**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CWP No.14111 of 2021
DATE OF DECISION : 29th JULY, 2021

Geeta Rani

…. Petitioner

Versus

State of Haryana & others

…. Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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In virtual Court
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Present : Mr. Chirag Wadhwa, Advocate for the petitioner.

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RAJBIR SEHRAWAT, J. (Oral)

1. The present petition has been filed by the petitioner under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for setting aside the order/letter dated 15.02.2019 (Annexure P-1) passed by respondent No.1 and order dated 05.04.2019 passed by respondent No.2, whereby the application of the petitioner for refund of Stamp Duty of ₹8,88,800/- was rejected, statedly, without assigning any reason, along with certain other prayers.

2. The submission of the counsel for the petitioner is that the petitioner had purchased the stamp papers worth ₹8,88,800/-. However, the same were misplaced by the petitioner. The petitioner has even reported the matter to the police and police have recorded the DDR in that regard. Hence, the petitioner is entitled to refund of the amount of

the said stamp papers. However, the authorities below have rejected the prayer of the petitioner only by saying that there is no provision for refund of the amount of the stamp papers in case the same are alleged to be stolen. The counsel has submitted that this kind of order is totally non-speaking. Before an order, rejecting the claim of the petitioner, is passed by the authorities, an enquiry has to be held and only thereafter the authorities can take decision. The counsel has further submitted that although it is written in the impugned orders that there is no provision for refund of the amount of the stamp duty in case of theft of stamp papers, however, since the Indian Stamp Act (in short, the Act) is silent on this aspect, therefore, the court has to give liberal consideration to the provision; so as to include the cases of theft, as well, in the category of cases where the stamp duty is to be refunded by the authorities.

3. Having heard the counsel for the petitioner and having perused the file, this court does not find any substance in the argument of the counsel for the petitioner. It is not in dispute that the petitioner had purchased the stamp papers worth ₹8,88,800/-. However, the claim of the petitioner is that he has misplaced the same, therefore, the same have not been used by the petitioner. But this is only the result of casualness or carelessness on the part of the petitioner. The petitioner cannot take advantage of his own wrong, so as to take refund from the public exchequer.

4. The provisions in the Act do not contain any stipulation qua refund of the amount of stamp papers, in case the same are claimed to have been stolen. The authorities are required to refund the amounts in the situations prescribed under the Act as contained in Sections 49, 52 &

54, besides some other special cases. The authorities under the Act are acting as *persona designata,* under the statute. Therefore, the authorities are not supposed to travel beyond their designated and specified authority; so as to permit refund to an individual on a ground which is not contemplated by the provision of the Act. Any such refund by the authorities would have been in violation of the provisions of the Act and would be an overreach by the authorities qua their prescribed competence. Hence, the authorities below have rightly rejected the claim of the petitioner.

5. Although, the counsel for the petitioner has submitted that since the Act is silent on the aspect of the refund of the amount of the stamp papers; in case the stamp papers are stolen, therefore, this contingency also has to be read into the provisions regarding the refund of the amount of the stamp papers, however, even this argument of the counsel for the petitioner is liable to be noted only to be rejected. It is well established by now that any omission to the legislate; on the part of a particular legislature, is always to be deemed to be intentional. It has to be presumed by the court that while making provision for refund of stamp duty on other counts the legislature was well aware that the stamp papers could be stolen or misplaced as well, however, still it has not made any provision for refund of stamp duty in case of theft or misplacement of the stamp papers. Hence, it has to be taken by the court that the legislature had not intended to refund the amount of stamp papers in case they are alleged to have been stolen. Moreover, the authorities prescribed under the statute; and the consequent proceedings before the Court of law; are required to be conducted as per what is expressly

provided in the Act and not on the basis of speculative premise by deemed inclusion or interpolation of any such factor in the provision of the statute, which legislature had omitted to include. It deserves to be mentioned that even the rule of liberal and purposive interpretation permits the liberal interpretation of existing language of the statute. Addition of words, phrases and situations to the language of statutes is not permissible under any rule of interpretation of statutes. Hence, situation of refund of amount of stamps in case of theft or misplacement cannot be interpolated in the provisions of the Act.

6. On the contrary, as per the provisions of the Act, the intention of the legislature not to permit refund of the amount of stamps, which are alleged to be stolen or misplaced, can be gathered from Section 54 of the Act which deals with the refund of amount of stamps in case they are not required for use. In this provision it has been clearly provided that if a person wants to get refund of the amount of stamps, not required to be used, then he shall have to deliver the same to the authority for cancellation. Same is the requirement under Section 49 which deals with refund of amount of used but spoiled stamp papers. Hence pre-condition for refund of amount of stamps is the return of used or unused stamp papers for cancellation by authorities concerned. No return of stamp papers, no refund of amount. In case of theft or misplacement, the stamp papers cannot be returned for cancellation. Hence there cannot be any refund.

7. The counsel for petitioner also argued that the competent authority was required to hold an enquiry before arriving at a decision as to whether stamp duty is to be refunded or not. However, even this

argument is misconceived for two reasons. Firstly, requirement of holding enquiry is prescribed only under Section 49 of the Act which relates to refund of amount for spoiled stamp papers and not under any other Section which deals with refund on other grounds. The case of petitioner is not covered under Section 49 at all. Secondly, any enquiry can be contemplated only when there is provision for refund of amount in case of theft or misplacement of stamp papers. Since there is no provision of such refund, therefore, there is no requirement of any enquiry. The authorities can straightaway reject or decline the application moved for such purpose only by saying that there exists no provision for any such refund.

8. In view of the above, finding no merit in the present petition, the same is dismissed.

29th July, 2021 **(RAJBIR SEHRAWAT)**
'raj' **JUDGE**

Whether speaking/reasoned: *Yes* *No*

Whether Reportable: *Yes* *No*