

IN THE HIGH COURT OF JUDICATURE AT PATNA

Rakesh Kumar & Ors.

vs

The State of Bihar & Ors.

Civil Writ Jurisdiction Case No. 3509 of 2023

19 November 2024

(Hon'ble Mr. Justice Mohit Kumar Shah)

Issue for Consideration

- Whether reference under Section 47(A)(1) of the Indian Stamp Act, 1899 could be made by the registering authority after registration of the sale deed?
- Whether the classification of the petitioners' land as residential instead of agricultural was arbitrary in absence of any entry in the Minimum Valuation Register (MVR)?
- Whether the impugned order suffered from procedural irregularities and non-application of mind under the Bihar Stamp (Prevention of Under Valuation of Instruments) Rules, 1995?

Headnotes

Court finds that the respondents have illegally and illogically deemed the said land in question to be falling under the residential branch road category instead of agricultural category. - There has been neither any fixation of estimated market value of the plot in question nor there has been any categorisation of the agricultural plots of Nagar Nigam, Purnea, hence any assumption either by the respondent no.5 or the respondent no.3 is perverse and arbitrary. - Impugned order passed by the respondent no.3 does not depict that any inquiry has been conducted in compliance of the provisions contained in Section 47(A)(2) of the Act, 1899. - Order is cryptic and does not showing any application of mind. (Para 12)

Even the District Sub-Registrar has admitted that the land in question is a ditch surrounded by agricultural farms, thus, on this score as well, classifying

the aforesaid land in question to be falling under the residential branch road category, instead of progressive agricultural land category is arbitrary and perverse as also without any basis. (Para 13)

Petition is allowed. (Para 16)

Case Law Cited

Prashant Kumar Mahensaria v. State of Bihar, CWJC No. 6440 of 2016; Sehnaz Begum v. State of Bihar, 2018(2) PLJR 293; State of Bihar v. Tetra Devi, 2018(3) PLJR 136

List of Acts

Indian Stamp Act, 1899; Bihar Stamp (Prevention of Under Valuation of Instruments) Rules, 1995

List of Keywords

Deficit stamp duty; Minimum Valuation Register (MVR); Section 47A Indian Stamp Act; Residential classification; Agricultural land; Stamp duty assessment; Post-registration reference; Rule 6 MVR; Procedural lapse; Quashing of order

Case Arising From

Stamp Case No. 1 of 2020, Purnea Division

Appearances for Parties

For the Petitioner(s): Mr. Gautam Kumar Kejriwal, Advocate; Mr. Alok Kumar Jha, Advocate; Mr. Mukund Kumar, Advocate; Mr. Akash Kumar, Mr. Aditya Raman, Advocate;

For the Respondent(s): Mr. Vikash Kumar (SC-11); Mr. Krishna (AC to SC-11)

Headnotes prepared by Reporter: Amit Kumar Mallick, Advocate

Judgement /Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3509 of 2023

- 1. Rakesh Kumar S/o Ramji Prasad, resident of Purani Bazar, Narkatiyaganj, P.S. Shikarpur, District West Champaran.
- 2. Jitendra Kumar Jaiswal, S/o Late Vishwanath Prasad, resident of Purani Bazar, Narkatiyaganj, P.S. Shikarpur, District West Champaran.
- 3. Naval Kishore Chaudhary, S/o Late Thakur Prasad Chaudhary, Resident of Lahuriya, P.S. Bela, District Sitamarhi, current resident of DamakChawk, Gulabbaagh, P.S. Sadar, District Purnia.

... .. Petitioner/s

Versus

- 1. The State of Bihar through the Inspector General (Registration) Bihar, Patna.
- 2. The Divisional Commissioner, Purnea.
- 3. The Assistant Inspector General (Registration), Purnea Division, Purnea.
- 4. The District Magistrate-cum-Collector, Purnea
- 5. The District Sub-Registrar, Purnea
- 6. The Circle Officer, Purnea

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Gautam Kumar Kejriwal, Adv.
Mr.Alok Kumar Jha, Adv.
Mr.Mukund Kumar, Adv.
Mr.Akash Kumar, Adv.
Mr.Aditya Raman, Adv.
For the Respondent/s : Mr.Vikash Kumar, SC-11
Mr.Krishna, AC to SC-11

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 19-11-2024

1. The present writ petition has been filed for quashing of the order dated 08.04.2021, passed by the Assistant Inspector General (Registration), Purnea Division, Purnea i.e. the respondent no.3, in Stamp Case No.1 of 2020, whereby and whereunder the petitioners have been directed to pay a sum of Rs.29,92,000/- on the head of deficit stamp duty along with a



sum of Rs.2,99,200/- on the head of penalty charges, totaling to a sum of Rs.32,91,200/-.The petitioners have also prayed for quashing of the appellate order dated 23.11.2022, passed by the Ld. Court of Divisional Commissioner, Purnea i.e. the respondent no.2, in Deficit Stamp Appeal No.298 of 2021, whereby and whereunder the appeal has been dismissed on the ground of non-deposit of 50 % of the amount of deficit stamp duty along with penalty charges, as has been directed to be paid by an order dated 08.04.2021, passed by the respondent no.3.

