFFICE OF SUPERINTENDENT OF STAMPS AND INSPECTOR GENERAL OF REGISTRATION, GANDHINAGAR & ANR.

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Appearance:
MR. SHALIN MEHTA SENIOR ADVOCATE WITH MR. MANYA N ANJARIA(13475) for the Petitioner(s) No. 1
NIKUNJ KANARA AGP for the Respondent(s) No. 1,2

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CORAM:**HONOURABLE MR. JUSTICE NIRZAR S. DESAI**

CAV JUDGMENT

1. Heard learned Senior Advocate Mr. Shalin Mehta, with learned Advocate Mr. M. N. Anjaria, for the petitioner and learned AGP Mr. Kanara for the respondent-State.

2. When the hearing was concluded on 30.07.2026, while keeping the matter reserved for judgment, the Rule was issued and the matter was heard finally.

2.1. By way of this petition, the petitioner has prayed for quashing and setting aside the impugned notices dated 09.06.2025 and 20.03.2026, at Annexures A1 and A2, respectively, issued by the Office of the Superintendent of Stamps and Inspector General of Registration, Gandhinagar, under Section 39(1)(b) of the Gujarat Stamp Act, 1958. By way of both the impugned notices, which are substantially identical, the respondents have initiated proceedings under Section 39(1)(b) of the Stamp Act, determining the total stamp duty payable on the document and, accordingly, calling upon the petitioner to pay deficit stamp duty amounting to Rs.22,49,01,851/-. The petitioner has, therefore, prayed that the said amount shall not be recovered from the petitioner, in view of Article 20(c) relating to the Transfer of Property Act, on the basis of the market price of the property prevailing at the relevant point of time.

3. It is the aforesaid two notices which are under challenge by way of this petition.

3.1. In the notices, reference is made to around 35 different documents (instruments) executed by the petitioner in respect of certain properties and, as per the notices, the total deficit stamp duty has been calculated on the basis of the market value of the said properties.

4. The brief facts leading to the filing of this petition are stated as under;

4.1. The petitioner, M/s. Himgiri Corporation, is a partnership firm constituted in the year 1975 under the provisions of the Indian Partnership Act, 1932, and originally comprised three partners, namely;

(i) Karamchand Premchand Private Limited (KPPL);

(ii) Sarabhai Private Limited; and

(iii) Shahibaug Enterprise Limited.

4.2. At the time of execution of the partnership deed, as a part of its capital contribution, over and above other land and cash, KPPL brought in the property bearing Survey No.192, comprised in Town Planning Scheme No.31 (University), bearing Final Plot No.99, admeasuring 12,383 sq. metres, situated at Moje Vastrapur, Taluka Vastrapur, District Ahmedabad, which is hereinafter referred to as the "subject property". Accordingly, the partners executed a partnership deed on 08.10.1975, whereby they agreed to carry on business in partnership under the name and style of M/s. Himgiri Corporation. Thereafter, the partnership firm underwent several changes in its constitution from time to time, for which separate deeds of reconstitution of partnership were executed. The partnership was lastly reconstituted in the year 2010. Between the years 1975 and 2010, the partnership firm executed, in all, 19 deeds of reconstitution, including the original partnership deed. The details of the various deeds of reconstitution are stated as under;

Sr. No.	Date of Transaction	Nature of Transaction
1	08.10.1975	Incorporation of the Partnership firm with three (3) Partners.
2	20.03.1976	Reconstitution of the Partnership firm by admission of four (4) additional Partners, thereby increasing the total numbers of partners from three to seven (7).
3	27.09.1976	Reconstitution of the partnership firm pursuant to the retirement of one (1) Partner, whereby the remaining six (6) partners continued to carry on the business of the firm.
4	21.04.1980	Reconstitution of the partnership firm pursuant to the retirement of one (1)

		Partner, reducing the total number of partners to five (5). The remaining partners continued the partnership firm.
5	11.12.1981	Reconstitution of the Partnership firm by retirement of one (1) partner and admission of a new partner. The total number of partner remains five (5).
6	22.01.1982	Modification of the profit-sharing ratio between existing partners.
7	02.04.1984	The subject document titled as Reconstitution of the Partnership and by which three (3) partners were added. Total Number of partners - eight (8).
8	03.07.1984	The subject document is Deed of Partnership by which four (4) partners left and the remaining four (4) continued as partners.
9	03.12.1991	Reconstitution of the Partnership firm by retirement of two (2) partners and admission of three (3) new partners, resulting in total of five (5) Partners.
10	03.04.1993	Reconstitution of the Partnership firm by retirement of two (2) partners and admission of three (3) new partners, resulting into total of six (6) Partners.
11	24.10.1993	Reconstitution of the Partnership firm by retirement of three (3) partners and admission of sixteen (16) new partners,

