HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.2188 OF 2017

ORDER:

This writ petition is filed seeking writ of mandamus directing the 5th respondent to refund the Transfer Duty of Rs.23,085/- paid by the petitioner.

It is the case of the petitioner that he executed a settlement deed dated 22.03.2017 for Rs.15,39,000/- in favour of his wife Smt.Manda Vijayalakshmi in respect of house bearing H.No.13-79, Ratnagiri A.P.H.B.Colony, P.M.Palem, Visakhapatnam, Visakhapatnam District. That on the advise of the 2nd respondent, the petitioner paid stamp duty of Rs.30,680/- and Transfer duty of Rs.23,085/- and registration fee of Rs.10,000/- along with user charges of Rs.200/- aggregating to total of Rs.63,963/- on 25.05.2016 through challan No.23, in SBI, Madhuravada, Visakhapatnam and the Settlement Deed was registered as document No.2943 of 2016 in the office of the 2nd respondent-Sub-Registrar's office, Maduravada, Visakhapatnam. Since on the advise of the 2nd respondent, the petitioner paid Rs.23,085/- towards transfer duty, though he is not entitled to pay, the present writ petition is filed for refund of the same.

Heard learned counsel for the petitioner, learned Assistant Government Pleader for Revenue and Sri S.Laxminarayana Reddy, learned Standing Counsel for the 5th respondent.

Learned counsel for the petitioner submits that the question of payment of transfer duty of Rs.23,085/- is not justified and the respondent authorities have to return the said amount.

On the other hand, learned Standing Counsel for the 5th respondent submits that the petitioners have to make application under Section 45 of the Indian Stamp Act, 1899, in case any excess payment of duty and that petitioner cannot file writ petition straight away. He further submits that the transfer duty amount is not directly remitted to the 5th respondent, as such, they cannot claim from the 5th respondent.

In this case, it is to be seen that the petitioner paid an amount of Rs.63,963/- on 25.05.2016 towards registration of Settlement Deed No.2943 of 2016. According to the learned counsel for the petitioner, though the petitioner is not liable to pay transfer duty of Rs.23,085/-, on the advise of the 2nd respondent, he paid the same through challan No.23 in SBI, Madhuravada, Visakhapatnam. Though learned counsel for the petitioner submits that transfer duty is not included in the stamp, it is a fact that the settlement deed has been registered as per the provisions of the Stamps and Registration Act. Even if any excess amount is paid, it is for the 2nd respondent to consider the same and pass orders, if petitioner files any application before the 2nd respondent as per the provisions of Section 45 of the Indian Stamp Act, 1899.

In view of the above facts and circumstances, it is open for the petitioner to file application before the 2nd respondent for refund of transfer duty of Rs.23,085/- and on such application, the 2nd respondent is directed to consider the same and pass appropriate orders, in accordance with law.

With the above direction, the writ petition is disposed of. As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY,J

25-01-2017
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HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.2188 OF 2017

Date: 25.01.2017

kvs