

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4381 of 2020

=====

Devendra Kumar Singh S/o Sri Shivdhyan Singh, R/o Village- Manikpur,
P.S.- Ekma, District- Saran.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Divisional Commissioner, Saran Division, Chapra.
3. The Inspector General Registration, Govt. of Bihar, Patna.
4. The District Magistrate-cum-Collector, Saran.
5. The Assistant Inspector General Registration, Saran Division, Chapra.
6. That Assistant Registrar, Ekma, Dist.- Saran.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Gajendra Kumar Singh, Adv.
For the Respondent/s : Mr.Kumar Pankaj, AC to SC-5

=====

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 30-10-2024

The present writ petition has been filed for quashing the order dated 14.8.2014, passed by the Assistant Inspector General Registration, Saran Division, Chapra, i.e. the Respondent No. 5, in Stamp Case No. 15 of 2013, whereby and whereunder the petitioner has been directed to deposit a sum of Rs. 18,120/- on the head of deficit stamp duty, apart from 10% penalty i.e. a sum of Rs. 1,820/-, totalling to a sum of Rs. 19,940/-. The petitioner has also challenged the appellate order dated 20.12.2019, passed by the learned Court of Commissioner,



Saran Division, Chapra, i.e. the Respondent No. 2, in Stamp Appeal Case No. 228 of 2018, whereby and whereunder the appeal filed by the petitioner has been dismissed.

2. The brief facts of the case, according to the petitioner, are that the petitioner purchased a piece of land, ad-measuring 1 Katha, 8 dhur, appertaining to Khata No. 144, Plot No. 356, situated at Village-Fuchati Khurd, P.S.-Ekma, District-Saran, by a registered sale deed, which was executed on 19.1.2013 and the same was registered by the office of the Sub-Registrar, Ekma, after payment of the requisite registration charges and stamp duty. It is stated by the learned counsel for the petitioner that the persons anemical to the petitioner had filed a complaint before the Respondent No. 5 that the nature of the land, purchased by the petitioner, is residential, however, in the sale deed, the same has been shown to be an agricultural land, whereafter enquiry was made and then the Sub-Registrar, Ekma, had referred the matter to the Respondent No. 5, vide letter dated 11.6.2014 for determination of deficit stamp duty and then the Respondent No. 5 had registered Stamp Case No. 15 of 2013 and issued notice to the petitioner, whereupon he had passed the impugned order dated 14.8.2014, directing the petitioner to pay a sum of Rs. 19,940/-, by way of deficit stamp duty and penalty amount.



The petitioner had then filed an appeal bearing Stamp Appeal Case No. 228 of 2018, however, the Respondent No. 2 has dismissed the same by the impugned order dated 20.12.2019.

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 Sub-Registrar, Ekma, has referred the matter to the respondent no. 5 after registration of the sale deed on 19.1.20213, hence the said reference itself is bad in law.

4. The learned counsel for the petitioner has referred to Section 47(A)(1) of the Indian Stamp Act, 1899 (hereinafter referred to as the “Act, 1899”), which is reproduced hereinbelow:-

“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 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 v. 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 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."

7. *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 had got the sale deed in question registered by concealing the real nature of the land inasmuch as he had declared the same to be falling under the agricultural category, however, upon enquiry, the Sub-Registrar, Ekma, had found the same to be falling under the residential category, hence, he had referred the matter to the Respondent No. 5 for determination and recovery of the deficit stamp duty, vide letter dated 11.6.2014, whereafter the Respondent No. 5 had instituted Deficit Stamp Case No. 15 of 2013 and after issuing notice to the petitioner, he had passed the impugned order dated



14.8.2014, directing the petitioner to pay a sum of Rs. 19,940/- on the head of deficit stamp duty and penalty charges. The petitioner had then challenged the same before the Appellate Authority, however, the appeal, filed by the petitioner, has also stood dismissed by an order dated 20.12.2019, passed by the Respondent No. 2. Thus, it is submitted that there is no illegality in the impugned orders dated 14.8.2014 and 20.12.2019.

8. I have heard the learned counsel for the parties and perused the materials on record from which it is clear that the Sub-Registrar, Ekma, had no authority / jurisdiction to refer the matter to the Respondent No. 5, after registration of the sale deed on 19.1.2013, under Section 47(A)(1) of the Act, 1899. In fact, the present case is squarely covered by the 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 Sub-Registrar, Ekma as also that of the Respondent No. 5 as well as the Respondent No. 2 is not only arbitrary and perverse, but also against the mandate of Section 47-A of the Act, 1899, hence, the impugned order dated 14.8.2014, passed by the Respondent No. 5, is quashed. Consequently, the Appellate Order dated 20.12.2019, passed by the Respondent No. 2, has got no legs to stand, hence, is also set aside.



9. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	30.10.2024
Transmission Date	NA