2. The brief facts of the case, according to the petitioners are that the petitioners purchased a piece of land situated at Circle-Purnea East, Mauza- Lakhan Jhardi, Thana No.97, Ward No.36, appertaining to Khata No.60, Khesra No.591/647, admeasuring 1 acre 20 decimal, by a sale deed which was registered by the Office of the District Sub-Registrar, Purnea i.e. the respondent no.5 on 01.07.2020, after making payment of the requisite stamp duty and registration charges. It is stated that the land in question was disclosed as a progressive agricultural land in the sale deed and since there was no entry muchless any categorization of the land in question in the Minimum Valuation Register (MVR), the petitioners had declared the value of the land in question, by way of sale consideration, to be a sum of



Rs. 40 lacs, relying upon the use of the land and the value of the adjoining land. It appears that the respondent no.5 had referred the matter to the respondent no.3 for determination of the category of the land in question as also for calculation of the deficit stamp duty, whereupon Stamp Case No.1 of 2020 was instituted by the respondent no.3 and then the impugned order dated 08.04.2021 has been passed, directing the petitioners to pay a sum of Rs.32,91,200/-, on the head of deficit stamp duty and penalty charges. The petitioners had then challenged the aforesaid order dated 08.04.2021, before the respondent no.2, by filing an appeal bearing Deficit Stamp Appeal No.298 of 2021, however, the same has been rejected vide order dt. 23.11.2022 on the ground of non-deposit of the statutory amount by the petitioners while preferring the said appeal.

3. The learned counsel for the petitioners has, at the outset, submitted that mere perusal of Form-I, prepared by the respondent no.5 for referring the matter to the respondent no.3 under Section 47(A)(1) of the Indian Stamp Act, 1899 (hereinafter referred to as 'the Act, 1899'), would show that the land in question is a progressive agricultural land and it has been recorded therein that though the land of the petitioners is situated next to Brick Flat Soling survey road, which falls under



the category of branch road, however the land of the petitioners is in the form of a pond like ditch where Makhana is being cultivated and is surrounded by farms, nonetheless the land in question has been deemed to be falling under the residential branch road category, which is illogical.

4. The learned counsel for the petitioners has further submitted that the petitioners have already paid the stamp duty and registration charges as per the prevalent market value as applicable to the agricultural lands, hence they are not liable to pay any further amount in terms of the provisions of the Act, 1899 or in terms of the Bihar Stamp (Prevention of under valuation of Instruments) Rules, 1995 (hereinafter referred to as the 'Rules, 1995'). It is specifically stated that Rule 5 & 6 of the Rules, 1995 provides that it is the Collector of the district who is obliged in law to classify the lands of Rural/Urban areas and prepare a register showing minimum value of lands/properties of that category as per the procedure prescribed in Rule 6, as such the District Magistrate-cum-Collector, Purnea, i.e the respondent no. 4 was/is duty bound to include each and every category of land, as per Rule 6 (1) of the Rules, 1995, for the purpose of determination of minimum market value of the land and property in question, which in turn could be referred to by the



Sub-Registrar for the purposes of registration of instruments presented for transfer of such land and properties. It is stated that in absence of such entry in the MVR pertaining to Nagar Nigam Purnea, the respondent no. 5 could not have changed the very nature of the land in question and replaced it with another category and that too without ascribing to the procedure prescribed under the law.

5. The Ld. Counsel for the petitioner has contended that the respondent no. 5 has committed gross error of law by referring the case of the petitioners to the respondent no. 3 under Section 47(A) of the Act, 1899, especially under section 47(A) (1) of the Act, inasmuch as the valuation of the land in question was rightly set forth by the petitioners in the instrument as Rs. 40,00,000/-, even though the MVR of Nagar Nigam, Purnea did not deal with any such category of land, which in fact was an error on the part of the respondent nos. 4 and 5, who happen to be the Chairman and Secretary of the District Valuation Committee but had not categorized such lands for the purpose of minimum market valuation in the MVR of the Nagar Nigam, Purnea, consequently, the very reference made by the respondent no. 5 u/s 47(A) of the Act, 1899 was/is illegal and misconceived.