		resulting into total of Nineteen (19) Partners.
12	11.11.1993	Execution of supplementary agreement
13	24.01.1996	Reconstitution of the Partnership firm by retirement of five (5) partners. Remaining total number of partners Fourteen (14).
14	28.03.1996	Reconstitution of the Partnership firm by admission of five (5) new partners, increasing the total numbers by Nineteen (19).
15	01.09.2000	Reconstitution of the Partnership firm by retirement of eight (8) Partners and admission of one (1) new partners, resulting in total numbers of partners to twelve (12).
16	23.01.2004	1 partner left (as he passed away). Remaining 11 partners continued with the firm
17	01.04.2005	Reconstitution of the Partnership firm by retirement of two (2) Partners and admission of one (1) new partners, resulting in total numbers of partners to ten (10).
18	01.04.2008	Reconstitution of the Partnership firm by retirement of six (6) Partners, remaining partners were four (4)
19	06.10.2010	One of the partner passed away, and his son was replaced as the 5^{th} partner.

4.3. Although the aforesaid transactions took place, the subject property remained with the petitioner throughout, until it was sold by way of a deed of conveyance dated 18.10.2024, which was registered with the Sub-Registrar of Assurances on the same day under Serial No.12481 and whereby the subject property was conveyed in favour of M/s. Godrej Properties Limited.

4.4. The aforesaid conveyance deed was voluntarily submitted for adjudication under Section 31 of the Gujarat Stamp Act, 1958 by the purchaser, who is not a party to the present petition. Pursuant to the aforesaid application, the authority, vide order dated 16.10.2024, adjudicated the same and determined the stamp duty payable thereon. Accordingly, the stamp duty was paid as determined by the order dated 16.10.2024.

4.5. Thereafter, the purchaser, i.e. M/s. Godrej Properties Limited, received a notice dated 11.11.2024 from the Additional Superintendent of Stamps, Gandhinagar, under Section 68(2) of the Gujarat Stamp Act, 1958, alleging that appropriate stamp duty had not been paid in respect of the changes made in the constitution of the partnership firm. By way of the aforesaid notice, the authority also sought copies of all relevant partnership deeds for verification. In compliance with the said notice, on 09.12.2024, the present petitioner, being the seller of the land, submitted photocopies of all the partnership/reconstitution deeds as sought for vide notice dated 11.11.2024.

4.6. Upon submission of the aforesaid photocopies, the petitioner received a notice dated 09.06.2025 from the Collector and Additional Superintendent of Stamps, Gandhinagar, initiating proceedings under Section 39(1)(b) of the Gujarat Stamp Act, 1958, alleging that the documents supplied by the petitioner and listed in Schedule II to the conveyance deed dated 18.10.2024 had not been duly stamped and that the stamp duty payable thereon under the provisions of the Act had not been paid at the relevant point of time, and thereby raising a demand of Rs.22,49,01,851/-. The petitioner was also directed to submit its objections.

4.7. The petitioner appeared before the authority and, from time to time, sought adjournments on various grounds, which were granted. In the meantime, another notice dated

20.03.2026 was issued to the petitioner, which was almost verbatim the same as the earlier notice, and the aforesaid demand for deficit stamp duty was again raised. Being aggrieved by and dissatisfied with the aforesaid two show-cause notices, the petitioner has preferred the present petition seeking the reliefs which have already been set out in the foregoing paragraph.

5. The State Government appeared on advance copy and, on 03.07.2026, when the matter was listed before this Court, upon a request made by the learned AGP, the matter was adjourned to 09.07.2026. On 09.07.2026, after hearing the parties, this Court passed the following order while issuing notice;

> *"1. I have heard Mr. S. N. Soparkar, learned Senior Counsel assisted by Mr. Manya N. Anjaria for the petitioner and Mr. Nikunj Kanara, learned Assistant Government Pleader appearing for the respondents.*
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> *2. Learned Senior Counsel Mr. Soparkar submitted that though the land has remained as it is and the same has never been transferred, it is only on account of composition and Partnership Deed having been changed from time to time and even the last document of the year 2015 also was registered by the respondents after*

receiving the payment of sufficient Stamp Duty for which there is no dispute, now vide notices dated 9.6.2025 and 20.3.2026, the respondents have demanded a sum of Rs.22,49,01,851/- from the petitioner when the land was sought to be transferred to the third party and along with the Conveyance Deed, the Partnership Deeds were attached, now the respondents are going behind the aforesaid Transfer Deeds and taking into consideration the Transfer Deeds, are demanding the stamp duty of more than Rs.22 Crores which is not permitted in view of the ***Division Bench decision of this Court in the case of Collector of Stamp v. Tulsi Rice and Pulse Mills reported in AIR 2021 GUJARAT 72*** *wherein the Full Court judgment in the case of* ***Velo Industries v. Collector, Bhavnagar, reported in 1971 ITR 291*** *as well as the decision of the Hon'ble Supreme Court in the case of* ***Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara v. Dewas Cine Corporation, reported in AIR 1968 SC 676*** *as well as the decision of the Hon'ble Supreme Court in the case of* ***Addanki Narayanappa v. Bhaskara Krishnappa (Dead) and thereafter his heirs, reported in AIR 1966 SC 1300*** *were considered. On the basis of the aforesaid decisions, it is submitted that the Division Bench has held that in case of change of Partnership, the same would not attract any stamp duty as a conveyance and the stamp duty would require only in case of transfer or assignment of land to third parties. In the instant case, the petitioner has already paid the stamp duty towards the transfer. But what is now being demanded is the stamp duty taking into consideration the earlier change in the constitution of the Firm which* *according to learned Senior Counsel Mr. Soparkar is not permissible in view of aforesaid decisions.*

3. Mr. Nikunj Kanara, learned Assistant Government Pleader appearing for the respondents requests for time to take necessary instructions and to file detailed reply.

