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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 12th May, 2026
Pronounced on: 12th August, 2026

\# **CNR No. DLHC010086782011**

\+ W.P.(C) 382/2011

SANSKAR HOMES PVT LTD. .....Petitioner

Through: Mr. H.L. Tiku, Sr. Adv. with Ms. Bharti Kochhar, Ms. Yashmeet Kaur & Mr. Hitesh Wadhwa, Advs.

versus

GOVERNMENT OF NCT OF DELHI & ANOTHER.....Respondents

Through: Mr. Tushar Sannu, Mr. Akshay Sharma & Mr. Fajallu Rehman, Advs.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present petition under Article 226 of the Constitution of India, 1950 has been filed seeking the following prayers: -

> "a) issue writ of certiorari or any other appropriate writ, order direction thereby quashing the impugned order dated 14.07.2010 passed by Respondent No. 2 i.e. Collector of Stamps;
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> b) issue any writ, order or direction directing the Respondents to refund the stamp duty in the sum of Rs. 82,74,178/- deposited by the Petitioner vide receipt No. FA/22/COS/VV/Verif./10 dated 15.10.2010, with interest;

c) issue any other writ, order or direction granting to the Petitioner all other necessary and consequential relief as are just and proper in the facts and circumstances of the case;

d) award costs to the Petitioner.

AND FOR THIS ACT OF KINDNESS YOUR PETITIONER AS DUTY BOUND SHALL EVERY PRAY."

2. Relevant facts for adjudication of the present writ petition are as follows:-

a) One Mrs. Sonu Kochar w/o Mr. Hari Krishna Kochar and Mr. Bal Krishna Kochar s/o Mr. Hari Krishna Kochar were owners of a residential plot bearing no. 60, Poorvi Marg, Vasant Vihar, Delhi, admeasuring 819 sq yds (hereinafter referred to as "**subject property**"). On 13.02.2008, the subject property was sold to M/s Surya Realtech Private Limited (hereinafter referred to as "**SRPL**") by way of a registered sale deed.

b) On 18.03.2008, SRPL entered into a collaboration agreement with the petitioner for re-development of the residential building on the subject property, comprising of basement, ground floor, first floor, second floor and third floor. Under the said collaboration agreement the petitioner was to incur the entire cost relating to reconstruction of the subject property, in addition to paying a sum of Rs. 11,80,96,000/- to the SRPL. Further, as per the collaboration agreement, in lieu of the cost incurred, the petitioner was entitled to basement, ground floor and third floor, and SRPL was to get the first floor and second floor of the residential building on the subject property.

c) On 23.06.2008, SRPL executed a General Power of Attorney (hereinafter referred to as "**GPA**"), registered for consideration, in favour of Mr. Ravi Arora, one of the Director of petitioner upon payment of stamp duty, empowering, amongst others, the authority to sell the basement, ground floor and third floor of the subject property.

d) Subsequently, SRPL *vide* Agreement to Sell dated 03.07.2008 and 14.02.2009 sold the first and second floor of the subject property respectively, to the petitioner for a consideration. On 17.02.2009 two more GPA were executed by SRPL through Mr. Satish Julka in favour of Mr. Ravi Arora, Director of petitioner, empowering, amongst others, the authority to sell the said first floor and second floor. These GPA's were registered upon payment of adequate stamp duty.

e) On 29.04.2010, respondent no. 2/ Collector of stamps issued a Show Cause Notice (hereinafter referred to as "**SCN**") to the petitioner asserting and alleging as under:-

> " Whereas a complaint dated 25.3.2010 was received from M/s Surya Realtech (P) Ltd., E-4/4, Vasant Vihar, New Delhi, wherein it is stated that M/s Sanskar Homes (P) Ltd., F-5/9, Vasant Vihar, New Delhi had entered into a collaboration agreement dated 18.3.2008 with the complainant i.e. M/s Surya Realtech (P) Ltd. for the development of Property No. 60, situated at Poorvi Marg, Vasant Vihar, New Delhi. And on perusal of collaboration agreement, it is observed that neither the aforesaid collaboration agreement is registered nor the requisite stamp duty over this agreement has been paid as per the provisions of Indian Stamp Act, 1899.
>
> You are therefore, directed to explain the reason for the same before the undersigned on 6th May 2010 at 2 PM as to why the stamp duty was not paid in the instrument, and why penalty should not be imposed on you, by way of appearance in person or through authorized representative."

f) The petitioner gave a written reply dated 01.06.2010 to the aforesaid SCN and raised an objection that the said collaboration agreement has not been produced before any judicial or *quasi* judicial authority nor the party can be compelled to produce the original and only original can be impounded.

g) Respondent no. 2 *vide* impugned order dated 14.07.2010 held that the collaboration agreement is covered under Section 17(1)(b) of the Registration Act, 1908 and imposed a penalty of Rs. 5 lakhs in addition to the stamp duty imposed of Rs. 77,74,177.56/- to be paid on the instrument as per Section 33 of the Indian Stamp Act, 1899. Thus, directed the petitioner to deposit a sum of Rs. 82,74,178/- with the Government. The said order was on the basis of circular dated 05.05.2006 passed by the Divisional Commissioner, Delhi. The said impugned order reads as under:-

> "OFFICE OF THE COLLECTOR OF STAMPS, VASANT VIHAR, DC (SOUTH-WEST) OFFICE COMPLEX, KAPASHERA, N.D. 37
>
> No. F.6/22/COS/VV/Imp./10 Dated14-7-2010
>
> Sub: Regarding changing of stamp duty on Collaboration Agreement in respect of Property No 60, Poorvi Marg, Vasant Vihar, New Delhi.
>
> An information regarding under valuation and evasion of stamp duty and transfer duty was received from the Director, M/s. Surya Realtech (P) Ltd. Received in this office on 20.3.2010 wherein it was informed that:-
>
> (i) They are owner of property bearing No. 60, Poorvi Marg, Vasant Vihar, New Delhi, admeasuring 819 sq. yds having purchased the same against total consideration of Rs.23,00,000/- (Rupees Twenty Three Crore only) vide Sale Deed registered as No. 1377 on 13.2.2008 in the office of the Sub Registrar-IX, New Delhi.
>
> (ii) They entered into a Collaboration Agreement dated 18.3.2008 with M/s. Sanskar Homes (P) Ltd. F.5/9 Vasant Vihar New Delhi (Builder),

and under the terms and conditions of the collaboration agreement received a sum of Rs. 10,80,96,000/- through cheque /pay orders, end in lieu of the cost of. construction of the said entire property, the said M/s. Sanskar Homes (P) Ltd. was entitled to be the owner of entire basement, ground floor and third floor with terrace of the said property, and shall hand over the physical vacant possession of fully furnished entire first and second floor of M/s. Surya Realtech (P) Ltd.

