IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO. 17905 OF 2022

Suresh Chanda Mahapatra .... ***Petitioner***

Mr. Prasanta Kumar Nanda, Advocate

-versus-

State of Odisha and others .... ***Opp. Parties***

Mr. Dillip Kumar Mishra,
Additional Government Advocate
(For Opp. Party Nos.1 to 4)

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

Order No. **08.08.2022**

2. 1. This matter is taken up through hybrid mode.

2. Grievance of the Petitioner in this writ petition is with regard to levy of stamp duty for registration of deed of lease-cum-sale dated 23rd September, 2021 (Annexure-2) in respect of core house, i.e., MIG-89, Anant Vihar, Phase-II, Pokhariput, Bhubaneswar.

3. Mr. Nanda, learned counsel for the Petitioner submits that pursuant to advertisement floated by Bhubaneswar Development Authority (BDA), Petitioner applied for a core house on lease-cum-sale basis. Pursuant to an agreement entered into, the Petitioner was delivered with possession of the said core house in the year 2005. Since then, the Petitioner is residing therein by completing construction of the core house. After much persuasion, a deed of lease-cum sale was executed between BDA and Petitioner and the same was registered on 23rd September, 2021. However, the registering authority has levied stamp duty on the said deed of registration as per the bench mark/market value of the property prevailing on the date of registration of the deed in question.

3.1 Being aggrieved, the Petitioner made a representation to the Inspector of General, Registration, Odisha, Cuttack (IGR) on 22nd December, 2021 under Annexure-5 for consideration of levying Stamp Duty, as aforesaid, but no action has yet been taken on the same. In view of the above, the Petitioner finding no other alternative has filed this writ petition to issue direction to the Opposite Parties to refund differential stamp duty charged at the time of registration of the property. It is his submission that law is no more *res integra* on the issue, as this Court, vide order dated 31st March, 2021, passed in W.P.(C) No.8942 of 2021, held as under:-

> *"It is keeping all the above in view, this Court finds that stamp duty involving the registration of instrument based on lease-cum-sale deed entered into the parties at a particular rate and particular time will be the value for the registration purpose. It is in the circumstance, this Court in disposal of the Writ Petition while reiterating the settled position of law through the above judgment directs the opposite party ns.1 and 2 in the event the instrument is placed for registration by this petitioner, the Registering Authority shall register the same on the face value of the lease-cum-sale deed involved herein by accepting the stamp duty on the value as indicated therein by completing the entire exercise within a period of seven days.*
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> *For number of cases coming to this Court on this aspect, the IGR of the State is directed to issue necessary communication to all the Registrars and Sub-Registrars of the State to follow the above direction in future registration of this nature at least to avoid flowing of such cases to this Court.*
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> *Free copy of this order be supplied to Mr.S.Ghosh, learned Additional Standing Counsel for the State for communication to the IGR of the State."*

3.2 It is his submission that pursuant to the order passed by this Court, as quoted above, Board of Revenue, Odisha, Cuttack, vide its letter No.5921 dated 1st December, 2021 (Annexure-4), issued instructions to the Sub-Registrar, Khandagiri, Bhubaneswar to levy stamp duty as per the bench mark value in respect of the core houses prevalent at the time of handing over possession. In spite of the same, the IGR has failed to consider the representation of the Petitioner and issue necessary directions for refund the differential stamp duty.

4. Taking into consideration the submission made by learned counsel for the Petitioner, this Court, vide order dated 26th July, 2022, directed learned State Counsel to take instruction. Mr. Mishra, learned Additional Government Advocate, however, prays for further time to take instruction in the matter.

5. Taking into consideration the facts and circumstances of the case and that the issue involved in this writ petition has already been answered in W.P.(C) No. 8942 of 2021, which was disposed of on 31st March, 2021 (Annexure-3) as well as letter dated 1st December, 2021 of Board of Revenue (Annexure-4), this Court feels that no fruitful purpose will be served awaiting response from the Opposite Parties. As such, this Court is of the considered opinion that case of the Petitioner should be considered in the light of the said direction and instruction respectively.

6. In view of the above, this Court disposes of the writ petition with a direction to the IGR, Odisha, Cuttack-Opposite Party No.2 to take a decision on the representation of the Petitioner dated 22nd December, 2021 under Annexure-5 as expeditiously as possible, preferably within a period of four weeks from the date of production of certified copy of this order and the result thereof shall be communicated to the

Petitioner forthwith. Excess stamp duty, if any, collected from the Petitioner at the time of registration of Lease-cum-Sale Deed dated 23rd September, 2021, shall also be refunded to him within a period of four weeks thereafter.

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

(K.R. Mohapatra)
Judge

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