4. Considering the above, issue notice to the respondents returnable on 14.7.2026. Learned Assistant Government Pleader waives service of notice on behalf of respondents. In the meantime, there shall be ad-interim relief in terms of paragraph 11 (C).

To be listed immediately after fresh matters."

6. Thereafter, the State Government filed three separate replies dated 14.07.2026, 20.07.2026 and 29.07.2026. In its reply dated 14.07.2026, the State Government filed a detailed reply, and the stand taken by the State Government can be summarized as under:

6.1. The petition is premature and is not maintainable, as the petitioner has challenged only the notices dated 09.06.2025 and 20.03.2026.

6.2. The petitioner can participate in the adjudication proceedings and, if a final order is passed against the petitioner, it would be open to the petitioner to challenge the same in accordance with the scheme of the Act.

6.3. There is a delay on the part of the petitioner, as the petitioner has challenged the impugned notice dated 09.06.2025 belatedly and, instead of filing objections to the show-cause notice, on the one hand, sought time from the authority, while, on the other hand, preferred the present petition.

6.4. Though the petitioner has referred to only one property in the petition, in fact, the partnership firm was the owner of a number of properties, and the show-cause notice has been issued collectively in respect of all such properties.

6.5. The partnership firm underwent 19 changes in its constitution between 1975 and 2010. During this period, partners were inducted and retired, and the profit-sharing ratio was varied from time to time.

6.6. As per Clause 10 of the partnership deed, upon the retirement of any partner, such partner's "share" shall be absorbed by the surviving or continuing partners in proportion to their respective shares in the partnership. This would mean that, upon the retirement of a partner, such partner's undivided share in the assets of the firm, including the immovable properties, stands transferred to and correspondingly enlarges the share of the continuing partners, which would mean that if the retiring partner is thereby divested of all interest in the property and the continuing partners are correspondingly invested with a larger interest than that held by them immediately prior thereto.

6.7. According to the respondents, the aforesaid act would constitute a transfer of interest in the property under the provisions of the Stamp Act and, therefore, the aforesaid notices were issued.

6.8. The State Government, by setting out its case in detail, took a stand that the judgments relied upon by the petitioner, which have been referred to in the interim order, are not applicable to the facts of the present case.

7. The petitioner filed its first rejoinder to the reply dated 14.07.2026 and submitted that the show-cause notices had been issued after an inordinate delay and were, therefore, without jurisdiction.

7.1. In the rejoinder, it was stated that, in view of the settled legal propositions of law, adjustment of the interest of the partners in the partnership firm would not constitute a transfer so as to attract stamp duty under the provisions of the Stamp Act.

7.2. It was also contended that, even if the documents in question had been impounded by the respondents, the factum of such impoundment had not been stated in the show-cause notices. According to the petitioner, such omission amounted to a procedural infirmity on the part of the respondents in issuing the notices, and the omission of such an important fact from the notices indicated that the notices had been issued in a mechanical manner.

7.3. Thereafter, the respondent filed another affidavit-in-reply on 20.07.2026 and stated that, vide notice dated 11.11.2024 issued under Section 68(2) of the Gujarat Stamp Act, 1958, the present petitioner was called upon to produce the original deeds of partnership referred to in Schedule II to the sale deed within a period of seven days from the date of receipt of the notice. However, the petitioner failed to produce the original partnership deeds within the time stipulated in the said notice dated 11.11.2024. It was only on 09.12.2024 that the petitioner provided photocopies of the documents referred to in Schedule II to the sale deed.

7.4. It was further submitted that all 19 documents, i.e. photocopies of the documents referred to in Schedule II to the sale deed of the partnership firm, were received by the respondent and were impounded by the respondent on 05.06.2025 under Section 33 of the Gujarat Stamp Act, 1958. It was, therefore, submitted that, since the aforesaid documents were impounded on 05.06.2025 under Section 33 of the Act, the notices dated 09.06.2025 and 20.03.2026 cannot be said to be illegal and that the proceedings initiated against the petitioner are in accordance with law.

7.5. The petitioner filed another rejoinder in response to the reply dated 20.07.2026 and stated that the photocopies of the deeds of reconstitution of the partnership firm for the period from 1975 to 2010, which were subsequently impounded, had been placed before the authority by the purchaser/third party along with its application under Section 31 of the Act, seeking adjudication by the Collector as to the proper stamp duty payable thereon.

