

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.5868 of 2023

Sushanta Kumar Mohanty* *Petitioner

Mr. Prasanta Kumar Nanda, Advocate

-versus-

State of Odisha and others* *Opp. Parties

Mr. Dillip Kumar Mishra,
Additional Government Advocate

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
28.02.2023**

Order No.

1. This matter is taken up through Hybrid mode.
2. Petitioner in this writ petition assails the order dated 21st October, 2022 (Annexure-7) passed by Inspector General of Registration, Odisha, Cuttack-Opposite Party No.2, whereby declining to entertain the representation favourably, he refused the prayer of the Petitioner to refund the excess stamp duty and registration fee.
3. Mr. Nanda, learned counsel for the Petitioner submits that the lease deed in respect of the house at HIG No.111, BDA Colony, Phase-I, Pokhariput, PO: Aerodrome Area, Bhubaneswar Dist: Khordha was executed on 2nd August, 2021. The entire consideration money of Rs.6,05,000/- was paid to Bhubaneswar Development Authority (BDA) by that date. However, the Petitioner was compelled to pay the stamp duty and registration fee on the market value prevailing on the date of registration. It is his submission that the case of the Petitioner is squarely covered by the decision of this Court in the case of ***Pradip Kumar Prusty Vs. State of Odisha and others*** in

W.P.(C) No.35140 of 2022 disposed of on 8th February, 2023 and batch of cases, wherein it is held as under:-

“9. Taking into consideration the submission made by learned counsel for the parties, this Court finds that in the case of **Santosh Kumar Nanda (supra)**, the Hon'ble Division Bench of this Court, taking into consideration the relevant provisions as well as case law, directed the Odisha State Housing Board (respondent therein) to execute the sale deed as per the valuation reflected in the draft lease-cum-sale deed. Thus, it is clear that the Petitioner is required to pay the stamp duty at the rate of 2% on the value reflected in the lease-cum-sale deed, which is paid to the BDA. The lease deed in question was executed on 14th February, 2020, which is much after the judgment, passed in **Santosh Kumar Nanda (supra)**. Thus, the ratio decided therein, is squarely applicable to the instant case. But the IGR-Opposite Party No.3, while taking decision pursuant to direction of this Court in **W.P.(C) No.12437 of 2022**, misinterpreted the observation made in **W.P.(C) No.8942 of 2021**. It failed to consider the ratio decided therein, which was passed relying upon the ratio decided in the case of **Santosh Kumar Nanda (supra)**. It ought to have read the order passed in **W.P.(C) No.8942 of 2021** in the light of the ratio decided in **Santosh Kumar Nanda (supra)**.”

He, therefore, submits that the Petitioner is entitled to refund of excess stamp duty paid by him for registration of the lease-cum-sale deed in respect of the house in question.

4. Mr. Mishra, learned AGA submits that he has no instruction in the matter. However, applicability of the ratio decided in **Pradip Kumar Prusty (supra)**, is a matter of consideration and the Inspector General of Registration-Opposite Party No.2 is competent to take a decision on the same.

5. It is the case of the Petitioner that he was compelled to pay the stamp duty and registration fee on the prevailing market value of the property in question. Whereas, the IGR rejected the

representation of the Petitioner on the ground that since the Petitioner paid the stamp duty and registration fee *suo motu* the registering authority had no scope to adjudicate valuation or classification of the instrument to charge or demand any deficit stamp duty from the lessee. Such a finding itself suggests that there was non-application of mind by the Registering Officer at the time of registration of the instrument. The Registering Officer does not act as post office. It is under legal obligation to apply its mind to the sufficiency of the stamp duty and registration fee along with other requirements under the Registration Act before registration of the instrument. When the Registering Officer has the power to impound the instrument for non-payment of required stamp duty, it is also equally responsible to take a decision as to whether an excess stamp duty has been paid or not. The State cannot enrich itself with the money of a common citizen, if it is not otherwise entitled to the same. Thus, the finding of the IGR to the effect that stamp duty and registration fee paid *suo motu* cannot be held to be excessive, is not sustainable, which renders the impugned order under Annexure-7 vulnerable.

6. As such, the impugned order under Annexure-7 is set aside and the writ petition is disposed of with a direction that on an application filed by the Petitioner within two weeks hence detailing his grievance, enclosing copy of the order dated 8th February, 2023 passed by this Court in **Pradip Kumar Prusty** (supra), the Inspector General of Registration-Opposite Party No.2 shall do well to take a decision on the said application with regard to refund of excess stamp duty/registration fee as expeditiously as possible preferably within a period of two

months by passing a reasoned order keeping in mind the observations made herein above. If the Petitioner is entitled to refund of stamp duty/registration fee, steps shall be taken in the regard forthwith.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge

s.s.satapathy