(iii) As per the terms of the Collaboration agreement, they executed a General Power of Attorney in favour of Shri Ravi Arora, Director of the Company in respect of entire basement, ground floor and third floor with terrace (alongwith 55% share in the land underneath the some) out of the aforesaid property. And the builder company has not paid requisite stamp and transfer duty on the collaboration agreement.

The case was perused and in order to examine the case, the complaint was forwarded to SR-IX, who scrutinized the complaint on the basis of the documents available with him and found that the documents i.e., GPAs registration No. 2396 dated 23.06.2008, 378 dated 18.2.2009 and 379 dated 17.2.2009 are registered in compliance with the provision of the Registration Act 1908 and Indian Stamp Act 1899, SR-IX further submitted to take action as per section 33 of Indian Stamp Act 1899 on Collaboration Agreement.

Accordingly, the proceedings u/s 33 were initiated and notices were issued to M/s. Sanskar Homes (P) Ltd. (the builder company). In reply to the notice, builder company, vide their letter dated 01.06.2010 submitted that it entered into an arrangement with the respondent for the purpose of redevelopment and reconstruction of the property ... transaction in question is a truncation of is of only building a new modern house of which the construction cost is to be borne by the builder and M/s. Surya Realtech Pvt. Ltd. agreed to certain terms and conditions which would entitle the respondent to recover the amounts spent by it on construction as well as for the skill that it utilizes construct the property and services rendered by it. The builder company has further submitted that the said collaboration has not been produced by them before any judicial or quasi-judicial authority, and even a civil court cannot compel a party to an agreement to produce the original with an intent to impound the same, and if it was done so, then the jurisdiction vested under section 33 of the Stamp Act could be invoked. And the builder company also further submitted that requisite stamp duty over the collaboration agreement has been paid.

The CCRA vide Circular dated 5th May, 2006, has clarified that '...such Collaboration Agreement are clearly covered under the Section 17(1) (b) of the Registration Act, 1908. This instrument creates, declares, assigns, limit or extinguish a right, title or interest in a moveable property. It is reiterated that an instrument covered under the definition of Section 17(1)(b) has to be compulsorily registered by paying the correct amount of stamp duty."

While going through, alongwith the record, it is observed that the 'Collaboration Agreement" dated 18.03.2008 clearly entitles the builders to develop the said property at its own cost, to procure the requisite permission and to obtain approval from the competent authority to develop the floors/ spaces in the said property and to be personally responsible for any penalties in fulfilling the requirement of the Rules and the Regulations. The owner of the property hands over the possession of the said property to the builder for the purpose of Development/ Reconstruction. The owner also empowers the Builder to sell the floors and the spaces in the reconstructing building. The builder is deemed to be the owner certain portion of reconstructed property including the basement, ground floor and third floor and exclusive ownership and usage rights of the entire terrace including rights of further construction thereon. The owner does not have any responsibility for violation of any Rules and Laws which applies during the course of re-construction; In this regard some points of 'Collaboration agreement' are re-producing as under:-

"The builder agrees to prepare building plans in accordance with the building bye-laws as applicable on the said property or as may be prescribed by the authority or authorities concerned with the development on the said property from time to time and as agreed between the owner and the builder. The Builder shall make its full efforts for obtaining permission for the maximum area to be covered on the said property. The total FAR sanctioned on the said plot of the land shall be divided equally on all the four floors i.e. ground, first and third floors. All the fees/ payment and expenses incurred in the matter of sanctioning of plans will be borne by the Builder (Para 4 page 6).

"That the owner in accordance with the terms and conditions, herein recorded, have placed at the complete disposal of the Builder, the vacant physical possession of the said property shall irrevocably;, vest in the builder, with all the powers and authorities of the owner as may be considered necessary by the Builder for obtaining the requisite permissions, sanctions from the concerned authorities for demolition/ re-construction of the proposed building and for the sale of the Builder's share." (Page 2 Page 7).

"That the entire amount required for carrying out construction, development, completion of the said building including the charges and fees of the architect for preparation of the plans and all the other statutory and other fees and/or demands shall be wholly to be account of Builder." (Para 2 Pages 8)

"That the Builder shall have the exclusive ownership and usage rights of the Entire Terrace over and above the Entire Third Floor of the said property, including rights of further construction thereon." (Para 2 Page 9).

"The Builder and the owner shall be entitled to sell, I transfer, convey and assign their respective portions to any prospective buyer and to receive the sale proceeds in respect thereof, in their respective names during or after the completion of the construction without any objection or hindrance by the other (Para 4 Pages 10).

"That the owner and the Builder shall themselves be responsible for all the Income Tax and capital gain tax liability arising out of the sale of their respective allocations in the proposed building. (Para 5 Page 11).

"That allege expenses for the execution of the sale deed/conveyance deed of the builder's portions including the right in the land such as stamp duty, registration charges etc. shall be borne and paid entirely by the Builder or its nominees." (Para 5 Page 12).

Hence in view of the examination of Collaboration agreement by the office of CCRA and circulated vide Circular No. F.21/6(1)/Comp/Agx/COS/HQ/05-06/418-24 dated 5.5.2006 and on the scrutiny of 'Collaboration Agreement' in question it is held that this Agreement signed between Director, Surya Realtech Pvt. Ltd. and Director, Sanskar Homes Pvt. Ltd. dated 18.3.2008 is covered under Section 17(1)(b) of Registration Act of 1908 as this instrument creates, declares, assigns, and limits/extinguish right/title/interest of builder/owner. Hence the same is compulsorily registrable instrument though the document is carefully worded as 'Collaboration Agreement' with the intension of evade the stamp duty on it.

Hence I hereby impose Rs. 5,00,000/- penalty in addition to the actual stamp duty to be paid on the instrument as per the following calculation under Sec. 33 of Indian Stamp Act, 1899.