7.6. By reproducing the amended Section 33 of the Act in the rejoinder, the petitioner contended that, under Section 33(4) of the amended Act, the Collector is required to call for the original documents and only thereafter, if the original documents are not produced within the specified time, the Collector can impound the photocopies of the documents/instruments called for. In the instant case, the authority had never issued any notice under Section 33(4) of the Act to the petitioner. It was, therefore, contended that the action of the respondents in impounding the photocopies of the documents could not be said to be in consonance with the provisions of the Act and, consequently, the authority could not have issued the notices under Section 39(1)(b) of the Act on the basis of such impoundment, which itself was illegal.

7.7. In the rejoinder, it was also contended that, if the provisions of the Act are interpreted in the manner in which it is sought to be interpreted by the respondents with regard to the exercise of powers under Section 68(2), the same would render the powers conferred under Section 33(4) of the Act redundant.

7.8. It was also contended that it is well settled that, when a statute provides for a thing to be done in a particular manner, it must be done in that manner and in no other manner. In the instant case, as the photocopies of the documents in question were impounded on 05.06.2025, i.e. after the amendment to Section 33 of the Act had come into force, unless procedure prescribed under Section 33(4) is followed, the authority could not have impounded the photocopies of the document under Section 33(5).

7.9. Thereafter, when the matter was heard on 30.07.2026, the respondents filed a third affidavit dated 29.07.2026 and contended that the object of Section 33(4) is only to provide an opportunity to the concerned party to produce the original document where a deficiency is noticed from a copy thereof. It was further contended that, as the aforesaid opportunity had already been granted to the petitioner under Section 68(2) of the Act, whereby the petitioner was specifically called upon to produce the original deeds, the requirement of Section 33(4) could be said to have been substantially complied with. Hence, it was contended that the petitioner ought not to be permitted to succeed on such a hyper-technical ground.

8. In view of the aforesaid pleadings, when the matter was heard, the controversy before this Court was confined to a very narrow compass. Learned Senior Advocate Mr. Shalin Mehta, at the outset, referring to the three affidavits filed by the respondents, submitted that, as the respondents have stated on oath in their affidavit dated 20.07.2026 that as many as 19 documents relating to the reconstitution of the partnership firm were impounded by the respondents on 05.06.2025 by impounding the photocopies thereof, such action cannot be said to be in consonance with the provisions of the Act, more particularly, in view of the amended provisions of Sections 33(4) and 33(5) of the Act. He, therefore, submitted that, keeping all the rights and contentions of the petitioner open, the petitioner may be permitted to assail the impugned show-cause notices only on the ground that the action of the respondents in impounding the photocopies of the deeds of reconstitution of the partnership firm on 05.06.2025 is in gross

violation of the provisions of the amended Section 33 of the Act. It was, therefore, submitted that any action initiated under Section 39(1)(b) of the Act on the basis of such impoundment of the photocopies of the documents cannot be said to be a valid or lawful action. Consequently, the show-cause notices dated 09.06.2025 and 20.03.2026 cannot be said to be valid show-cause notices, and the entire proceedings initiated on the basis thereof are, therefore, required to be quashed and set aside.

8.1. Learned Senior Advocate Mr. Mehta submitted that, at this juncture, the petitioner may be permitted to assail the impugned show-cause notices only on this ground and, if the aforesaid ground does not find favour with the Court, the petitioner may be permitted to address the Court on the other grounds as well. For the time being, however, he submitted that the petitioner may be permitted to challenge the impugned show-cause notices only on the issue as to whether, even after the amendment to Section 33 of the Act, the respondents could have impounded the photocopies of the documents in question without following the mandatory procedure prescribed under Section 33(4) of the Act.

8.2. Learned Senior Advocate Mr. Shalin Mehta submitted that the respondents themselves have admitted in their affidavit that, pursuant to the show-cause notice issued by the respondents on 11.11.2024, the petitioner had submitted the photocopies of the documents in question on 09.12.2024. Thus, the photocopies of the documents were already there in the possession of the respondents on 09.12.2024. He submitted that sub-sections (4) and (5) were inserted in Section 33 by way of the Gujarat Stamp (Amendment) Act, 2025, dated 02.04.2025, which was published vide notification dated 07.04.2025, and, therefore, the amended provisions came into force with effect from the date of their publication in the Official Gazette, i.e. 07.04.2025. Hence, on the date on which the amended provisions came into force, the respondents already had the photocopies of the documents in question in their possession.

8.3. Learned Senior Advocate Mr. Mehta submitted that Section 33(4) provides that, where any deficiency in stamp duty is noticed from a copy of an instrument, the Collector may, *suo motu*, or on a reference from any Court or any authority, or by any person in this behalf, call for the original document for the purpose of satisfying himself as to the adequacy of the duty paid thereon, and the instrument so produced before the Collector shall be deemed to have been produced or to have come before him in the performance of his functions.

