IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15981 of 2014
With
I.A. No.149 of 2015
With
I.A. No.3094 of 2015

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1. Kumari Shivani Rai, daughter of Shri Mithilesh Kumar, resident of village- Parsa Bazaar, Sumari Tola, Police Station- Parsa Bazaar, District- Patna….. (Vendee/Purchaser).
2. Rakesh Kumar Singh, son of late Bharat Singh, resident of village/mohalla- Digha Ghat, Police Station- Digha, District- Patna, at present Deed Writer, License No. 11/02, District Sub-Registry Officer, Patna… Writer.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Inspector General of Registration, Bihar, Patna.
3. The Assistant Inspector General of Registration, Bihar, Patna.
4. The District Collector -cum- District Registrar, Patna.
5. The District Sub-Registrar, Patna.
6. Avinash Kumar, son of Mithilesh Prasad, resident of village- Parsa Bazaar, Sumari Tola, Police Station- Parsa Bazaar, District- Patna (Power of attorney holder/Agent)- Vendor (Seller).

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bal Mukund Prasad Sinha
		Mr. Vikash Kumar
For the Respondent/s	:	Mr. Lalit Kishore, PAAG.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 21-04-2015

Heard Mr. Bal Mukund Prasad Sinha, learned counsel appearing on behalf of the petitioners and Mr. Lalit Kishore, learned Principal Additional Advocate General for the State.

This writ petition filed under Article 226 of the Constitution of India prays for a direction in the nature of mandamus commanding the respondent authorities of the Registration Department to register the sale-deed presented by the petitioner no.2

dated 30.5.2014, a copy of which is placed at Annexure-2 which has been denied, inter alia, on grounds that the *challan* showing deposit of stamp duty as well as registration fee is more than one year old. Whereas the *challan* is dated 14.5.2013, the sale-deed was presented for registration on 30.5.2014 i.e. more than one year later and hence in view of the statutory provisions underlying section 50(2) of the Indian Stamp Act, 1899 (hereinafter referred to as 'the Act') the *challan* had lost its validity.

According to the petitioners, all necessary legal formalities stands fulfilled by the deposit of stamp duty as well as registration fee by way of *challan* and no infirmity has been found in the valuation of the document. The petitioners relying upon directives of the department itself dated 2.4.2012 placed at Annexure-4 moved this Court making a submission that the Department itself had issued an advisory clarifying the legal position that there would be no validity period for a *challan* and which can be utilized for registration of an instrument without any objection on limitation.

A counter affidavit has been filed on behalf of the department enclosing a letter of the Inspector General of Registration, Bihar, Patna addressed to the Sub-Registrar, Patna bearing memo no.3418 dated 11.8.2014 whereby a direction was issued that the validity of *challan* would be only for one year and cannot be used for registration of an instrument after expiry of one year. According to the Inspector General of Registration the stipulations made in the earlier guidelines of the department dated 2.4.2012 as contained in Annexure-4 was examined in the light of the audit objection of the Accountant General and when it was decided that such of the *challans* showing deposit of stamp duty and registration fee beyond a year cannot be utilized after expiry of one year. It was thus the stand of the respondents that since admittedly the *challan* submitted by the petitioners is dated 14.5.2013 and the sale deed was presented on 30.5.2014, after a lapse of year, it was not fit for registration.

As apparently the directives issued by the Inspector General of Registration bearing Memo No.3418 dated 11.8.2014 present at Annexure-B to the counter affidavit was in the teeth of the statutory provisions underlying section 10 read with section 50(2) of 'the Act' inasmuch as though the statute specifically provides for a period of validity of a stamp paper, there is no such limitation provided as to the use of *challan,* that this Court desired to hear the Principal Additional Advocate General on the issue.

The matter has thereafter been taken up today when the learned Principal Additional Advocate General has filed a supplementary counter affidavit on behalf of the respondents in which it is stated that the department having realized its mistake had decided to amend letter bearing Memo no.3418 dated 11.8.2014 of the Inspector General of Registration and directive has been issued to the Sub-Registrar, Patna vide letter no.1805 dated 17.4.2015 placed at Annexure-A to the supplementary counter affidavit to register the document of the petitioners which has since been registered. A statement was thus sought to be made by learned Principal Additional Advocate General that in view of the statement made in paragraph 4 of the counter affidavit and the letter dated 17.4.2015 placed at Annexure-A to the supplementary counter affidavit resulting in the registration of the sale deed of the petitioners, the writ petition has been rendered infructuous.

I have heard learned counsel for the parties and I have perused the records.

Although the relief prayed for has been granted to the petitioners but since the issue involved concerns the people at large and would be affecting a large number of persons hence this Court has proceeded to adjudicate on the issue despite noticing the developments.

As I have observed at the outset, the letter bearing Memo no.3418 dated 11.8.2014 issued by the Inspector General of Registration is not an independent exercise of mind but a mechanical reaction to the audit objection raised by the office of the Accountant General. The statutory authority has not even bothered to satisfy itself that such directives were in the teeth of the statutory provisions governing the issue of *challan* as found in sections 10 and 10A of 'the Act' and that the provisions governing the stamp paper as found in section 50(2) of 'the Act' would not ipso facto apply to a *challan* in absence of any legislative intent. Whereas there is a specific limitation regarding usage of a stamp paper, there is no such restriction on usage of *challan* and the department correctly appreciating the statutory provisions had issued the earlier directive dated 2.4.2012 placed at Annexure-4. The department perhaps having realized the legal infirmity in the letter bearing Memo no.3418 dated 11.8.2014 placed at Annexure-B to the main counter affidavit has decided to amend the same but once this Court has noticed the transgression by the Inspector General of Registration, any continuance of the said letter would be prolonging an illegality and in consequence the letter bearing Memo no.3418 dated 11.8.2014 of the Inspector General of Registration placed at Annexure-B to the main counter affidavit, is quashed and set aside.

The writ petition is allowed. The interlocutory application stands disposed of.

(Jyoti Saran, J)

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