IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1877 of 2023

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Anil Kumar Son of Late Sukhdeo Prasad, resident of Mohalla - Balti Karkhana Chowk, Marufchak, P.O. Mirjanhat, P.S. Mojahidpur, District - Bhagalpur - 812005. Presently residing at Yuvraj Tower, Sarai Chowk, P.O. Bhagalpur City, Police Station - Tatarpur, District - Bhagalpur - 812002.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Land and Revenue, Government of Bihar, Patna.
2. The Principal Secretary, Department of Land and Revenue, Government of Bihar, Patna.
3. The Inspector General of Registration, Government of Bihar, Patna.
4. The Divisional Commissioner, Bhagalpur Division, Bhagalpur.
5. The District Magistrate, Bhagalpur.
6. The Senior Deputy Collector, District Legal Section, (Collectoriate), Bhagalpur.
7. The Sub -Registrar, District Registration Office, Bhagalpur.
8. The District Treasury Officer, Bhagalpur.
9. The Branch Manager, State Bank of India, Bhagalpur Branch, Bhagalpur.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Suman Kumar, Adv.
For the Respondent/s	:	Mr.Vikash Kumar, SC-11
For the Bank	:	Mr. Apurv Harsh, Adv.
		Mr. Raghu Raj Pratap, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 29-10-2024

The present writ petition has been filed for directing the Respondents to refund the amount of stamp duty to the tune of

Rs. 72,045/-, which was purchased by the petitioner for registration of a flat, but the same could not be utilized. The petitioner has further prayed for quashing of the letter dated 6.6.2022, issued by the Senior Deputy Collector, District Legal Section (Collectoriate), Bhagalpur, by which he has refused to pay back the amount of unused stamp.

2. The brief facts of the case, according to the petitioner, are that the petitioner had entered into a registered agreement, vide Deed No. 12056, dated 28.11.2015, with one Sri Pawan Kumar Chouhan, authorized Director of Arnav Real Built Private Limited, for purchase of a flat and as per the said agreement, the petitioner had to get the sale deed registered up to 31.3.2017, hence, he had purchased stamp worth a sum of Rs. 72,045/- from the Bhagalpur Treasury, Bhagalpur, through the State Bank of India, Bhagalpur Branch, Bhgalpur, on 13.11.2015. On account of the petitioner being not able to get leave from his employer, he could not get the sale deed registered in time and in the meantime, the stamp purchased by him had lapsed, thus, the petitioner got the sale deed registered on 24.2.2018, by purchasing fresh stamps. Thereafter, the petitioner had met with an accident and could not apply for refund of the aforesaid amount of stamp duty, nonetheless, when he recovered, he had

filed an application for refund of the stamp duty amount, as aforesaid, however, the Respondents have refused to pay back the same. It is submitted that the Respondents belong to a welfare State, which is not supposed to forfeit the hard earned money of its citizens. Reference has also been made to an order dated 17.5.2019, passed by a coordinate Bench of this Court in the case of ***Bindu Kumar Yadav vs. The State of Bihar & Ors.*** (CWJC No. 290 of 2019).

3. *Per contra*, the learned counsel for the Respondent-State has submitted, by referring to the counter affidavit filed in the present case that the petitioner has suppressed material facts, inasmuch as the aforesaid stamps, stated to have been purchased by the petitioner on 13.11.2015, have already been used by the petitioner in registration of the agreement to sale on 28.11.2015, as is apparent from a copy of the registered agreement to sale dated 28.11.2015, which is annexed as Annexure-C to the counter affidavit. Nonetheless, it is further submitted that there is no provision in the Indian Stamp Act, 1899 as well as in the Indian Registration Act, 1908, for refund of used stamps, which have already stood utilized for the purposes of registration of an instrument. At this juncture, the learned counsel for the Respondent-State has referred to Clause 5(b) of Schedule-IA to

the Indian Stamp Act, 1899 (hereinafter referred to as "the Act, 1899"), which is reproduced hereinbelow:-

No.	Description of Instrument	Proper Stamp Duty
5(b).	If relating to construction of a house or building including a multiunit house or building or unit of apartment/flat/portion of a multistoried building or for development/sale of any other immovable property.	(b). Two Rupees for every one hundred rupees or part thereof '(on the market value of the land/land with building as the case may be), provided that the duty paid at the time of such agreement or Memorandum of an Agreement may be set off against the duty to be paid at the time of the sale of such immovable property to the said party. [2]["Explanation-For subsequent agreements, relating to construction of a house or building including a multiunit house or building or unit of apartment/ flat/portion of a multistoried building or for development/sale of any other immovable property, the stamp duty, if not paid earlier, on such agreements relating to construction of a house or building including a multistoried building or for development/sale of any other immovable property shall be chargeable at the rate as prescribed above In clause (b) subject to a maximum of Rs. 10,000/- (Rupees Ten Thousand). [3][Rs. 1000/-(One thousand)"

It is submitted by the learned counsel for the Respondent-State that the petitioner having not availed the facility of set-off, as provided for under Clause 5(b) of Schedule-IA of the Act, 1899, at the time of registration of the sale deed in question, no relief can be granted to the petitioner, hence, the present writ petition is fit to be dismissed.

4. I have heard the learned counsel for the parties and perused the materials on record from which it is not only apparent but also it has not been denied by the petitioner that he had purchased stamp duty, by depositing money with the State Bank of India, Bhagalpur Branch, Bhgalpur, on 13.11.2015, whereafter he had entered into an agreement to sale, which was registered, vide deed No. 12056, on 28.11.2015 and the aforesaid stamp duty purchased by the petitioner had stood utilized, however, subsequently, while getting the sale deed registered on 24.2.2018, the petitioner thought it proper not to avail the benefit of Clause 5(b) of Schedule-IA of the Act, 1899, hence, in the opinion of this Court, there is no provision under the Act, 1899, which makes the petitioner entitled for refund of the aforesaid amount of stamp duty purchased on 13.11.2015, thus, the present writ petition is devoid of any merit and is fit to be dismissed on this ground alone.

5. In any view of the matter, Rule 2 of the Bihar Stamp (Refund of amount of Non-judicial Stamp Duty deposited by Bank challan) Rules, 2008, provides that an application for refund of stamp duty deposited in the Bank, which has not been or could not be utilized by the depositor or the parties, shall be filed in three copies in Form A, prescribed under the Rule,

before the Collector of the District, in whose jurisdiction, the Bank is located and where such amount has been deposited along with depositor's copy of the of the Bank challan within six months from the date of deposit of the amount of stamp duty by Bank challan and after expiry of six months, such application shall be filed before the Divisional Commissioner of the area, but within one year from the date of deposit of amount in the Bank. In fact, Section 50 of the Indian Stamp Act, 1899, provides for filing of an application for relief only within two months. In the present case, the stamp was purchased on 13.11.2015 and application was filed by the petitioner for refund of the same (though the same has already stood utilized at the time of registration of the agreement to sale on 28.11.2015) on 6.4.2022 i.e. after lapse of about six and a half years, hence, under no circumstances, any relief can be granted to the petitioner. As far as the Judgment relied upon the Ld. Counsel for the petitioner, i.e. the one rendered in the case of *Bindu Kumar Yadav* (supra), is concerned, the same is clearly distinguishable in the facts and circumstances of the present case.

6. Having regard to the facts and circumstances of the case and for the foregoing reasons, I do not find any merit in the

present writ petition, hence, the same stands dismissed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.12.2024
Transmission Date	NA