

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4012 of 2024

Shaili Devi @ Shail Devi Wife of Shankar Lal Yadav, resident of Ward Number 9, Agarpur, Lalganj, P.s.-Lalganj, District-Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar through the Inspector General of Registration, Government of Bihar, Patna.
2. The District Magistrate, Vaishali, District-Vaishali.
3. The Assistant Inspector General of Registration, Tirhut Commissioner, Muzaffarpur, District-Muzaffarpur.
4. The District Registrar, Vaishali, District-Vaishali.
5. The Sub Registrar, Lalganj, District-Vaishali.
6. The Certificate Officer, Vaishali, District-Vaishali.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ranjeet Kumar, Adv.
For the State	:	Mr. Government Pleader (13)
	:	Mrs. Shweta Anand, AC to GP13
	:	Mr. Ajit Anand, AC to GP13

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL JUDGMENT

Date : 04-09-2024

Heard the learned counsel for the parties.

The present writ petition has been filed for the following reliefs:-

“i. For issuance of appropriate Writ, especially, in nature of Certiorari, to set aside the initiation of Case No.- 06/2015-16, under section 47 A of the Indian Stamp Act, by the Additional Inspector General of Registration (Respondent No.-3) on the basis of reference made by the respondent No.- 5, the Registering Officer, who after registering the sale deed No, 1154 dated 12/03/2015 in the name of petitioner made reference to



the Respondent No.-3 to realize deficit stamp duty of Rs. 2,54,400 on aforesaid sale deed, alleging its market value is Rs. 43,40,000/-. Section 47 A of the India Stamp (Bihar Amendment) Act, 2013, envisages that the registering authority can refer the instrument to the Collector to assess the value of the property before registering it but not thereafter.

(ii) Further prayer is to call for the record of the Case No.- 06/2015-16 from the office of respondent No.- 3 and set aside the entire proceeding including order contained in Memo No. 331 dated 15/09/2015 issued by the Respondent No.- 3 directing the petitioner to deposit deficit stamp duty of Rs. 2,54,000 and penalty of Rs. 25,440 thereon.

(iii) Further prayer is to set aside the requisition for certificate dated 22/02/2019 made by the Sub-Registrar, Lalganj (Respondent No. 5) to Certificate Officer, Vaisahli (Respondent No.-6) under section 5 of the Public Demand Recovery Act for recovery of a sum of Rs. 8,75,136/-, which includes the late fine on aforesaid alleged deficit stamp duty and penalty.

(iv) Further prayer is to set aside the entire order passed by the certificate officer (Respondent No.-6) in Certificate Case No.- 50/2018-19 including the Certificate dated 05/03/2019, arising out of aforesaid requisition dated 22/02/2019.

(v) Further prayer is to quash the consequential notice contained in Memo No.- 218 dated 26/07/2023 issued by the Sub Registrar, the respondent No.-5, directing the petitioner to deposit all together Rs.



8,75,136/- which includes late fine of Rs.- 5,95,296/- otherwise the certificate officer will issue body warrant against the petitioner.”

3. Learned counsel for the petitioner has stated that the act of the authority in passing the impugned order levying a sum of Rs. 2,54,000/- (Two Lakhs Fifty Four Thousand) and penalty of Rs. 25,440/- (Twenty Five Thousand Four Hundred Forty) is contrary to the provisions of the Indian Stamp (Bihar Amendment) Act, 2013, more specifically, Section 47(A). Further, the initiation of the proceedings by the Certificate Officer, Vaishali, District-Vaishali i.e., respondent No. 6 for recovery of Rs. 8,75,136/- (Eight Lakhs Seventy Five Thousand One Hundred Thirty Six) cannot be sustained. Learned counsel has stated that the document of sale was registered in the office of the Sub-Registrar, Lalganj (Annexure-P/1) duly paying the stamp duty and other fees on 12.03.2015. Thereafter, the Sub-Registrar on his own has passed the order dated 10.04.2015 (Annexure-P/2) levying a sum of Rs. 2,54,400/- as a deficit stamp duty. Thereafter, the certificate proceedings were issued by the respondent No. 6 under Section 5 of the Bihar & Orrisa Public Demands Recovery Act, 1914 for recovery of a sum of Rs. 8,75,136/-