6. It is next contended by the Ld. Counsel for the petitioner,



by referring to the certificate inscribed by the Head Clerk of the Office of the Respondent No. 5, on the first page of the sale deed in question that it has been clearly stated therein that the market value of the land under sale is in accordance with the MVR of the district and that the stamp duty, registration charges together with other charges have been properly paid. The said certification itself would indicate that the valuation of the property in question, as mentioned in the sale deed presented for registration had been accepted by the Office of the Respondent No. 5. Thus, the action of the Respondent No. 5 in referring the matter to the Respondent No. 3 is contrary to the aforesaid certification by the Head Clerk of his own Office.

7. The learned counsel for the petitioners has next contended that the Assistant Inspector General (Registration), Purnea Division, Purnea, i.e the respondent no. 3, has committed another error of law by not conducting any enquiry u/s. 47(A)(2) of the Act, 1899, at any point of time and has straight away accepted the recommendation made by the respondent no. 5, which is based on mere presumption and conjectures and not on any cogent material, having any validity in the eyes of law. In the instant case, the Respondent No. 3 did not conduct any enquiry so as to ascertain the correctness and validity of the



report of the Respondent No. 5, whereby he had recommended the land in question to be treated as residential. In fact, the Respondent No. 3 ought to have applied its mind to the remarks given in column 11 of form No. 1, forwarded by the respondent number 5, wherein the very nature and status of the land in question has been described as a pond like ditch, filled with water hyacinth and in part thereof Fox nut (Makahana) is being grown. The said remark itself unravels the very nature of the land under transfer in the sale deed to be partly agricultural and partly forming a pond. Thus the impugned order dated 08.04.2021 is without jurisdiction and suffers from violation of the statutory procedure, as is prescribed under the law.

8. Thus it is the submission of the Ld. counsel for the petitioners that once the respondent no.5 himself has admitted that the land in question is in the nature of a pond with water hyacinth and Fox nut being grown in part thereof and all other adjoining lands being agricultural in nature, it is the statutory obligation of the respondent Collector, Purnea to incorporate such category of lands in the MVR of the district so as to facilitate assessment of proper market value of such lands for the purpose of determination of stamp duty and registration fee in case of transfer of such land.



9. The learned counsel for the petitioners has referred to a judgment dated 25.04.2019, rendered by this Court in the case of ***Prashant Kumar Mahensaria vs. The State of Bihar and Ors.*** (CWJC No.6440 of 2016), paragraph nos.5 to 9 whereof, are being reproduced hereinbelow:-

“5. I have heard the learned counsel for the parties and perused the materials on record. At this juncture, it would be relevant to reproduce Rule 5 of the Bihar Stamp (Prevention of Under Valuation of Instruments) Rules, 1995 herein below:-

"5. Guidelines register of minimum value.- For the purpose of assisting the Registering Officer in finding out actual market value of properties (as accurately as may be possible) the District Sub-Registrar within the area of his district shall after classifying the lands of rural or urban area prepare a register showing estimated minimum value of the land/ properties of the category as per procedure laid down in Rule 6".

6. Rule 6 of the aforesaid Rules, 1995 prescribes the process for fixation of estimated minimum market value in every district on the recommendation of District Valuation Committee established for this purpose under the chairmanship of the Collector of the district which in turn functions under the overall guidance and supervision of Central Valuation Committee constituted at State level.



7. Admittedly, in the present case, the minimum valuation register, as prescribed under Rules 5 and 6 of the Bihar Stamp (Prevention of Under Valuation of Instruments) Rules, 1995, does not prescribe any rate in the category of irrigated/ agricultural land of Nagar Panchyat, Gogri, however, according to the petitioner, the minimum valuation register pertaining to Mauza-Jamalpur (Annexure-1/A to the writ petition) shows the rate of irrigated land under the district of Jamalpur whereas on the other hand, the respondents have relied upon a letter dated 02.04.2012 issued by the Circle Officer, Gogri wherein the land in question along with other Khesras have been shown as "NAC" i.e. non-agricultural/ commercial lands and, accordingly, the rate has been decided on the basis of commercial rate prescribed for Ward No.12 in the MVR. This Court finds that the respondent no.2 in the impugned order dated 27.01.2016 has nowhere referred to the aforesaid letter of the Circle Officer, Gogri dated 02.04.2012 which, in fact, is a general letter showing various khesras to be either non-agricultural or commercial land or agricultural/ irrigated land, hence the respondents cannot be permitted to improve their case by supplementing their arguments by way of the counter affidavit filed in the present case and introducing the said letter of the Circle Officer dated 02.04.2012, for the simple reason that an order has to be judged on its own merits, considering the contents thereof. Therefore, this Court finds that the respondent no.2, in the impugned order