8.4. Learned Senior Advocate Mr. Shalin Mehta submitted that Section 33(5) provides for, and takes care of, a situation where, despite a notice under Section 33(4) having been issued to the concerned person, such person fails to produce the original instrument within the period specified by the Collector. In such a case, and only thereafter, the Collector can impound the photocopy of the instrument/document.

8.5. By making the aforesaid submissions, learned Senior Advocate Mr. Shalin Mehta submitted that Section 33(5) cannot be read in isolation and that the powers thereunder cannot be exercised independently unless the procedure prescribed under Section 33(4) is first followed by the Collector. In the instant case, there is an admission on the part of the respondents that they had never issued any notice under Section 33(4) to the present petitioner. Therefore, until and unless a notice under Section 33(4) is issued to the petitioner calling upon him to produce the original instrument, the respondents could not have impounded the photocopy of the instrument, even if the photocopies were already available with them, in view of the clear language of Sections 33(4) and 33(5) of the Act.

8.6. Learned Senior Advocate Mr. Shalin Mehta submitted that Section 33 falls within Chapter IV of the Act, which bears the title "Instruments Not Duly Stamped", whereas Section 68 falls within Chapter VIII, which deals with supplemental provisions. He further submitted that the heading of Section 33 is "Examination and impounding of instruments", which indicates that Section 33 is the specific provision governing the examination and impounding of instruments. Therefore, unless the powers under Section 33 are exercised in accordance with the procedure prescribed therein, it is not open to the authority to invoke the supplemental provisions under Section 68 of the Act.

8.7. Learned Senior Advocate Mr. Mehta submitted that Section 68 deals with the power of the Collector to authorise an officer to enter premises and inspect certain documents. He further submitted that the language of Section 33(4) makes it clear that, in accordance with the requirement thereof, the Collector shall call for the original instrument for the purpose of satisfying himself as to the adequacy of the duty paid thereon, whereas Section 68 provides for the Collector the power to authorise an officer to enter the premises and inspect certain documents.

8.8. Learned Senior Advocate Mr. Shalin Mehta submitted that both the provisions are separate provisions, and that, until and unless the procedure prescribed under Section 33 is followed, it is not open to the Collector to exercise powers under Section 68 for the purpose of getting instruments for impoundment. Learned Senior Advocate Mr. Shalin Mehta submitted that the purpose behind Section 33(4) is to allow the Collector to collect the original instrument for examination by calling upon the concerned person to produce the same before the authority. Thus, the language of Section 33 indicates that the concerned person is required to produce the document before the Collector, and the Collector is not required to step out of his office to collect the original document from such person. On the other hand, Section 68 confers upon the Collector the power and authority to authorise an officer to enter the premises and inspect certain documents. This, according to learned Senior Advocate Mr. Shalin Mehta, itself indicates that the power under Section 68 can be exercised where a person fails or refuses to produce the original documents before the

Collector. Therefore, for the purpose of impounding the document, if the Collector does not even have the photocopy of the original document, the Collector can authorize a person to enter the premises to inspect the documents so as to achieve the object of the Act.

8.9. Learned Senior Advocate Mr. Shalin Mehta further submitted that, in the instant case, the respondents had never issued any notice under Section 33 of the Act to the petitioner and had straightaway issued a notice under Section 68(2) of the Act, without providing the petitioner an opportunity to produce the original documents before the authority. He, therefore, submitted that, until and unless a notice under Section 33(4) of the amended Act is issued to the concerned person and the Collector comes to the conclusion that the procedure prescribed under Section 33 has proved to be a futile exercise or has not yielded any result, it is not open to the Collector or the authority, as the case may be, to straightaway invoke Section 68(2) of the Act. According to learned Senior Advocate Mr. Shalin Mehta, no opportunity was given to the petitioner to produce the original documents in accordance with Section 33, which is the specific provision governing the examination and impounding of instruments.

8.10. Learned senior advocate Mr. Shalin Mehta, learned Senior Advocate, therefore submitted that in absence of there being any notice under Section 33(4) of the Act, both the impugned notices, which are issued after the Act was amended on 07.04.2025 by amending Section 33(4) and 33(5), the authority was not justified in impounding the instrument on the basis of photocopies of the instrument which were received by the authority by exercising powers under Section 68(2) of the Act, more particularly when the aforesaid instruments were received by the authority prior to amendment of the Act, i.e. on 09.12.2024. He, therefore, submitted that, once the amended provisions came into force on 07.04.2025, it was incumbent upon the authority to follow the procedure prescribed under Section 33(4) and call upon the petitioner to produce the original instruments and in event of failure only on the part of petitioner to produce such documents, the Collector either could have impounded the photocopies of the instrument or could have resorted to his powers under Section 68 of the Act.

8.11. He, therefore, submitted that, in view of the fact that the impugned show-cause notices do not refer to any impoundment of the documents and that the documents were purportedly impounded by impounding their photocopies, such impoundment cannot be said to be a valid impoundment of the documents. He, therefore, submitted that both the impugned show-cause notices are required to be quashed and set aside.

