IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO. 11944 OF 2022

Rudra Mohan Nayak .... ***Petitioner***

Mr. Srinibash Satapathy, Advocate

-versus-

The State of Orissa and others .... ***Opp. Parties***

Mr. Swayambhu Mishra,
Additional Standing Counsel

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

Order No.	**20.09.2022**
1.	1. This matter is taken up through hybrid mode.

2. The Petitioner in this writ petition seeks to assail the order dated 2nd September, 2021 (Annexure-7) passed by the Deputy Collector (Tauzi), Collectorate Khordha-Opposite Party No.3, whereby the application of the Petitioner for refund of stamp duty of Rs.79,100/- was rejected.

3. Mr. Satapathy, learned counsel for the Petitioner submits that the sale deed was executed on 30th March, 2021 and it was presented for registration. However, the District Sub-Registrar, Dhenkanal-Opposite Party No.4 refused to register the same on 29th July, 2021. Thereafter, the Petitioner filed an application before the Deputy Collector (Tauzi), Collectorate Khordha-Opposite Party No.3 for refund of stamp duty. Prayer of the Petitioner was rejected vide order dated 2nd September, 2021 under Annexure-7. He further submits that the case of Petitioner does not come under Section 49(b) of the Indian Stamp Act, 1899 (for short 'the Act'). Hence, rejection of refund of stamp duty is

not sustainable in the eyes of law. He, therefore, prays for setting aside the impugned order under Annexure-7.

4. Mr. Mishra, learned Additional Standing Counsel referring to the counter affidavit submitted that since the application for refund of stamp duty was not submitted within the stipulated period, the Opposite Party No.3 had no other option than to refuse the prayer. He, therefore, prays for dismissal of the writ petition being devoid of any merit.

5. Considering the submissions made by learned counsel for the parties and on perusal of the impugned order, it appears that the application of the Petitioner for refund of stamp duty was rejected on the ground of contravention of Section 49(b) of the Act. Section 49 (b) of the Act relates to the stamp on any document which is written out wholly or in part, but not signed or executed by party thereto. Since the document in question had already been executed on 30th March, 2021, the provision under Section 49(b) of the Act is not applicable to the case at hand. On the other hand, sub-section (3) of Section 50 of the Act provides as under:

> "50. Application for relief under Section 49 when to be made:
>
> *(1) & (2) xxx xx xxx*
>
> *(3) In the case of a stamped paper in which an instrument has been executed by any of the parties thereto, within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed:*

6. In the instant case, the document in question appears to have been executed on 30th March, 2021 and submitted before expiry of six months mentioned in Section 50(3) of the Act. Thus, the matter requires fresh consideration by the Collector & District Magistrate, Khordha-Opposite Party No.2. As such, this Court while setting aside the impugned order under Annexure-7 remits the matter back to the Collector & District Magistrate, Khordha-Opposite Party No.2 to adjudicate the matter afresh keeping in mind the observation made herein above, giving opportunity of hearing to the parties concerned.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

bks