

**Court No. - 17**

**Case :-** WRIT - C No. - 10698 of 2023

**Petitioner :-** Ram Lakhan

**Respondent :-** State Of U.P. Thru. Prin. Secy. Deptt. Of Revenue Civil Sectt. Lko And Another

**Counsel for Petitioner :-** Amit Srivastava

**Counsel for Respondent :-** C.S.C.

**Hon'ble Alok Mathur,J.**

1. Heard Sri Anil Srivastava, learned counsel for petitioner as well as learned Standing Counsel for the respondents.
2. With the consent of learned counsel for parties, the writ petition is heard and decided at the admission stage itself.
3. By means of present writ petition, the petitioner has assailed the order dated 23.06.2022 passed by Assistant Commissioner exercising power under Section 49 of the Indian Stamps Act, 1899 and has thereby declining to refund the amount of stamp duty affixed by the petitioner on the sale deed executed by the petitioner.
4. According to the petitioner, Kamakhya Prasad and Sukhraj Shukh Ram S/o Asharam Singh, R/o Village - Bakarpur Majre Lohati Saraya, District Ayodhya had shown their willingness to execute the sale deed of his agricultural plot NO. 1085K/0.69 hectare situated at Bakarpur Majre Lohati Saraya Tehsil Rudauli, District Ayodhya. The petitioner for the aforesaid transaction has purchased stamp papers of Rs. 63100/- and a sale deed was prepared on the said stamp papers.
5. After the said sale deed was prepared, the vendor i.e. Kamakhya Prasad and Sukhraj Shukh Ram declined to sale said land to the petitioner and consequently the sale deed was never executed.
6. It is in the aforesaid circumstances that when the vendor had declined to execute the sale deed, the petitioner had moved an application under Section 49 of the Stamp Act, 1899 for refund of the stamp purchased by the petitioner duly affixed on the instruments prepared by him.
7. The Assistant Commissioner, Stamps has rejected the application of the petitioner solely on the ground that his case

does not fall into any of the categories as mentioned under Section 49 of the Act and consequently rejected his application.

8. Learned counsel for petitioner has submitted that Section 3 read with Section 17 of the Stamp Act , the power ..... a person eligible since the instrument is executed i.e. sale deed in the present case. It is also undisputed that the said sale deed was eligible to stamp duty but subsequently a contingency has arisen on which the instrument executed is found to be useless as per provisions of Section 49-A of Sub-Section 3.

9. In support of his submissions, learned counsel for petitioner has relied upon the judgment of the coordinate Bench of this case in of **Rakesh Kumar Vs. Deputy Commissioner Stamp and others, 2013 (6) ADJ 272** where this Court in paragraph Nos 20 has held as under:-

*" In a case for refund of stamp duty under Section 49 of the Act on the ground that after entering into a transaction to purchase a flat and payment of sale consideration and stamp duty the transferor having failed to deliver possession as the tenant declined to vacate, the Bombay High Court in Sunman Trade Impex Pvt. Ltd. Vs. State of Maharashtra and others AIR 2005 Bombay 74 accepted the claim and directed for the refund of stamp duty as the instrument stood frustrated."*

10. He has further submitted that once the contract is frustrated then provision of Section 39 would immediately come into play and the aggrieved person would be entitled for refund of the stamp duty. He further relied upon the judgment of the Supreme Court in the case of **Sanman Trade Impex Pvt. Ltd. Vs. State of Maharashtra and others, AIR 2005 Bombay 94** Wherein in para 11 held as under:-

*"11. Similarly, even in case where an instrument in relation to such an agreement is recorded with the nomenclature of deed of sale and purchase of property but after execution thereof the transferee thereunder is rendered helpless in the matter of giving effect to the sale of the property agreed upon in the sense that he fails to deliver actual possession of the property to the purchaser, certainly in such cases, also it would amount to total failure of intended purpose within the meaning of the said expression under Clause (c)(5) of section 47 unless, the evidence produced before the Collector discloses that the claim for refund is either bogus or is made with sole intention to defraud the Government in relation to revenue or for any other purposes."*

11. In light of the above, it is clear that the sale deed prepared

by the petitioner on the stamp paper purchased by him could not be registered due to refusal of the vendor to sale the said land subsequent to preparation of sale deed, the entire transaction stood frustrated and no unilateral steps could not have been taken by the petitioner to said sale deed have been registered consequently the entire transaction was failed and the sale deed has been rendered useless and consequently the conditions provided in Section 49(3) stood fulfilled.

12. There is not dispute that the instrument was never registered and never came into force as the said transaction was never completed.

13. In light of the above, this Court finds force in the contention of the petitioner and accordingly the order dated 23.06.2022 is set aside. The petitioner is entitled for the refund of the stamp. Accordingly, respondents are directed to refund the stamp duty to the petitioner in accordance with law within next six weeks.

14. In view of the above, the writ petition stands allowed.

**(Alok Mathur, J.)**

**Order Date :- 13.12.2023**

Ravi/