including the penalty of Rs. 25,440/- (Annexure-P/9). Learned counsel has stated that as per the provisions of the Indian Stamp (Bihar Amendment) Act, 2013, the Sub-Registrar will have jurisdiction to verify the stamp duty paid and call for any deficit stamp duty prior to the registration of the document only but once a document is registered, it is only the Collector who can *suo moto* within two years takes steps for realization of any deficit stamp duty. But in this particular case, the Sub-Registrar concerned contrary to the provisions the Indian Stamp (Bihar Amendment) Act, 2013, more specifically, Section 47(A) has come to the conclusion that the petitioner is liable to pay the deficit stamp duty after the document has been registered. Learned counsel has relied on the judgment of this Hon'ble Court passed in CWJC No. 1758 of 2023 dated 28.03.2023 reported in **2023(3) PLJR 242** to support his case. Therefore, learned counsel for the petitioner has prayed this Hon'ble Court to set aside the impugned order passed by the registering officer and also the initiation of the certificate proceedings.

4. *Per contra*, the learned counsel for the respondents has vehemently opposed the very maintainability



of the present writ petition and stated that the authority concerned duly taking into consideration the fact that the stamp duty paid by the petitioner is less, has taken necessary steps for realization of the deficit stamp duty. That the petitioner in spite of being served notice did not bother to pay the deficit stamp duty therefore, the authorities left with no other option had to initiate the proceedings under the Bihar & Orrisa Public Demands Recovery Act, 1914. That the petitioner is bound to pay the deficit stamp duty assessed by the Sub-Registrar. Learned counsel has therefore, prayed this Hon'ble Court to dismiss the present writ petition.

5. In order to appreciate the issue involved in the present writ petition, it is necessary to extract the necessary provisions of the Indian Stamp (Bihar Amendment) Act, 2013 more specifically, Section 47(A) which reads as under;

“2. Substitution in sub-section (1) of Section-47-A of The Indian Stamp Act, 1899 Section-47-A(1) of the Indian Stamp Act, 1899 (as amended from time to time) shall be substituted by the follower:-

“(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 as 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.”

6. As per the above section, the Registering Authority (Sub-Registrar) while registering any instrument of conveyance, exchange, gift, partition or settlement etc. finds that the value set forth in the instrument has been wrongly shown or less than the market value then he shall refer the instrument to the Collector for determination of the proper market value of such property and the proper duty payable thereon before the instrument is registered. Once an instrument is registered, the Sub-Registrar does not have any jurisdiction to pass any order for determination of the stamp duty payable or for realization of any deficit stamp duty.

7. This Court in CWJC No. 1758 of 2023 dated 28.03.2023 reported in **2023(3) PLJR 242**, has held as under;

“Shahnaz Begam vs. The State of Bihar & Ors., reported in 2018(2) PLJR 293

"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).”

8. In this particular case, the document was registered on 12.03.2015, whereas the Sub-Registrar has passed the order on 10.04.2015 which is impermissible under



the law and the same has to be held contrary to the provisions of the Section 47(A) of the said Act. Therefore, the order passed by the Sub-Registrar levying a deficit stamp duty on the instrument already registered has to be held as illegal, bad, arbitrary exercise of power not vested with the authority consequently, the certificate proceedings in Case No. 06/2015-16 dated 10.04.2015 initiated by the authority and also the order passed by the Certificate Officer (respondent No. 6) in Certificate Case No. 50/2018-19 dated 05.03.2019 cannot be sustained and the same are accordingly, quashed.

9. The present writ petition stands allowed to the extent indicated.

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.09.2024.
Transmission Date	NA