Locality	:Vasant Vihar
Category	:A
Land Rates	:Rs.43,000/- per sq. mtr
Construction Rate	:Rs.14,960/-
Year of construction	:2008-2009
Age Factor	:1
Plot Area	:684.78 sq. mtr
No. of floors	:03
Total plinth area	:1917.38 (567%)
No of floors allotted to	
Owner and their plinth area	: 2,766.95 sq. mtr
Cost of construction of the	
Portion allocated to owner	:766.95, 14960
Total Cost borne by the	
Builder to acquire 03 floors	
Of the property	:11,80,96,000/-
	1,14,73,626/-
	12,95,69,626/-
Stamp duty paid by the builder	: 77,74,177.56(6%)
	+5,00,000
	=82,74,1178

Accordingly Rs.82,74,178/- be deposit in Government Treasury.

Collector of Stamp
Vasant Vihar
Vivek Kumar Tripathy

SDM Vasant Vihar,
Old Terminal Tax Building
Kapashera, New Delhi-37"

h) Subsequently, petitioner sold the ground floor of the subject property to Mr. Yashpal Mehra *vide* sale deed dated 23.07.2010 and the petitioner along with Mr. Yashpal Mehra got the said sale deed registered after paying proper stamp duty. However, *vide* letter/ order dated 07.08.2010, Sub Registrar impounded the said sale deed and sent it for clubbing in the matter of charging of stamp duty on the said collaboration agreement. It was specifically noted in the said letter/ order that the stamp duty paid on the said sale deed is in order.

i) Thereafter, petitioner sold the second floor of the subject property to Masu Brakes Private Limited *vide* sale deed dated 20.08.2010 on which also proper stamp duty had been paid. However, *vide* letter/ order dated 01.09.2010, Sub Registrar impounded the said sale deed and sent it for clubbing in the matter of charging of stamp duty on the said collaboration agreement. It was specifically mentioned in the said letter/ order that the stamp duty paid on this Sale deed, is in order.

j) SRPL filed a suit bearing CS (OS) no. 2105/ 2010 before this Court against the petitioner and Mr. Ravi Arora arrayed as defendants seeking *interalia* for the reliefs pertaining to the first floor and second floor that the GPAs dated 17.02.2009 and respective Sale Deeds executed in pursuance thereof are illegal, null and void. However, subsequently the parties settled their *interse* disputes and SRPL withdrew the suit on 28.10.2010.

k) On 15.10.2010, the petitioner deposited the stamp duty along with the penalty with respect to the collaboration agreement amounting to Rs. 82,74,178, under protest. Thereafter, the respondent no. 2 released the sale deeds dated 23.07.2010 and 20.08.2010 in respect of ground and second floor of the subject property.

3. Learned Senior Counsel for the petitioner in support of the present petition submitted as follows:-

a) Impugned order dated 14.07.2010 is against the principles of natural justice as respondent no. 2 did not give a copy of the alleged complaint dated 25.03.2010 to the petitioner, on the basis of which SCN dated 29.04.2010 was issued.

b) Under the Indian Stamps Act, 1899, stamp duty is chargeable on the instrument itself *i.e.* the original executed document and not a mere photocopy. There is nothing in the said SCN or impugned order to show that original collaboration agreement was presented before the respondent no. 2, as original collaboration agreement was with the petitioner.

c) With respect to Section 33 of the Indian Stamps Act, 1899, admittedly, neither the collaboration agreement was presented before any Judicial or *quasi* Judicial authority for the purpose of receiving in evidence nor the said agreement was produced or came in performance of function by any person in charge of a public office. Thus, respondent no. 2 had no jurisdiction to impound a photocopy of a document.

d) The provisions of the Indian Stamp Act, 1899 and Indian Registration Act, 1908 becomes applicable only when a document is presented for registration. However, in the present case, no document was with the Sub-Registrar for registration on the basis of the said collaboration agreement. The sale deeds for the ground and second floors were presented by the petitioner for registration on the basis of GPA's executed by the owner. Thus, impugned order have been passed without jurisdiction and is liable to be set aside.

e) A document can be examined/ impounded under Section 33 of the Indian Stamp Act 1899, only if it is presented before the authorities and it is found that the said document is not properly stamped. The same cannot be done merely on the basis of a complaint filed by any one. Thus, no cognizance could be taken by the respondent no. 2 on a complaint filed by SRPL and that too on the basis of a photocopy of the document.

f) There is no provision in Indian Stamp Act 1899 to impound a document if the said document is adequately stamped. In the present case, respondent no. 2 has not disclosed under which provision of law, it received and impounded the sale deeds dated 23.07.2010 and 20.08.2010, especially when they were adequately stamped.

g) Further, reliance was placed on the following judgments:-

i) **Distt. Registrar & Collector v. Canara Bank,**[1]

ii) **Ashok Kamal Capital v. State**[2]**,**

iii) **Hariom Aggarwal v. Prakash Chand Malviya**[3]**,**

iv) **Somdutt Builders v. State of U.P.**[4]**,**

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[1] MANU/SC/0935/2004
[2] MANU/DE/2007/2009
[3] J.T. 2007(12) S.C. 49

v) **Tata Teleservices Ltd. v. State of U.P.[5] ,**

vi) **Mohini Electricals Ltd. v. Delhi Jal Board[6],**

vii) **Ambuja Cement v. Collector of Stamp, Delhi[7]**

viii) **Ramesh Chand (D) Thr. LRs v. Suresh Chand & Anr.[8]**

4. Learned counsel for the respondents, refuting the submissions made on behalf of the petitioner, submitted as follows:-

a) Collaboration agreement herein creates, declares, assigns and limits/ extinguish right/ title/ interest of builder/ owner. The said agreement was a transaction of transfer of ownership rights and possession to the builder for a valuable consideration. However, the said agreement was deceptively nomenclatured as "Collaboration Agreement", with the intention to evade the stamp duty. Further, Sale deeds dated 23.07.2010 and 20.08.2010 were also based on the said collaboration agreement dated 18.03.2008. Thus, the said agreement squarely fell within the definition of a "Conveyance" under Section 2(10) read with Section 3 of the Indian Stamp Act 1899 and was compulsorily registrable under Section 17(1)(b) of the Indian Registration Act, 1908.

