

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 698 of 2024

Raj Kumari Devi Wife of Raju Kumar Gupta, Resident of Mohalla - Katahari
Bagh Road, near Shubham Transport, Town and P.O.- Chapra, P.S.- Chapra
Town, District- Saran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary / Additional Chief Secretary, Department of Prohibition Excise and Registration.
2. The Principal Secretary / Additional Chief Secretary, Department of Prohibition, Excise and Registration Government of Bihar, Secretariat, Patna.
3. The Inspector General, Registration, Bihar, Patna.
4. Assistant Inspector General Registration, Saran Division, Chapra.
5. District Sub-Registrar, Saran at Chapra.

... .. Respondent/s

Appearance:

For the Petitioner/s : Mr. Koshalendra Rai, Advocate
For the Respondent/s : Mr. Vikas Kumar, SC-11
Mr. Rewti Kant Raman, J.C. to SC-11

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 22-08-2024

The present writ petition has been filed for quashing the order dated 09.07.2022, passed by the Assistant Inspector General, Registration Saran Division, i.e. respondent no.4 in Stamp Case No. 41 of 2022, whereby and whereunder the petitioner has been directed to pay deficit stamp duty to the tune of Rs.1,38,046/- plus penalty to the tune Rs.13,805, totaling to a sum of Rs.1,51,851/-.



2. The brief facts of the case, according to the petitioner, are that the petitioner purchased 10 dhur land appertaining to Khata No. 271, Plot No. 334 part, situated at Mohalla-Chhota Telpa, Ward no. 36, Holding No. 931, which was registered on 31.08.2019, after payment of the requisite stamp duty and the registration charges. The petitioner had mentioned the category of the said land, including the structure constructed thereon, as residential. It is the further case of the petitioner that suddenly, the petitioner received a notice dated 11.11.2023, in connection with the order dated 09.07.2022, passed by the respondent no.4 in Stamp Case No. 41 of 2022, to deposit a sum of Rs.1,85,313/- within seven days, wherein it had been mentioned that the category of land purchased by the petitioner should have been “fit for commercial use” and not “residential” category.

3. The learned counsel for the petitioner has firstly submitted that the aforesaid order dated 09.07.2022 has been passed ex parte, i.e. behind the back of the petitioner, without issuance of any notice to her and secondly, the impugned order dated 09.07.2022 is bad in law, inasmuch as 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. 5 has referred the matter to the respondent no.4, only after registration of the sale deed on 31.08.2019, hence the said reference itself is bad in law. In this connection, 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 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.”

4. In this connection, the learned counsel for 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 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 Ld. Single Judge in the present Letters Patent Appeal."

5. The learned counsel for the petitioner has also relied on a judgment, rendered by a co-ordinate 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 that upon spot verification, it was found that the category of land mentioned by the petitioner in the sale deed is different from the actual category of the said land, hence the same was informed to the department, vide letter dated 20.02.2022, whereafter the District Sub-Registrar, Saran at Chapra had referred the matter to the respondent no.4, vide letter dated 09.05.2022 and then Stamp Case No. 41 of 2022 was initiated, whereafter the impugned order dated 09.07.2022 has been passed directing the petitioner to pay a sum of Rs.1,51,851/-, by way of deficit stamp duty and penalty charges.

7. 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 respondent no.5 to



the respondent no. 4 on 09.05.2022, i.e. after registration of the sale deed in question on 31.08.2019, hence undeniably, the respondent no.5 had no jurisdiction/authority to refer the matter to the respondent no. 4, after lapse of more than 2 ½ years under Section 47-A(1) of the Act, 1899. The present case is squarely covered by the judgment rendered by a co-ordinate Bench of this Court in the case of *Shanaz Begam* (supra).

8. This Court further finds from a bare reading of Section 47-A of the Act, 1899 that if at all any proceeding is required to be initiated after registration of the instrument in question, the same can be done by the Collector / Assistant Inspector General Registration, who can suo motu, within two years from the date of such registration, under Section 47A(3) of the Indian Stamp Act, 1899, 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, however, as far as the present case is concerned, the proceedings have been initiated after lapse of more than 2 ½ years from the date of registration of the sale deed in question, hence even under Section 47-A(3) of the Act, 1899, no proceedings could have been initiated against the petitioner for recovery of the deficit stamp duty.



9. Having regard to the facts and circumstances of the case and for the foregoing reasons, 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 47-A of the Act, 1899, hence the impugned order dated 09.07.2022, passed by the Assistant Inspector General Registration, Tirhut Divsion, Saran is quashed, being contrary to law.

10. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.08.2024
Transmission Date	NA

