

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15895 of 2023

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Anish Kumar Singh S/o Ramashankar Singh Resident of Village-Sirsi, P.S.-Chainpur,
District Kaimur at Bhabhua.

... ... Petitioner/s

Versus

1. The State of Bihar through the Inspector-General of Registration, Bihar, Patna.
2. The, Inspector General of Registration, Bihar, Patna.
3. The Assistant Inspector General of Registration, Patna, Division, Patna.
4. The, District Registrar-cum-Collector-cum- District Magistrate, Kaimur at Bhabhua.
5. The District Sub-Registrar, Kaimur, District-Bhabhua.

... ... Respondent/s

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Acts/Sections/Rules:

- Section 47-A(1) of the Indian Stamp Act, 1899

Cases referred:

- The State of Bihar and others vs. Smt. Tetra Devi, 2018 (3) PLJR 136
- Shahnaz Begam vs. The State of Bihar & Ors., reported in 2018(2) PLJR 293

Writ petition - filed for quashing the order passed by the Court of Collector in Stamp Appeal Case whereby the petitioner has been directed to pay deficit stamp duty along with fine.

A gift deed was executed and registered in the office of the District Sub-Registrar. Subsequently, an inspection was conducted. Thereafter, the District Sub-Registrar had prepared a report regarding payment of deficit stamp duty and had referred the matter to the Collector.

Held - Reference has admittedly been made after the gift deed was registered, whereas Section 47A-1 of the Indian Stamp Act, 1899 provides that such reference can be made, only before registration of the instrument in question, hence District Sub-Registrar had no authority/jurisdiction to refer the matter, after registration of the gift deed. (Para 7)

Writ is allowed. (Para 8)

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... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ranjan Kumar Dubey, Advocate Mr. Kumar Gaurav, Advocate Mr. Shashank Kashyap, Advocate
For the Respondent/s	:	Mr.Vikash Kumar (SC-11) Mr. Akash Chaturvedi, AC to SC-11

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 23-07-2024

The present writ petition has been filed for quashing the order dated 21.08.2023, passed by the Ld. Court of Collector-cum-District Magistrate, Kaimur at Bhabua in Stamp Appeal Case No. 25 of 2023, whereby and whereunder the petitioner has been directed to pay a sum of Rs. 1,17,362/- on the head of deficit stamp duty along with fine to the tune of Rs. 11,736/-, totalling to a



sum of Rs. 1,29,098/-.

2. The brief facts of the case, according to the petitioner are that one Draupadi Kuer executed a gift deed, registered on 25.04.2023 in the office of the District Sub-Registrar, Kaimur at Bhabua in favour of the petitioner with respect to total 68 decimals land, situated at Khata No. 298, Plot No. 501 and 68 decimals land, situated at Khata No. 298, Plot No. 288, Mauja-Saraiya, Thana No. 170, P.S. Chainpur, Bhabhua. Subsequently, an inspection was conducted by a staff of the District Registration Office, Kaimur at Bhabua on 26.04.2023, wherein he had found that a residential house is situated within a radius of 200 metre of the aforesaid land in question. Thereafter, the District Sub-Registrar, Kaimur at Bhabua had prepared a report regarding payment of deficit stamp duty and had referred the matter to the Collector-cum-District Magistrate, Kaimur at Bhabua i.e. the respondent no. 4 by a letter dated 11.05.2023, whereupon the respondent no. 4 had instituted Stamp Appeal Case No. 25 of 2023 and



issued notices to the petitioner. The petitioner had filed his objections, however, without considering the same, the impugned order dated 21.08.2023 has been passed.

3. The learned counsel for the petitioner has submitted that reference can be made by the Registering Officer for determination of the proper market value of the property in question, if he is satisfied that the classification of the property or the measurement of the structure contained in the property is wrong or the market value of the property has been set forth at a lower rate than the Guideline Register of Estimated Minimum Value, only before registering the instrument in question, however in the present case, the respondent no. no.5 has referred the matter to the respondent no. 4 only after registration of gift deed on 25.04.2023, hence the said reference itself is bad in law. In this connection, reference has been made to Section 47-A(1) of the Indian Stamp Act, 1899, which is reproduced herein below:-

“47A (1) Where the registering officers appointed under the



Registration Act, 1908 while registering any instrument of conveyance, exchange, gift, partition or settlement is satisfied that the classification of the property and/ or the measurement of the structure contained in the property which is subject matter of such instrument has been set forth wrongly or the market value of the property, which is subject matter of such instrument has been set forth at a lower rate than the Guideline Register of Estimated Minimum Value prepared under the rules framed under the provision of this Act, he shall refer such instrument before registering it to the Collector for determination of the proper market value of such property and the proper duty payable thereon.

Provided that where the market value of the property of the instruments described above has been fixed at an amount which is not less than the value prescribed in the Guide Line Register of estimated minimum value prepared under the rules framed under the provisions of this Act, but the registering officer has reasons to believe that the market value of the property which is the subject matter of such instrument has



not been rightly set forth or it is higher than the estimated minimum value, he after registering such instrument, shall refer it by assigning proper reasons to the Collector for determination of proper market value of the property and the proper duty payable thereon.