dated 27.01.2016, though has referred to the letter/report of the Circle Officer, Gogri dated 05.03.2014 showing the land in question to be "do fasla irrigated land", submitted in response to the letter of the District Sub-Registrar, Khagaria calling for a report from him regarding the nature and category of the land in question, but he has failed to rely upon the same and instead has relied upon the opinion of the Registration Officer to the effect that the land in question is situated in Nagar Panchayat Ward No. 12.

8. Admittedly, there is no categorization of the land in question i.e. as to whether the said land is irrigated/ agricultural land or urban land or non-agricultural land or commercial land. The respondents, in their counter affidavit, have shown the land in question as belonging to the category of "commercial/ residential", which is not decipherable, in as much as a plot of land cannot be both commercial and at the same time residential. This position has been stated in paragraph-9 of the counter affidavit filed on behalf of the respondent nos. 3 and 4. Thus, this Court finds that there has been neither any fixation of estimated market value of the plot in question nor there has been any categorisation of the irrigated/ agricultural plots of Nagar Panchayat, Gogri District Khagaria. Moreover, this Court finds that the impugned order dated 27.01.2016 does not show that the respondent no.2 has conducted any enquiry before passing the



said order, in compliance of the provisions as contained in Section 47(A)(ii) of the Indian Stamp Act, 1899. Lastly, this Court is of the opinion that the impugned order dated 27.01.2016 is cryptic and does not show any application of mind by the respondent no.2 in declaring that there is deficit stamp duty of Rs. 25,01,868/-, which is recoverable from the petitioner herein.

9. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, the writ petition is allowed and the order dated 27.01.2016 passed by the respondent no.2 is quashed, however, with a direction to the respondent no.3 i.e. the District Magistrate-cum- Collector, Khagaria to act in terms of Rule 6 of the Bihar Stamp (Prevention of Under Valuation of Instruments) Rules, 1995 and fix the estimated minimum value of the land in question along with other irrigated/ agricultural category land of the Nagar Panchayat, Gogri, District Khagaria as also define the category of the land in question belonging to the petitioner herein for which sale deed has been presented by the petitioner for registration before the respondent authorities.”

10. The other issue raised by the learned counsel for the petitioners is that though the sale deed was registered on 01.07.2020 by the Office of the respondent no.5, however, reference has been made thereafter, as would be apparent from Annexure-A to the counter affidavit filed by the District Sub-



Registrar, Purnea, which is contrary to the provisions contained under Section 47(A)(1) of the Act, 1899, inasmuch as no reference can be made after registration of sale deed in question. Reference in this connection has been made to a judgment rendered by the Ld. Division Bench of this Court, in the case of *The State of Bihar and Ors. vs. Smt Tetra Devi*, reported in *2018(3) PLJR 136*, as also the one rendered by a co-ordinate Bench of this Court, in the case of *Shahnaz Begum vs. The State of Bihar and Ors.*, reported in *2018(2) PLJR 293*.

11. Per contra, the learned counsel for the respondent State has submitted, by referring to the counter affidavit filed in the present case that the District Sub-Registrar, Purnea had referred the matter under Section 47(A)(1) of the Act, 1899, only after निष्पादन(execution) of the sale deed on 01.07.2020, as is apparent from Annexure-A to the counter affidavit, whereafter Stamp Case No.1 of 2020 was initiated by the respondent no.3, notices were issued to the petitioners and then the respondent no.3 had passed the impugned order dated 08.04.2021, directing the petitioners to pay deficit stamp duty and penalty charges, totaling to a sum of Rs.32,91,200/-. The petitioners had then challenged the said order dated 08.04.2021, by filing an appeal before the Ld. Court of Commissioner, Purnea Division, Purnea,



however, since 50 % of the amount of deficit stamp duty and penalty charges as directed to be paid by the said order dated 08.04.2021, was not deposited, the said appeal had stood dismissed vide order dated 23.11.2022. Thus, it is submitted that there has been no error in the procedure adopted by the respondents, hence the present writ petition is fit to be dismissed.

