IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 1120 of 2014

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Sunil Kumar Singh S/o Kumar Prasad Singh Resident of Village Sirsa Khap, P.S. Motihari Muffasil, District East Champaran.

.... Petitioner

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Commissioner, Trihut Commissionary, Muzaffarpur.
3. The Collector (Revenue), East Champaran at Motihari.
4. The Deputy Collector (Revenue), East Champaran at Motihari.
5. The District Sub Registrar, Motihari, East Champaran.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Nachiketa Jha

For the Respondent/s : AC to GP - 16

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL ORDER

5. 16-09-2015 Heard Sri Nachiketa Jha, learned counsel for the petitioner and learned A.C. to Govt. Pleader – 16.

The petitioner, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has prayed for quashing of an order dated 31-10-2013 passed by the Commissioner, Tirhut Division, Muzaffarpur, as contained in Letter No. 4630 dated 01-11-2013 (**Annexure – 8** to the writ petition), whereby, the prayer of the petitioner for refund of unused stamp has been rejected, only on the ground that it was filed after one year.

Short fact of the case is that the petitioner had deposited registration fee alongwith stamp for registration of sale-deed, which was deposited through challan on 19-10-2011 and 21-10-2011. However, the vendor subsequently denied to execute the deed and as such, the petitioner immediately thereafter on 04-04-2012 filed an application before the Collector (Revenue), East Champaran, Motihari/respondent no. 3 for refund of the registration fee as well as the amount of unused stamp.

Learned counsel for the petitioner has referred to **Annexure – 3** to the writ petition (at running page 18), which is a certificate issued by the District Sub-Registrar, whereby, it was certified that the stamp for an amount of **Rs. 27,790/-** (twenty seven thousand seven hundred & ninety) has not been used. In terms of Rule 44 of the Bihar Registration Rules, 2008, a prayer was made before the Collector (Revenue) to refund the aforesaid amount. Learned counsel for the petitioner accepts that the registration fee has already been refunded, but the amount of unused stamp was not refunded and the matter was kept pending before the Collector (Revenue) for a long time, despite the fact that the petitioner subsequently also filed an application for refund of the same. However, at belated stage, vide **Annexure – 6** to the writ petition i.e. Memo No. 2950 dated 10-12-2012, the District Sub-Registrar, East Champaran, Motihari informed the petitioner to file an application before the Commissioner for refund of the same and thereafter, the order impugned has been passed, vide **Annexure – 8** to the writ petition, whereby the claim of the petitioner has been turned down on the ground that the petitioner had filed an application on 18-12-2012 (**Annexure – 7**) i.e. after one year from the date of submission of the stamp. Learned counsel for the petitioner submits that delay has not occurred on the part of the petitioner, rather within time immediately after failure of the registration, the petitioner had filed the application before the Collector (Revenue), Motihari on 04-04-2012 for refund of the same, which was kept pending for a considerable time. He submits that had the Collector (Revenue) was not competent to adjudicate on the issue, he would have immediately referred the matter to the Commissioner, but he withheld the claim of the petitioner for a long time and after expiry of period of limitation i.e. one year, the petitioner was asked by the District Sub-Registrar for filing an application before the Commissioner. Thus, he submits that the learned Commissioner has not considered the claim of the petitioner in its right perspective and as such, a prayer has been made for setting aside the order impugned i.e. **Annexure – 8** and directing the respondent to refund the amount of the unused stamp to the tune of Rs. 27,790/-.

Learned State counsel opposing the prayer of the petitioner submits that the claim of the petitioner has rightly been rejected by the learned Commissioner. He has specifically referred to paragraph – 5 of the counter affidavit and submits that since the petitioner had not filed application before the Divisional Commissioner within one year, as per provision contained in Bihar Stamp (Refund of Amount of Stamp Duty by Bank Challan) Rules 2008, the Divisional Commissioner has rightly rejected the claim.

Besides hearing learned counsel for the parties, I have also perused the material available on record. It is not in dispute that the registration of the document had failed, due to non-execution of the sale-deed by the vendor. Accordingly, in view of provision contained under Rule 44 of the Bihar Registration Rules, 2008, the petitioner immediately approached the learned Collector for refund of the registration fee as well as refund of the amount of the stamp. There was no delay on the part of the petitioner. Once the petitioner had approached before the Collector (Revenue) for refund of the same, if the Collector was not competent to adjudicate in respect of refund of the stamp amount, he was immediately required to refer the matter to the competent authority i.e. Divisional Commissioner. Instead sending the matter to the Divisional Commissioner, he sat over the matter for a long period and after expiry of one year from the date of deposit of the registration fee, the petitioner was advised, vide **Annexure – 6** to approach the Commissioner and thereafter, the petitioner filed an application before the Commissioner.

Fact remains that it is not a case that the petitioner slumbered over his right for inordinate period, rather the petitioner immediately had approached the competent authority.

In view of facts and circumstances, particularly; the fact that stamp was not used, as it is evident from **Annexure – 3** (running page 18 of the writ petition), the Court is of the opinion that the petitioner is entitled to get refund of the amount of stamp i.e. **Rs. 27,790/-,** as per **Annexure – 3** to the writ petition. The order contained in **Annexure – 8** is set aside.

Accordingly, the writ petition stands allowed with a direction to the respondent to take all steps to refund aforesaid amount i.e. Rs. 27,790/- to the petitioner within a period of eight weeks from the date of receipt/production of a copy of this order, failing which, the petitioner shall be entitled to get interest @ 12% per annum on the said amount, which shall be calculated from the date of raising claim by the petitioner i.e. 4th April, 2012.

With above observation and direction, the writ petition stands allowed.

(Rakesh Kumar, J.)

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