4. In this connection, the petitioner has referred to a judgment rendered by the learned Division Bench of this Court, reported in **2018 (3) PLJR 136 (The State of Bihar and others vs. Smt. Tetra Devi)**, paragraphs no. 14 and 15 whereof, are reproduced herein below:-

“14. In the present case, it is the Collector who has issued notice on the ground that the document registered is deficient in stamp duty. He might have issued notice on the report of the Sub-Registrar or the Commissioner. The fact remains that he is exercising his suo motu power. Such notice could be issued only within two years of the registration of the document. Even if it is to be examined that the notice was issued at the instance of the Sub-Registrar, then the Sub-Registrar was bound to act at the time of registration of the document in terms of Rules 9



and 10 reproduced above. He cannot make recommendation after long delay, particularly when the officer registering the document has not made any reference at the time of registration of the document

15. Thus, we find that initiation of proceedings by the Collector suffers from patent illegality and has been rightly set aside by the learned Single Judge. We do not find any reason to interfere in the order passed by the learned Single Judge in the present Letters Patent Appeal."

5. The Ld. Counsel for the petitioner has also relied on a judgment, rendered by a coordinate Bench of this Court in the case of **Shahnaz Begam vs. The State of Bihar & Ors.**, reported in **2018(2) PLJR 293** paragraphs no. 6 to 9 whereof are reproduced herein below:-

"6. It, thus, follows that the Registering Authority can only refer the matter before registering it to the Collector for determination of the proper market value of such property and the proper duty payable thereon. In the present case, it is quite clear that the registration was already effected and it was only thereafter that the reference was made to



the Collector/AIG Registration for determination of the correct value. Furthermore, if at all, a proceeding was to have been initiated after registration by the Collector suo motu within the provisions of Section 47A(3), the same could have been done within a period of two (2) years from the date of registration of such instrument already referred to him under Sub-Section (1). Provisions as stated in Section 47A(3) is as follows:-

“The Collector may suo motu within two years from the date of registration of such instrument not already referred to him under sub-section (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject matter of such instrument and the duty payable thereon and if, after such examination, he has reason to believe that the market value of such property, has not been rightly set forth in the instrument, [or is less than even the minimum value determined in accordance with any rules made under this Act] he may determine the market value of such property and the duty as aforesaid in accordance with the procedure provided for in sub-section (2). The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty.

Provided that nothing in this



sub-section shall apply to any instrument registered before the date of commencement of the Indian Stamp (Bihar Amendment Ordinance, 1986)."

7. *It appears from the counter affidavit filed that it is not a proceeding initiated rather it was a reference to the Collector under Section 47A (1).*

8. *In that view of the matter, since the provisions clearly state that such enquiry can be made only before registering it to the Collector for determination of the proper market value of such property and the proper duty payable thereon. The entire reference is made against the statutory provisions and cannot be sustained in the eye of law. Thus, in the considered opinion of the Court, the impugned order dated 16.05.2016 as contained in Annexure-4 is wholly illegal and arbitrary and has to be quashed.*

9. *Accordingly, the impugned order dated 16.05.2016 as contained in Annexure-4 stands quashed. The writ application is allowed. No costs."*

6. *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 in collusion with the executants had



deliberately recited the subject matter of the gift deed as agricultural/irrigated land, which in fact has been found to be residential in nature, thus the respondent no. 5 had referred the matter to the respondent no. 4 for determination of the market value and realisation of deficit stamp duty under Section 47A-1 of the Indian Stamp Act, 1899, whereafter the respondent no. 4 had instituted the aforesaid Deficit Stamp Appeal Case No. 25 of 2023 and then he had, after giving sufficient opportunity to the petitioner, passed the impugned order dated 21.08.2023, hence there is no illegality in the same.

7. I have heard the learned counsel for the parties and perused the materials on record, from which this Court finds that the reference has admittedly been made by the respondent no. 5 to the respondent no. 4, after the gift deed was registered on 25.04.2023, whereas Section 47A-1 of the Indian Stamp Act, 1899 provides that such reference can be made, only before registration of the instrument in question, hence the respondent



no. 5 had no authority/jurisdiction to refer the matter, after registration of the gift deed on 25.05.2023, thus the reference itself is bad. In fact, the present case is squarely covered by a judgment rendered by a coordinate Bench of this Court in the case of **Shahnaz Begam** (supra), thus this Court finds that the action of the respondent no. 5 as also that of the respondent no. 4 is not only arbitrary and perverse but also against the mandate of Section 47A of the Indian Stamp Act, 1899, hence the impugned order dated 21.08.2023 passed by the respondent no. 4 in Stamp Appeal Case No. 25 of 2023 is quashed.

8. The writ petition stands allowed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	N/A
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Transmission Date	N/A