12. I have heard the learned counsel for the parties, and perused the materials on record, from which this Court finds that the land in question has neither been entered in the Minimum Valuation Register (MVR) nor has been categorized, as is required under Rules 5 and 6 of the Rules, 1995, nonetheless, the District Sub-Registrar, Purnea, while referring the matter to the respondent no.3, under Section 47(A)(1) of the Act, 1899 has admitted that though the land in question is situated near the Brick Flat Soling survey road, which falls under the category of branch road, nonetheless, the same is pond like ditch in which Makhana is been grown and the said land is surrounded by agricultural land. Thus, this Court finds that the respondents have illegally and illogically deemed the said land in question to be falling under the residential branch road category instead of agricultural category. Moreover, in absence of the land in



question being categorized by the Nagar Nigam, Purnea in the Minimum Valuation Register, not only the respondent no.5 but also the respondent no.3 were obligated, under Section 47(A)(2) of the Act, 1899, to conduct an inquiry, which they have not conducted and merely on the basis of presumption and conjectures, reference has been made by the respondent no.5 which has also been illegally accepted by the respondent no.3. In fact, Rule 5 of the Rules, 1995 mandates that the District Sub-Registrar, Purnea, within the area of his district, shall maintain a register prescribing the classification of the land of rural/urban area, showing estimated minimum value of the land/properties of the category as per the procedure laid down in the Rule 6 of the Rules, 1995, however, as far as the land in question is concerned, no such classification is in existence. Admittedly, in the present case, the Minimum Valuation Register, as prescribed under Rules 5 and 6 of the Rules, 1995, does not prescribe any rate/category of the land in question. Thus, undeniably, there has been neither any fixation of estimated market value of the plot in question nor there has been any categorization of the agricultural plots of Nagar Nigam, Purnea, hence any assumption either by the respondent no.5 or the respondent no.3 is perverse and arbitrary. Moreover, this Court finds that the impugned order



dated 08.04.2021, passed by the respondent no.3 does not depict that any inquiry has been conducted in compliance of the provisions contained in Section 47(A)(2) of the Act, 1899, apart from the said order dated 08.04.2021, being cryptic and an order not showing any application of mind, thus, the same is fit to be set aside on this ground alone.

13. This Court, further finds that even the District Sub-Registrar, Purnea, while referring the matter to the respondent no.3 under Section 47(A)(1) of the Act, 1899, has admitted that the aforesaid land in question is a pond like ditch and is surrounded by agricultural farms, thus, on this score as well, classifying the aforesaid land in question to be falling under the residential branch road category, instead of progressive agricultural land category is arbitrary and perverse as also without any basis. In fact, the respondent no.5 has also erred by not conducting any inquiry at the time of presentation of the document/instrument, as envisaged under Rule 4 (4) of the Rules, 1995, apart from the fact that on the first page of the sale deed in question, the Head Clerk of the Office of the respondent no.5 has clearly certified that the market value of the land under sale is in accordance with the MVR of the district and that the stamp duty, registration charges, together with other charges



have been properly paid, thus, now the respondents cannot denounce the said certification made by the Office of the Respondent no.5. It may further be noted that the respondent no.5, in his reference has accepted that the land in question is surrounded by agricultural farms, hence the categorization of the land in question by the petitioners cannot be faulted.

14. The other aspect of the matter is that admittedly, the sale deed has been registered on 01.07.2020 and the respondent no.5 has referred the matter to the respondent no.3 only thereafter, hence the respondent no.5 had no authority/jurisdiction under Section 47(A)(1) of the Act, 1899, to refer the matter to the Assistant Inspector General (Registration), Purnea Division, Purnea, after registration of the sale deed, for determination of the category of land and calculation of deficit stamp duty. In fact, this aspect of the matter is squarely covered by a judgment rendered by a co-ordinate Bench of this Court, in the case of ***Sehnaz Begum*** (supra).

15. Having regard to the facts and circumstances of the case, for the foregoing reasons and considering the fact that the present case is squarely covered by a judgment rendered by this Court, in the case of ***Prashant Kumar Mahensaria***(supra) and the one rendered by a co-ordinate Bench of this Court, in the



case of *Sehnaz Begum*(supra), this Court finds that the order dated 08.04.2021, passed by the respondent no.3 in Stamp Case No.1 of 2020 is illegal, arbitrary and contrary to the provisions contained under Section 47(A) of the Act, 1899, hence is quashed. Consequently, the appellate order dated 23.11.2022, passed by the respondent no.2 has got no legs to stand, thus, is also set-aside. Any consequential action taken by the respondents, pursuant to the impugned order dated 08.04.2021, shall be deemed to be null and void.

16. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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CAV DATE	NA
Uploading Date	16.12.2024
Transmission Date	NA