b) Respondent no. 2 rightly relied upon the Divisional Commissioner's Circular dated 05.05.2006, that directs that builder-owner collaboration agreements transferring rights in immovable property must be treated as

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[4] MANU/UP2370/2005
[5] MANU/UP/1276/2008

[6] MANU/DE/0110/2021
[7] MANU/DE/7784/2024
[8] 2025 INSC 1059

conveyances and charged full stamp duty. Thus, deliberate non-registration of the collaboration agreement and simultaneous execution of registered GPAs transferring title show that the arrangement was structured to avoid stamp duty.

c) The impugned order itself records that the subject case was verified through the registration records. Thus, the respondent no. 2 did not act on any photocopy, but on authenticated official records. Consequently, once such agreement "came before him in the performance of his functions" jurisdiction under Section 33(1) of the Indian Stamp Act 1899 stands validly invoked. Subject proceedings therefore, satisfy all legal requirements of Section 33 read with Section 40 of the Indian Stamp Act 1899, which empower the Collector to impound and assess stamp duty on any instrument appearing under-stamped from official records.

d) The Indian Stamp Act 1899 contains no provision permitting payment "under protest." Once the adjudicated duty is deposited, the liability is concluded. Refund can be granted only under Section 49 of the said Act, which applies solely where an instrument has not been executed or used. In the present case, the transaction had been fully executed, acted upon, and commercially utilized. Hence, no refund or reopening of the assessment can arise. The petitioner's conduct amounts to acquiescence and acceptance of the Collector's authority. Further, petitioner allowed the impugned order to attain finality by not preferring any statutory appeal under Section 56 of the Indian Stamp Act 1899.

e) Indian Courts have consistently held that substance prevails over form, and technical objections cannot be allowed to defeat legitimate public revenue. The petitioner's submission that respondent no. 2 lacked jurisdiction because the original instrument was not produced is a technical pretext advanced to shield an admitted transaction. Once the existence of a dutiable instrument is established through registered GPAs and official records, respondent no. 2 is duty-bound to act.

f) Upon presentation of the two sale deeds dated 23.07.2010 and 20.08.2010, the Sub-Registrar-IX rightly impounded the said instruments on account of deficit stamp duty arising from an earlier unregistered and unstamped collaboration agreement and made a reference to the respondent no. 2 for adjudication, whereupon the petitioner was informed that the sale deeds would neither be released nor registered unless the adjudicated stamp duty and penalty were paid; acting upon such determination, the petitioner deposited a sum of ₹82,74,178/- on 15.10.2010 and secured release and registration of the aforesaid sale deeds on 25.10.2010. Hence, having consciously accepted and enjoyed these statutory benefits, the petitioner is *estopped* by his own conduct from questioning the very liability that enabled such registration, as he cannot be permitted to approbate and reprobate by accepting the benefit under the Indian Stamp Act 1899 while disputing the corresponding obligation, a principle firmly settled by the Hon'ble Supreme Court in **State of Punjab v. Dhanjit Singh Sandhu**[9].

g) Relying on **Eureka Forbes Ltd. v. Allahabad Bank**[10], it is submitted that the petitioner cannot plead non-registration or procedural irregularity to

[9] (2014) 15 SCC 144
[10] (2010) 6 SCC 193

defeat the lawful recovery of stamp duty.

h) Complaint dated 25.03.2010 filed by the SRPL was supplied to the petitioner's staff though receiving was not obtained.

5. Refuting the stand taken by the respondents, learned Senior Counsel for the petitioner submitted that:-

a) Certain disputes had arisen between the petitioner and SRPL and taking advantage of the said dispute, it appears that Directors of SRPL has filed a frivolous/ false complaint. Further, SRPL had also filed CS(OS) 2105/2010, however, the same was withdrawn by the Director of SRPL on 28.10.2010 while admitting that they received entire sale consideration in respect to first and second floor of the subject property.

b) Respondent no. 2's conduct amounts to coercive administrative overreach, as the vendees/ purchasers having already paid substantial sale consideration were urgently insisting upon delivery of their title documents. Petitioner being answerable to the purchasers of Ground and Second floor were left with no alternative but to comply with the demand raised by the respondent no. 2 so as to secure release of the Sale Deeds. This deposit of stamp duty and penalty cannot, by any stretch, be construed as voluntary, consensual or an admission of liability.

6. Heard learned counsel for the parties and perused the records.

7. In ***Ashok Kamal Capital Builders v. State & Anr.***, W.P.(C) 427/2005, Hon'ble Mr. Justice Sanjiv Khanna (as His Lordship then was) had dealt with a similar issue arising out of similar facts as in the present case. In the said case as well, owner of the subject property and builder therein entered into a development arrangement of the subject property therein, wherein builder had to construct and get some economic benefit. However, the authorities had suspected disguised transfer of rights in the property to evade stamp duty and thus, invoked Section 33 and Section 35 of the Indian Stamp Act, 1899. In the said case as well, it was alleged that rights have been created in the immovable property and hence, stamp duty is payable.

8. In the said case, after considering the law and relevant Sections on the issue, whether photocopy of a document is an "instrument" under Section 2(14) of the Indian Stamp Act, 1899 and can be impounded or subjected to stamp duty/ penalty, it has been observed and held as under: -

> "15. The question whether photocopy/copy of a document is as an 'instrument' under Section 2(14) of the Act and can be impounded or subjected to penalty and validated, was examined by the Supreme Court in the case of State of Bihar v. Karamchand Thapar and Bros. Ltd., AIR 1962 SC 110 and it was opined:
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> > "6. It is next contended that as the copy of the award in Court was unstamped, no decree could have been passed thereon. The facts are that the arbitrator sent to each of the parties a copy of the award signed by him and a third copy also signed by him was sent to the Court. The copy of the award which was sent to the Government would appear to have been insufficiently stamped. If that had been produced in Court, it could have been validated on payment of the deficiency and penalty under Section 35 of the Indian Stamp Act, 1899. But the Government has failed to produce the same. The copy of the award which was sent to the respondents is said to have been seized by the police along with other papers and is not now available. When the third copy was received in Court, the respondents paid the requisite stamp duty under Section 35 of the Stamp Act and had it validated. Now the contention of the appellant is that the

instrument actually before the Court is, what it purports to be, 'a certified copy', and that under Section 35 of the Stamp Act there can be validation only of the original, when it is unstamped or insufficiently stamped, that the document in Court which is a copy cannot be validated and 'acted upon' and that in consequence no decree could be passed thereon. The law is no doubt well settled that the copy of an instrument cannot be validated. That was held in Rajah of Bobbili v. Inuganti China Sitarasami Garu where it was observed—

> 'The provisions of this section (Section 35) which allow a document to be admitted in evidence on payment of penalty, have no application when the original document, which was unstamped or was insufficiently stamped, has not been produced; and, accordingly, secondary evidence of its contents cannot be given. To hold otherwise would be to add to the Act a provision which it does not contain. Payment of penalty will not render secondary evidence admissible, for under the stamp law penalty is leviable only on an unstamped or insufficiently stamped document actually produced in Court and that law does not provide for the levy of any penalty on lost documents'."

