

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17837 of 2023

1. Rishu Raj Son of Kaushalendra Kumar Resident of House No. 320C Near Ice Factory, Ganpat Nagar, Dhumsa Toli, Ranchi G.P.O., District-Ranchi.
2. Vikash Kumar Son of Kaushalendra Kumar Resident of House No. 320C Near Ice Factory, Ganpat Nagar, Dhumsa Toli, Ranchi G.P.O., District-Ranchi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise, Prohibition and Registration Department, Bihar, Patna.
2. The Inspector General of Registration, Bihar, Patna.
3. The Divisional Commissioner, Patna Division, Patna.
4. The Assistant Inspector General Registration, Patna, Division, Patna.
5. The Collector-cum-District Registrar, Patna.
6. The District Sub-Registrar, Patna.

... .. Respondent/s

Appearance :

For the petitioner/s : Mr. Manohar Pd. Singh, Advocate
Mr. Bhim Sen Prasad, Advocate
For the Respondent/s : Mr. Raghwanand (GA-11)
Mr. Sanjay Kr. Tiwari, AC to GA-11

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 28-08-2024

The present writ petition has been filed for quashing the order dated 28.06.2023, passed by the Assistant Inspector General of Registration, Patna Division, Patna i.e. the respondent no. 4 in Deficit Stamp Case No. 37 of 2023, whereby and whereunder the petitioners have been directed to pay deficit stamp duty to the tune of a sum of Rs. 1,54,400/- + a penalty of Rs. 15,440/- totalling to a sum of Rs. 1,69,840/-.

2. The brief facts of the case, according to the petitioners, are that they purchased a residential flat bearing Flat No. 204A along with car parking in the basement, in a multi storied



apartment in the name and style of Raj Complex, situated at Mauza-Dasaratha, Thana-Phulwarisharif, P.S. Beur, District-Patna vide registered sale deed dated 24.03.2023, executed at the office of the Sub Registrar, Patna, after payment of the requisite stamp duty and registration charges. The petitioners had subsequently received notice in connection with Deficit Stamp Case No. 37 of 2023, whereafter they had appeared and filed their objections, nonetheless, the impugned order dated 28.06.2023 has been passed by the respondent no. 4.

3. The learned counsel for the petitioners 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 Sub-Registrar, Patna has referred the matter to the respondent no. 4 only after registration of the sale deed on 24.03.2023, hence the said reference itself is bad in law.

4. At this juncture, the learned counsel for the petitioners



has referred to Section 47-A(1) of the Indian Stamp Act, 1899 (hereinafter referred to as the 'Act, 1899'), which is reproduced herein below:-

“47-A (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.

5. In this connection, the Ld. Counsel for the petitioners 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 hereinbelow :-

“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.”

6. The Ld. Counsel for the petitioners 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."

7. *Per contra*, the learned counsel for the respondent-State has submitted, by referring to the counter affidavit filed in the present case, that after registration of the sale deed on 24.03.2023, the District Sub-Registrar had submitted a spot inspection report dated 27.03.2023, wherein it has been stated that the land in question falls within the commercial category, however, in the sale deed it has been shown as residential category, hence, the matter was referred by the District Sub-Registrar, Patna vide letter dated 27.03.2023 to the respondent no. 4 for recovery of the deficit stamp duty leading to registration of Deficit Stamp Case No. 37 of 2023, whereafter notice was issued to the petitioners and then the impugned order dated 28.06.2023 has been passed directing the petitioners to pay the deficit stamp duty along with penalty amount totalling



to a sum of Rs. 1,69,840/-. Thus, it is submitted that there is no illegality in the impugned order dated 28.06.2023.

8. I have heard the learned counsel for the parties and perused the materials on record from which it is apparent that admittedly reference has been made by the District Sub-Registrar, Patna to the respondent no. 4 on 27.03.2023 i.e. after registration of the sale deed on 24.03.2023, hence undisputedly the District Sub-Registrar, Patna had no authority/jurisdiction to refer the matter to the respondent no. 4 under Section 47-A(1) of the Act, 1899. In fact, the present case is squarely covered by a judgment rendered by a coordinate Bench of this Court in the case of Sahnaj Begam (supra). Thus, this Court finds that the action of the respondent no. 6 as also that of the respondent no. 4 is not only arbitrary and perverse but also against the mandate of Section 47A of the Act, 1899, hence the impugned order dated 28.06.2023, passed by the respondent no. 4 in Stamp Case No. 37 of 2023 is quashed, being contrary to law.

9. The writ petition stands allowed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
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