9. Learned AGP Mr. Nikunj Kanara, in response to the aforesaid limited submission made by learned Senior Advocate Mr. Shalin Mehta, submitted that the powers under Section 68 fall within the supplementary provisions of the Act. He submitted that the powers conferred under Section 68 are independent powers and have no connection with the exercise of powers under Section 33. Therefore, according to the learned AGP, having regard to the language of the Act, it cannot be said that the powers under Section 68 cannot be exercised unless and until the powers under Section 33 are first exercised.

9.1. Learned AGP Mr. Kanara further submitted that the powers under Section 68 are contained in Chapter VIII, which bears the title "Supplemental Provisions", and that such powers can be exercised in addition to the specific powers vested in the Collector under Section 33. He, therefore, submitted that, depending upon the facts and circumstances of the case, it is open to the Collector to exercise either the powers under Section 33 or those under Section 68 with a view to ensuring that the object of the Act is achieved. He further submitted that whether the photocopies were obtained by the respondents in exercise of powers under Section 68(2) or under Sections 33(4) and 33(5) would pale into insignificance, as what is important is that the concerned person is afforded an opportunity to produce the original instrument before the Collector. He, therefore, submitted that, when such an opportunity had already been afforded to the present petitioner by issuing a notice under Section 68(2), the petitioner could not raise a technical objection regarding the alleged failure on the part of the respondents to exercise powers under Section 33(4) by issuing a notice thereunder. Accordingly, he submitted that the action of the respondents in impounding the documents by impounding the photocopies of the instruments could not be said to be illegal and, therefore, such action would not render the impugned show-cause notices illegal or invalid.

9.2. Learned AGP Mr. Kanara relied upon the decision of the ***Hon'ble Supreme Court in the case of G.M. Shahul Hameed v.***

Jayanthi R. Hegde reported in 2024 (o) AIJEL SC 73782 and submitted that mere technicalities cannot be permitted to undermine the legislative intent and the fiscal interests of the State. Relying upon the aforesaid judgment, learned AGP Mr. Kanara prayed for dismissal of the present petition.

10. In rejoinder, learned Senior Advocate Mr. Shalin Mehta submitted that, insofar as the decision in the case of G.M. Shahul Hameed *(supra)*, relied upon by the State, is concerned, the same dealt with the admissibility of evidence. He drew the attention of the Court to the substantial question of law framed by the Hon'ble Supreme Court and submitted that the substantial question before the Hon'ble Supreme Court was whether, upon admission of an instrument in evidence and its marking as an exhibit by a Court (despite the instrument being chargeable to duty, but insufficiently stamped), such process could be recalled by the Court in exercise of its inherent powers saved under Section 151 of the Code of Civil Procedure, for the ends of justice or to prevent abuse of the process of the Court.

10.1 Learned Senior Advocate Mr. Mehta submitted that, as the Hon'ble Supreme Court was examining the issue of admissibility of evidence, the aforesaid judgment is required to be considered in that context. He, therefore, submitted that what has been termed as a "technicality" by learned AGP Mr. Kanara is, in fact, not a mere technicality, but a mandatory requirement or duty cast upon the authority under the provisions of the Act. He, therefore, submitted that the judgment relied upon by learned AGP Mr. Kanara is not applicable to the facts of the present case.

11. Though a compilation of judgments was initially submitted to the Court by learned counsel for the petitioner, along with a few other judgments, in view of the fact that learned Senior Advocate Mr. Shalin Mehta, at this juncture, confined his submissions only to the aforesaid issue as to whether compliance with the procedure prescribed under Section 33(4) is mandatory for exercising the power under Section 33(5) of the Act for impounding the photocopy of an instrument or not, and keeping all the rights and contentions of the petitioner open at this stage, he did not rely upon any other judgment.

12. Learned AGP Mr. Kanara also did not cite any other judgment or make any other submission except those recorded

herein-above, including the judgment referred to in the foregoing paragraph.

13. I have heard learned counsels for the parties and perused the record. For determination of the aforesaid issue, it would be necessary to consider the language and provisions of Sections 33 and 68 of the Act, which are reproduced hereunder;

> ***" Section 33 - Examination and impounding of instruments***
>
> *(1) [Subject to the provision of section 32A, every person] having by law or consent of parties authority to receive evidence, and every person in charge of a public office except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions shall if it appears to him that such instrument is not duly stamped, impound the same.*
>
> *(2) For that purpose every such person shall examine very instrument so chargeable and so produced or coming before him in order to ascertain whether it is stamped with a stamp of the value and description required be the law for the time being in force in the State when such instrument was executed or first executed:*

Provided that-

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (V of 1898);

(b) in the case of a Judge of High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court may appoint in this behalf.

(3) For the purpose of this section, in cases of doubt,-

(a) the State Government may determine what offices shall be deemed to be public offices; and

(b) the State Government may determine who shall be deemed to be persons in charge of public offices.