16. The Supreme Court in the aforementioned ***case held that a copy or secondary evidence of the original document is not an 'instrument' within the meaning of the Act. Copy of a document which is unstamped or not duly stamped cannot be validated by payment of stamp duty and penalty.***

17. The Supreme Court again examined Sections 33 and 35 along with other provisions of the Act in the case of Jupudi Kesava Rao v. Pulavarthi Venkata Subbarao, (1971) 1 SCC 545. In the said case, one of the parties wanted to lead oral evidence by way of secondary evidence, to prove terms of a lease which was in writing and duly executed, but was not duly stamped. The contention was rejected after making reference to Indian Evidence Act, 1872 and the provisions of the Act. It was observed that the Indian Evidence Act, 1872 does not purport to deal with the admissibility of documents, which are required to be stamped under the Act. It was held:

> "13. The first limb of Section 35 clearly shuts out from evidence any instrument chargeable with duty unless it is duly stamped. The second limb of it which relates to acting upon the

instrument will obviously shut out any secondary evidence of such instrument, for allowing such evidence to be let in when the original admittedly chargeable with duty was not stamped or insufficiently stamped, would be tantamount to the document being acted upon by the person having by law or authority to receive evidence. Proviso (a) is only applicable when the original instrument is actually before the Court of law and the deficiency in stamp with penalty is paid by the party seeking to rely upon the document. Clearly secondary evidence either by way of oral evidence of the contents of the unstamped document or the copy of it covered by Section 63 of the Indian Evidence Act would not fulfil the requirements of the proviso which enjoins upon the authority to receive nothing in evidence except the instrument itself. Section 25 is not concerned with any copy of an instrument and a party can only be allowed to rely on a document which is an instrument for the purpose of Section 35. 'Instrument' is defined in Section 2(14) as including every document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded. There is no scope for inclusion of a copy of a document as an instrument for the purpose of the Stamp Act.

14. If Section 35 only deals with original instruments and not copies Section 36 cannot be so interpreted as to allow secondary evidence of an instrument to have its benefit. The words 'an instrument' in Section 36 must have the same meaning as that in Section 35. The Legislature only relented from the strict provisions of Section 35 in cases where the original instrument was admitted in evidence without objection at the initial stage of a suit or proceeding. In other words, although the objection is based on the insufficiency of the stamp affixed to the document, a party who has a right to object to the reception of it must do so when the document is first tendered. Once the time for raising objection to the admission of the documentary evidence is passed, no objection based on the same ground can be raised at a later stage. But this in no way extends the applicability of Section 36 to secondary evidence adduced or sought to be adduced in proof of the contents of a document which is unstamped or insufficiently stamped."

18. The Supreme Court in the said case referred to the earlier judgments of the Privy Council and High Courts wherein, barring

some exceptions, consistently the view taken was that a copy of an original document is not an 'instrument' and cannot be validated by payment of unpaid/insufficient stamp duty and penalty. A reading of the aforesaid passages from the decision of the Supreme Court predicates that the term 'instrument' as defined in Section 2(14) of the Act refers to the original instrument and not a copy or photocopy of the same. ***It is only on production of the original instrument that deficiency in the stamp duty/penalty can be paid to validate the same.***"

(emphasis supplied)

9. Further, in the said case, whether the Collector could compel production of the original document and direct payment of deficient stamp duty and penalty on the basis of a photocopy, it has been held as under: -

"20. Thereafter, the Supreme Court examined the amendments made to the Act by the Stamp (Madhya Pradesh) Act, 1990. Reference was made to Section 48B introduced in the Act by the aforesaid Amendment Act. The said section which is applicable to the State of Madhya Pradesh reads as under:

"48B. Original instrument to be produced before the Collector in case of deficiency—Where the deficiency of stamp duty is noticed from a copy of any instrument, the Collector may, by order, require the production of original instrument from a person in possession or in custody of the original instrument for the purpose of satisfying himself as to the adequacy of amount of duty paid thereon. If the original instrument is not produced before him within the period specified in the order, it shall be presumed that the original document is not duly stamped and the Collector may proceed in the manner provided in this Chapter: Provided that no action under this section shall be taken after a period of five years from the date of execution of such instrument."

21. The Supreme Court on reading of Section 48B observed:

"19. On a plain reading of Section 48B, we do not find that the submission of the learned Counsel for the appellant that by virtue of this provision the Collector has been authorised to impound even copy of the instrument, is correct. Under this section where the deficiency of stamp duty is noticed from the copy of any instrument, the Collector may call for the original document for inspection, and on failure to produce the original instrument could presume that proper stamp duty was not paid on the original instrument and, thus, recover the same from the person concerned. Section 48B does not relate to the instrument i.e. the original document to be presented before any person who is authorised to receive the document in evidence to be impounded on inadequacy of stamp duty found. The section uses the phraseology 'where the deficiency of stamp duty is noticed from a copy of any instrument'. Therefore, when the deficiency of stamp duty from a copy of the instrument is noticed by the Collector, the Collector is authorised to act under this section. On deficiency of stamp duty being noticed from the copy of the instrument, the Collector would order production of original instrument from a person in possession or in custody of the original instrument. Production is required by the Collector for the purpose of satisfying himself whether adequate stamp duty had been paid on the original instrument or not. In the notice given to person in possession or in custody of original instrumerit, the Collector shall provide for time within which the original document is required to be produced before him. If, in spite of the notice, the original is not produced before the Collector, the Collector would draw a presumption that original document is not duly stamped and thereafter may proceed in the manner provided in Chapter IV. By virtue of the proviso, the step for recovery of adequate stamp duty on the original instrument on insufficiency of the stamp duty paid being noticed from the copy of the instrument, can only be taken within five years from the date of execution of such instrument. The words 'the Collector may proceed in the manner provided in this Chapter' have reference to Section 48 of the Act. Under this section, all duties, penalties and other sums required to be paid under Chapter IV, which includes stamp duty, would be recovered by the Collector by distress and sale of the movable property of the person who has been called upon to pay the adequate stamp duty or he can implement the method of recovery of arrears of land revenue for the dues of stamp duty. By virtue of proviso to Section 48B, the Collector's power to adjudicate upon the adequacy of stamp duty on the original instrument on the basis of copy of the instrument is restricted to the period of five years from the date of execution of the original instrument. This Section only authorises the Collector to recover the adequate stamp duty which has been avoided at the time of execution of the original instrument. This Section does not authorise the Collector to impound the copy of the instrument."

