THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.16110 OF 2005

ORDER:

Heard the learned counsel for the petitioner and the learned Government Pleader for respondents.

The petitioner states that she along with one Bhagwati Bai Baheti purchased stamps worth Rs.44,000/-. All the stamp papers were purchased in the name of Bhagwati Bai Baheti for herself and others to use them for engrossing the sale deed as they wanted to purchase the property in the Industrial Development Area, Qutbullapur Village. They got the matter typed, but subsequently sale could not be materialized. In view of non-usage of stamp papers, the said Bhagwati Bai Baheti submitted an application to the Commissioner and Inspector General of Registration and Stamps, Andhra Pradesh, Hyderabad, on 23.10.1999 for refund of the value of the stamps as per Sections 52 to 54 of the Indian Stamp Act, 1899. He rejected the said claim by order, dated 25.05.2000 stating that the transaction was already recorded on the stamp papers purchased which cannot be treated as a substituted document. He gave the following reasons in support of his decision.

> Smt.Bhagwati Bai Baheti has applied for refund of Non Judicial Stamps worth Rs.44,000/-. After careful examination of the claim, the following points were noticed. The transaction intended by the parties has been completed due to payment of total consideration of Rs.4,00,000/- by the vendee to the vendor as admitted by the applicant herself. But later with the receipt of same consideration plus Rs.50,000/- as additional amount, the property was registered in favour of M/s.Sharp Engineers (P) Limited. It was admitted by the applicant herself that M/s.Sharp Engineers (P) Limited is her own family firm and the company allotted shares for the amount of Rs.4,00,000/- paid by her to the vendor, when asked to produce evidence, copy of return of allotment for 3000 shares at the rate of Rs.100/- as made on 25.02.2000 and filed on 21.03.2000 has been filed with our office.

Hence, there is no failure of transaction. The transaction was already recorded on the stamp papers purchased which cannot be treated as a substituted document.

When a revision was preferred to the second respondent, the second respondent disposed of the same stating that since the order was passed by the Commissioner and Inspector General of Registration and Stamps, Hyderabad, who is also the Chief Controlling Revenue Authority, the revision was not maintainable and appeal lies only to the High Court. Challenging the said order, dated 07.03.2002, and that of the order passed by the Commissioner, dated 25.05.2000, the present writ petition is filed.

A counter affidavit is filed by the Commissioner stating that after receipt of the application for refund of value of Non-Judicial Stamps worth Rs.44,000/- on 22.10.1999, an enquiry was conducted and deposition of the said Bhagwati Bai Baheti was recorded by the Vigilance Officer. She stated that the stamp papers were purchased as per the advice of the legal officer to draft the sale deed for purchase of shed in plot No.67 in Survey No.377 of Qutubullapur Municipality along with her daughter-in-law, the petitioner herein, from M/s.Vijay Industries and an advance amount of Rs.4,00,000/- was given. Due to delay in registration, the said property was registered in the name of M/s.Sharp Engineering. Her share and her daughter-in-law's share worth Rs.6,00,000/- were allotted and the same was confirmed by M/s.Sharp Engineering (P) Limited in Form No.2 under Section 75(1) of the Companies Act, 1956. In view of the said transaction, the stamp papers on which the original sale deed was typed cannot be treated as a substituted document. It was further stated that the transaction was completed in view of the payment of total consideration of Rs.4,00,000/- by the vendee to the vendor as per the deposition given by Smt Bhagwati Bai Baheti. The recitals were drafted in document No.6286 of 1999 of SRO, Medchal. In view of the same, the present issue does not fall under Sections 52 and 54 of the Indian Stamp Act nor the provisions of Section 49(d)(7) of the Indian Stamp Act are applicable.

It is clear from the above averments that a sale deed was drafted on the stamp papers with an averment that Rs.4,00,000/- advance was paid to the vendor but the document was not registered and the property was ultimately registered in favour of the third party, who passed on the consideration already paid by the vendee. Section 52 of the Indian Stamp Act provides for 'Allowance for Misused Stamps' and Section 54 deals with 'Allowances for stamps not required for use'.

Section 54 of the Indian Stamp Act reads as under.

> **54. Allowance for stamps not required for use:-** When any person is possessed of a stamp or stamps which have not been spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use, the Collector shall reply to such person the value of such stamp or stamps, in money, deducting ten naye paise for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled, and proving to the Collector's satisfaction,-
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> (a) that such stamp or stamps were purchased by such person with a *bona fide* intention to use them;
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> (b) that he has paid the full price thereof; and
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> (c) that they were so purchased within the period of six months next preceding the date on which they were so delivered:
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> Provided that, where the person is a licensed vendor of stamps, the Collector may, if he thinks fit, make the repayment of the sum actually paid by the vendor without any such deduction as aforesaid.

It is not a case where the transaction did not materialize but the vendor was paid the amount of consideration by the vendee and the company in whose favour the registration was effected is none other than her own family firm. In view of the same, this Court sees no ground to interfere with the order of the Commissioner passed on 25.05.2000.

The writ petition is accordingly dismissed. Miscellaneous petitions, if any pending, in this writ petition, shall stand closed.

A.RAMALINGESWARA RAO, **J**

15.06.2017
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