(4) Where deficiency in stamp duty is noticed from the copy of an instrument, the Collector may suo motu or on a reference from any Court or any Authority or by any person in that behalf, the collector shall call for the original instrument for the purpose of satisfying himself

as to the adequacy of the duty paid thereon, and the instrument so produced before the Collector shall be deemed to have been produced, or come before him in the performance of his functions.

(5) In case the instrument is not produced within the period specified by the Collector, collector shall impound the copy of instrument, he shall require the payment of the proper duty or the amount required to make up the same, together with penalty under Section 39(1)(b) on the copy of the instrument.

Section 68 – [Collector's power to authorise officer to enter premises and inspect certain documents

(1) The Collector may, where he has reason to believe that all or any of the instruments specified in Schedule I have not been charged at all or incorrectly charged with duty leviable under this Act, authorise in writing any officer to enter upon any premises where he has reason to believe that any registers, books, records, papers, documents, or proceedings relating to or in connection with any such instruments (including such instrument) are kept and to inspect them, and to take such notes and extracts as such officer deems necessary, and if necessary, to seize them and to impound them under section 33.

(2) Every person having in his custody or (maintaining such instrument, registers), books, records, papers, documents or proceedings shall, when so required by the officer authorised under sub-section (1), produce them before such officer and at all reasonable times permit such officer to inspect them and take the notes and extracts as he may deem necessary.

14. The question that arises for determination is, whether a show-cause notices issued after the amendment to Section 33 of the Act, on the basis of the impoundment of photocopies of the instruments/documents which had been obtained by the authority prior to the said amendment in exercise of powers under Section 68(2) of the Act, without following the procedure prescribed under Sections 33(4) and 33(5) of the Act, can that be said to be a valid show-cause notices; and whether such impoundment of the photocopies of the instruments/documents can be said to be a valid impoundment of the instruments/documents or not.

15. To consider the aforesaid question, what is required to be considered is the fact that the notice under Section 68(2) of the Act was issued to the petitioner on 11.11.2024 and,

pursuant to the aforesaid notice, the petitioner produced photocopies of certain instruments/documents on 09.12.2024, meaning thereby, prior to the amendment of the relevant provisions of the Act by the notification dated 07.04.2025, the authorities were already in possession of the photocopies of the instruments/documents in question. Thereafter, the authority impounded the same on 05.06.2025, taking the stand that, once the petitioner had been issued a notice under Section 68(2) calling upon him to produce the original documents/instruments, there was no requirement to issue a notice under Section 33(4) of the Act before impounding the photocopies of the documents in exercise of powers under Section 33(5) of the Act.

16. To decide the issue on hand, if the situation prevailing prior to 07.04.2025, i.e. prior to the amendment of Section 33 of the Act, is considered, the authorities were entitled to impound only the original instrument, and any impoundment of a photocopy of the instrument, could not be said to be a valid impoundment of the document or instrument. Therefore, with a view to ensuring that no person who had paid deficient stamp duty could take undue advantage of the aforesaid provisions of law, and more particularly Section 33 of the Act,

Sections 33(4) and 33(5) were introduced by way of the amendment notified on 07.04.2025. Section 33(4) empowers the Collector or the authority to issue a notice thereunder and call for the original instrument/document for which it is alleged, or where the Collector or authority as the case may be has a reason to believe, that the concerned person has paid less stamp duty than what is required. Thus, in exercise of powers under Section 33(4), the authority may call upon the concerned person to produce the original instrument/document.

17. Section 33(5) takes care of a situation where, despite the issuance of a notice under Section 33(4), the instrument is not produced within the period specified by the Collector. In such a situation, the Collector is empowered to impound the photocopy of the original instrument, meaning thereby, the language of Section 33(5) itself makes it clear that it is only when the instrument/document is not produced within the period specified by the Collector, in that case, the Collector can proceed to impound the photocopy of the instrument/document.

18. Section 33 is the first section of Chapter IV, which bears the title “Instruments Not Duly Stamped”. Chapter IV deals

with various situations and prescribes the procedure required to be followed in certain situations or for doing certain things in respect of instruments which are not duly stamped. Prior to the amendment, when Section 33(4) was not in force, probably Section 68 was the only provision under which, by invoking the powers conferred thereunder, the Collector was empowered to call upon a person to produce the original instrument. However, after the amendment, Section 33(4) itself confers upon the Collector the power to call for the original instrument within the period specified in the notice. Therefore, when the Collector exercised the powers under Section 33(5) and proceeded to impound the photocopies of the instruments on 05.06.2025, the Collector or the authority, as the case may be, ought not to have resorted to the powers already exercised under Section 68(2) of the Act during the pre-amendment era, and by virtue of exercising those powers, the authority had already obtained the photocopies of the instrument/document.

19. When the authority was exercising the powers under the amended provisions of Section 33, it was expected and incumbent upon the authority to follow the procedure prescribed under Section 33 for the purpose of impounding the photocopies of the instruments. It is only in the event that a

person fails to comply with the requirement of a notice issued under Section 33(4) to produce the original instrument before the Collector, then only the Collector can proceed to impound the photocopy of the original instrument in exercise of powers under Section 33(5). In the instant case, the stand taken by the respondents themselves indicates that no notice under Section 33(4) was ever issued to the petitioner calling upon him to produce the original documents/instruments in terms thereof. Therefore, when the petitioner was never afforded an opportunity to produce the original documents under Section 33(4), the authority could not have straightaway exercised the powers under Section 33(5) and impounded the photocopies of the instruments/documents.