22. Section 48B which is applicable to the State of Madhya Pradesh is not applicable in the National Capital Territory of Delhi. Similar or identical provisions, under which action can be taken by the authorities on production of a copy or secondary evidence exist in some other States, in view of the State specific amendments e.g., Indian Stamp (Orissa Second Amendment) Act, 1986, Tamil Nadu by Pondicherry Act XXI of 1970, Rajasthan Act No. 17 of 1989 and Uttar Pradesh Act No. 22 of 1998 and West Bengal Act No. 17 of 1990.

23. However, in the National Capital Territory of Delhi no such power vests with the authorities to compel production of an original document from a party to impound the same or levy penalty or for direction to pay proper stamp duty/penalty on failure to produce the original. In several amendments, limitation period has been prescribed when an order for production of the original document or for imposition of penalty on basis of the copy can be passed.

24. State of Andhra Pradesh had made amendments in the Act, which included power to conduct search and seizure of invalidly stamped documents. These amendments made by the Andhra Pradesh Act, 1976 and the Rules became subject matter of challenge before the High Court. Some provisions were struck down. The State of Andhra Pradesh thereupon filed an appeal before the Supreme Court, which was decided by the judgment District Registrar and Collector, Hyderabad v. Canara Bank, (2005) 1 SCC 496. The Supreme Court noticed that the Act is a fiscal legislation and imposed burden on the public and therefore is to be strictly construed. There is no scope for equity and judiciousness, if the language is clear and unambiguous. Further, benefit of ambiguity and conflict of opinions goes to the subject. Referring to the provisions of the Act, it was observed:

"12. The provisions of Section 29 providing for the persons by whom duties are payable have been left untouched. So is with Section 31 dealing with adjudication as to proper stamp, which confers power on the Collector to adjudicate upon the duty with which a document shall be chargeable, though such document may or may not have been executed. The scheme of Section 31 involves an element of voluntariness. The person seeking adjudication must have brought the document to the Collector and also applied for such adjudication. The document cannot be compelled to be brought before him by the Collector. Section 33 confers power of impounding a document not duly stamped subject to the document being produced before an authority competent to receive evidence or a person in charge of a public office. It is necessary that the document must have been produced or come before such authority or person in charge in performance of its functions. The document should have been voluntarily produced. At the same time, Section 36 imposes an embargo on the power to impound vesting in the authority competent to receive evidence, by providing that it cannot question the admission of document in evidence once it has been admitted. None of these provisions have been amended by the State of Andhra Pradesh.

13. In Surajmull Nagoremull v. Triton Insurance Co. Ltd., Their Lordships of the Privy Council made it clear that the provisions of the Stamp Act cannot be held to have been framed solely for the protection of revenue and for the purpose of being enforced solely at the instance of the revenue officials."

25. The Supreme Court in the aforesaid paragraphs has emphasized that while exercising the power of impounding under Section 33 of the Act, the authority competent and entitled to receive evidence or a person in charge of public office cannot compel a person to produce the 'instrument'. The 'instrument' has to be produced voluntarily. The Supreme Court approved of two judgments of the Lahore High Court in Jai Devi v. Gokal Chand, (1906) 7 Punjab Law Reporter 428 (FB) and Mushi Ram v. Harnam Singh, AIR 1934 Lah. 637. In the case of Jai Devi (supra) it was held that a document not duly stamped but filed with the plaint, which was dismissed for non prosecution, cannot be subsequently impounded as it was not produced in the Court in evidence. It was further observed that the Court cannot call for production of the original document and impound the same. In the case of Munshi Ram (supra) the suit was compromised at the first hearing and the original bahi was not put in evidence. It was held that the bahi was not liable to be impounded. Reference was also made with approval to the judgment L. Puran Chand v. Emperor, AIR 1942 Lah. 257. It was observed that when an unduly stamped document was directed to be returned as not proved, the same cannot be impounded even if the document had not been physically returned."

*** *** ***

28. In the light of the aforesaid judgments it is clear that ***the Sub-Divisional Magistrate who was also the Collector of Stamps could not have directed production of the original agreement dated 23rd December, 1987 or impounded the photocopy and passed an order directing the petitioners to pay the deficient stamp duty and penalty. Photocopy of the agreement dated 23rd December, 1987 is not an instrument, as defined in Section 2(14) of the Act. The impugned Order dated 29th November, 2004 therefore cannot be sustained to the extent that it impounds the photocopy of the agreement dated 23rd December, 1987 and directs payment of deficient stamp duty and imposes penalty under Sections 33 and 35 of the Act.*** It may be appropriate to refer to the decision of three Judges' Bench of the Delhi High Court in Dayal Singh v. Collector of Stamps, AIR 1972 Del. 131, wherein it was observed:

> "10. Section 2(6) of the Stamp Act defines 'chargeable' to mean 'chargeable under this Act'. Section 2(11) of the Stamp Act defines 'duly stamped' to mean 'that such stamp has been affixed or used in accordance with the law for the time being in force in India'. Under Section 33 it is only when an instrument is 'chargeable with duty' and it 'not duly stamped' that it can be impounded. Can the sale deed in question be impounded under Section 33 because the transfer duty is either not paid or is insufficiently paid? The answer must be 'No'. For, the meaning of the expression 'any instrument chargeable' or the expression 'instrument not duly stamped' used in Section 33 of the Stamp Act is to be understood in the light of the definitions in Sections 2(6) and 2(11). 'Chargeable' means chargeable under the Stamp Act only and not under any other Act. The Stamp Act authorizes the levy of stamp duty only and not of the duty on transfer of property. The latter is authorized by the Corporation Act alone. The sale deed in question is not, therefore, 'chargeable' to transfer duty under the Stamp Act at all. It is not, therefore, an instrument chargeable to duty within the meaning of Section 33 of the Stamp Act."

(emphasis supplied)

10. Moreover, as far as the issue of "production" of document/ instrument to public officer in terms of Section 33(2) of the Indian Stamp Act, 1899 is concerned, following observation of Hon'ble Supreme Court and Allahabad High Court respectively is of relevance-

i) In **Distt. Registrar and Collector, Hyderabad & Ors. v. Canara Bank & Ors.[11]-**

> "12. The provisions of Section 29 providing for the persons by whom duties are payable have been left untouched. So is with Section 31 dealing with 'adjudication as to proper stamp' which confers power on the Collector to adjudicate upon the duty with which a document shall be chargeable, though such document may or may not have been executed. ***The scheme of Section 31 involves an element of voluntariness. The person seeking adjudication must have brought the document to Collector and also applied for such adjudication. The document cannot be compelled to be brought before him by the Collector. Section 33 confers power of impounding a document not duly stamped subject to the document being produced before an authority competent to receive evidence or a person incharge of a public office. It is necessary that the document must have been produced or come before such authority or person incharge in performance of its functions. The document should have been voluntarily produced. At the same time, Section 36 imposes an embargo on the power to impound, vesting in the authority competent to receive evidence, by providing that it cannot question the admission of document in evidence once it has been admitted.*** None of these provisions have been amended by the State of Andhra Pradesh."
>
> ***(emphasis supplied)***

ii) In **Tata Teleservices Limited v. State of UP & Ors.[12]** -

[11] MANU/SC/0935/2004
[12] 2008 SCC OnLine All 897

"14. ***Decided cases have interpreted the words "produced or come in the performance of his functions" as having been voluntarily produced*** vide Ujjal Singh v. A.Y. Khan, AIR 1936 Lahore 95, In re Narayandas Nathuram Marwadi, AIR 1943 Nagpur 97, Uttam Chand v. Perman Nand, AIR 1942 Lahore 265, Raja Mohd. v. Deputy Commissioner, 1956 ALJ 220 : (AIR 1956 All 453) (FB), Government of U.P. v. Mohd. Amir, AIR 1961 SC 787, R.A. Remington v. Deputy Commissioner, 1966 ALJ 514, Varghese v. State of Kerala, AIR 1989 Kerala 248, Som Dutt Builders v. State of U.P., AIR 2005 All. 234 : (2005 All LJ 2346) and District Registrar v. Canara Bank, (2005) 1 SCC 496 : (AIR 2005 SC 186). In Lala Uttam Chand v. Perman Nand it was held that no court has a right to compel a party to produce a document against his wishes. If a party does not produce a material document the party will suffer its consequences. ***The word 'produced' in Section 33 of the Indian Stamp Act was defined to mean production in the ordinary course of law and not under compulsion***. In Re, Narayandas Nathuram AIR 1943 Nagpur 97 Vivian Bose, J. held that the word 'produced' has a technical meaning and means either produced in response to summons or produced voluntarily for some judicial purpose such for instance as evidence and ***not to documents which fall accidentally or incidentally into a Judge's hands***. The learned Judge has given the example of a document submitted mistakenly under the impression that it is another document. In such a case there is no intention to produce the document. The same view was taken by the Full Bench of this Court in Raja Mohammad v. Deputy Commissioner, Sitapur, 1956 ALJ 220 : (AIR 1956 All 453). That was a case in which an instrument was produced before the Collector for his opinion about the stamp duty required to be paid thereon. ***It was held that after determining the duty payable the Collector became functus officio and he could not impound the instrument if the duty determined was not paid.*** It was held that the words "is produced or comes in the performance of his functions" used in Section 33 of the Act mean the production of the instrument concerned in evidence or for the purposes of placing reliance upon it by one party or the other. The decision of this Court in Raja Mohammad's case was affirmed in appeal by the Apex Court in Government of U.P. v. Raja Mohammad Amir Ahmad Khan, AIR 1961 SC 787. In District Registrar and Collector v. Canara Bank (supra) the provisions of Sections 31, 33 and 36 were again considered and it was held in the context of Section 33 that to attract the provision the document must have been voluntarily produced or come before the authority or person in charge in performance of its functions. It is to be noted that there is no provision in the Stamp Act requiring a person to get the stamp duty assessed such as by filing a return. Even the production of the instrument for the purposes of Registration is voluntary. When however the instrument is produced for registration the adequacy of stamp duty can be examined under Section 47-A. ***From the scheme of the provisions of the Stamp Act and the cases above referred to it appears that duty can be charged only upon a voluntary production of the original instrument. But what does a voluntary production mean***. It would appear from the cases aforesaid that if a document is summoned in evidence and produced by a party called upon to produce it would be a 'production' within the meaning of Section 33 and the document can be impounded vide. In Re Narayandas Nathuram (supra). In such a situation it cannot be said that the production was not voluntary. But if a party refuses to produce it despite the summons it may suffer the consequences of withholding evidence in the cake, but it cannot be compelled to produce it for the purposes of the Stamp Act. But it appears from the cited cases that it was in the context of proceedings to recover the duty that it was observed that the proceedings could be initiated only on a voluntary production of the instrument."

(emphasis supplied)

11. As per the impugned order, the collaboration agreement was a document within the meaning of Section 17(1)(b) of the Indian Registration Act, 1908 and, therefore, was compulsorily registerable. However, the fact remains that the said document was never produced nor did it come in the performance of any of the functions as held in the aforesaid judgments. The photocopy of the collaboration agreement dated 18.03.2008 was sent by the SRPL by way of a complaint dated 25.03.2010 and the said agreement was never produced or furnished by the petitioner before the said authority. Further, admittedly, the said agreement before the respondent no. 2 was a photocopy and therefore, in view of **Ashok Kamal Capital Builders**

(Supra), the same could not be considered as an 'instrument' under Section 2(14) of the Indian Stamps Act,1899.