20. I have reason to say so the aforesaid view because Section 68 confers powers upon the Collector under Chapter VIII, which bears the title "Supplemental Provisions", whereas Chapter IV deals with "Instruments Not Duly Stamped", and Section 33 is the specific provision dealing with the examination and impounding of instruments. Therefore, a person who receives the notice from the respondents, if such notice is received by him under Section 33 and more particularly under Section 33(4) considering the amended

provision of the Act, the moment a person receives the notice under Section 33(4), he would realize that the aforesaid notice is issued for the purpose of examining and, if necessary, impounding the instrument. In case, if such person fails to produce the original instrument within the period specified in the notice issued under Section 33(4), the Collector or the authority, as the case may be, would still have the power to impound the photocopy of the instrument under Section 33(5). Thus, a notice under Section 33(4) conveys a clear indication to the recipient that the intention of the authority is to examine and, if necessary, impound the instrument/document. With such clarity, the concerned person may either choose to produce the original instrument/document before the authority or may avail of such appropriate remedy as may be available to him in law against such notice.

21. Whereas, if a notice is issued under Section 68 of the Act, such notice cannot be presumed to be a notice which would carry the proceedings further and ultimately culminate in the impounding of the document, since such provision falls within the Chapter relating to "Supplemental Provisions". Section 68 specifically deals with the power of the Collector to authorise an officer to enter the premises and inspect certain

documents, meaning thereby, when the Collector exercises powers under Section 68, the Collector does not, at that stage, have the relevant documents in his possession, whether original or photocopies thereof. The inspection of the document also can be undertaken only either upon the documents are provided to the Collector or Collector chooses to enter the premises, may be forcibly or without the will and wish of the concerned person. It is only upon inspection of the instrument/document that the Collector may come to know that an instrument/document is not duly stamped and may thereafter choose to exercise the powers under Section 33, because the language of Section 33(1) is clear that every person in charge of a public office, except an officer of the police, before whom any instrument, chargeable, in his opinion, with duty is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

22. Section 33(1) requires the officer to first form an opinion as to the insufficiency of the stamp duty and, thereafter, to proceed in accordance with law for the purpose of impounding the instrument. Section 68 empowers the Collector to call for the documents, including by authorising an officer to enter the

premises where such documents are kept. Once such an opinion is formed, the unamended provision of Section 33 contemplated the impounding of the original instrument. But subsequently, as Section 33(4) and Section 33(5) were amended, now post-amendment, the officer can even impound the photocopy of the instrument/document. But such action cannot be taken without disclosing intention to impound the document, and a person would know about such intention only if he is served with a notice under Section 33. Because only upon receiving a notice under Section 33(4), the concerned person would come to know about the intention of the authority that even if that person chooses to retain the original documents with him, the authority can still impound the document/instrument by exercising powers under Section 33(5) and can impound the photocopy. Therefore, Section 33(4) shows the intention of the authority to impound the document and puts such person on guard that in case if the documents called for by way of notice under Section 33(4) is not provided in original, authority still can impound the photocopy of the document. Therefore, issuance of notice under Section 33(4) is a condition precedent for exercising powers under Section 33(5) and thereby impounding the photocopy of the instrument.

23. In the instant case, as the respondents did not issue any notice under Section 33(4) to the petitioner and proceeded to impound the photocopies of the instruments/documents by relying upon the notice issued under Section 68(2), such action on the part of the authority cannot be considered to be legal or valid. Consequently, the action of the respondents in impounding the photocopies of the instruments in exercise of powers under Section 33(5), without first issuing a notice under Section 33(4), renders the impoundment of the photocopies of the instruments invalid and illegal. Consequently, the notice issued under Section 39(1)(b), being founded upon such invalid impoundment of the photocopies of the instruments, cannot also be sustained in law. Hence, both the impugned notices dated 09.06.2025 and 20.03.2026 are held to be invalid and illegal.

24. As regards the decision in case of G.M. Shahul Hameed *(supra)* relied upon by the respondents is concerned, the aforesaid judgment dealt with the issue of admissibility and exhibiting of a document/instrument. Since the subject matter and the issue arising for consideration in the present petition are entirely different, the reliance placed by the respondents upon the aforesaid judgment is misplaced. Moreover, having

regard to the materially different facts and circumstances of the present case, the said judgment is not applicable to the facts of the case.

25. Resultantly, in view of the aforesaid discussion, both the impugned notices dated 09.06.2025 and 20.03.2026 are required to be quashed and set aside, and are accordingly quashed and set aside. The petition is accordingly allowed. Rule is made absolute.

(NIRZAR S. DESAI,J)

BHAVIN MEHTA