12. The impugned order dated 14.07.2010 further relies on a circular dated 05.05.2006 passed by the Divisional Commissioner, relevant paragraphs of which reads as under: -

> " Such 'Collaboration agreement' or sometimes called 'amalgamation deed' of the company has been carefully considered and it has been decided that such agreement(s) are clearly covered under section 17(l)(b) of the Registration Act, (1908). This instrument creates, declares, assigns, limit or extinguish a right, title or interest in a immovable property. It is reiterated that an instrument covered under the definition of section 17(1)(b) has to be compulsorily registered by paying the correct amount of the stamp duty. Thus it can be seen that name of an instrument may be many times misleading and may not specify, the true nature of instrument. ***It is the duty of all the registering authorities to be vigilant on their part. All similar instruments whenever presented to SR/Public Officer should be examined to ensure /that it is properly stamped as instrument of sale deed chargeable to stamp duty on article as per schedule I A of the Indian stamp act 1899 and if he finds that it is not properly stamped he shall impound the same u/s 33 of Indian Stamp Act, 1899, and should forward his comment to Cos/HQ for further action for realization. of defiant stamp and penalty thereon and prosecution for intentional evasion of stamp duty.***
>
> ***As far as documents which have, been already executed by registering authorities, concerned SR(s) are advised to scan all such similar documents registered with them in the past two years and after proper examination of the same, they should forward the copy to COS for prosecution and realization of deficient stamp duty & penalty (u/s 62, 64 read with section 27 of the Indian Stamp act, 1899) which has to be recovered from the builder/construction company or firm as***

<u>arrear of land revenue u/s 48 of the Indian Stamp act, 1899. A compliance report shall be sent by. 15th May 2006.</u>"

(emphasis supplied)

13. Perusal of the aforesaid circular, clearly signifies that Public Officer has been assigned the duty to examine all "instruments" chargeable to stamp duty on article as per schedule IA of the Indian Stamp Act 1899, whenever "presented" to it and in case he finds such "instruments" to be not stamped, then only to pursue further action of impounding and realization of deficient stamp/ penalty. In the present case, it is undisputed that the original collaboration agreement was never "presented" before a Public Officer. It is further pertinent to note that the said circular also records that the documents which have already been registered by the authorities, should also be examined and forwarded for realisation of deficient stamp duty and penalty from the concerned authorities. Thus, the circular clearly contemplates presentation of 'instrument' before resorting to any action to be taken under Section 33 of the Indian Stamps Act, 1899, which was admittedly not done in the present case. Further, as held in **Ashok Kamal Capital Builders *(Supra)***, photocopy of a document cannot be considered as an 'instrument' under Section 2(14) of the Indian Stamps Act, 1899.

14. Learned Senior Counsel appearing on behalf of the petitioner had raised an objection with regard to the sanctity of the said circular dated 05.05.2006 on the ground that it had no legal validity and was more of an internal guideline for the department and the same cannot, in any manner, justify the passing of the impugned order. In the considered opinion of this

Court, there is merit in the said submission of the learned Senior Counsel for the petitioner. It is noted that the power to impound or impose penalty as per the Indian Stamps Act, 1899 has to be done in the manner provided in the said Act and not in any other manner, as has been done in the present case. The document which were presented before the competent authority were the sale deeds dated 23.07.2010 and 20.08.2010 of ground and second floor respectively of the subject property, which were duly stamped and were registered on the said date. However, they were not released but were clubbed with the file relating to the collaboration agreement pending before the respondent no. 2, despite the admitted fact of stamp duty on the said deeds being in order. It is further pertinent to note that *vide* the impugned order, the deficient stamp duty along with the penalty has been imposed on the photocopy of the collaboration agreement and not on the aforesaid sale deeds. Even though, as noted hereinbefore, photocopy of a document cannot be considered as an 'instrument' under Section 2(14) of the Indian Stamps Act, 1899.

15. So far as the judgment of the **Eureka Forbes (*Supra)*** as relied upon by the learned counsel for the respondent is concerned, it is noted that the issue therein before the Hon'ble Supreme Court was with respect to the sale of hypothecated goods by the appellant therein without the consent or the knowledge of the concerned Bank and in these circumstances, it was held that the said appellant, who had acted along with the respondent no. 2 and 3 therein, while disposing of the hypothecated goods cannot be permitted to argue that since the goods have been sold the liability cannot be fastened upon them. In the present case as noted hereinbefore, the issue pertains to the power of the competent authority to pass the impugned order dated 14.07.2010 as per the provisions of the Indian Stamps act, 1899.

16. Further, **Dhanjit Singh Sandhu (*Supra*)** case, as relied upon by the learned counsel for the respondent, is distinguishable from the present case in hand. Since, in the said case Hon'ble Supreme Court held that:-

> "**22.** The doctrine of "approbate and reprobate" is only a species of estoppel, it implies only to the conduct of parties. As in the case of estoppel it cannot operate against the provisions of a statute. (Vide *CIT* v. *V. MR. P. Firm Muar* [*CIT* v. *V. MR. P. Firm Muar*, AIR 1965 SC 1216] .)"

However, in the present case, when the statue itself doesn't permit impounding/ raising stamp duty/ penalty on the photocopy of a document, as noted above, Rule of *estoppel* can't operate.

17. In view of the aforesaid discussion, since there was no authority with the respondent to impose penalty along with the stamp duty on a photocopy of a document, which had not been presented in terms of Section 33(2) of the Indian Stamp Act, 1899, the impugned order dated 14.07.2010 is set aside.

18. On 05.10.2010, petitioner had deposited with the respondent no. 2, the penalty of Rs. 5,00,000/- in addition to the actual stamp duty of Rs. 77,74,177.56 imposed *vide* impugned order dated 14.07.2010 under Section 33 of the Indian Stamps Act, 1899. The said stamp duty along with the penalty deposited by the petitioner, shall be released within the period of 4 weeks along with the simple interest of 5% with effect from 05.10.2010 till the date of realisation.

19. In view of the aforesaid, present petition stands allowed and disposed of, accordingly.

20. Pending application(s), if any, also stand disposed of.

21. Order be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA
(JUDGE)

AUGUST 12,2026/*kr*/sg