IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2588 of 1999

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1. Md. Kalim Akhtar son of Ziaul Rahman, resident of village Belwat, P.S. Tarabar, District Araria.
2. Rajesh Kumar Rai son of Satya Narayan Rai, resident of Moh. Kali Bazar, P.S. & District Araria.
3. Md. Kasim Alam son of Zahuruddin, resident of Moh. Azad Nagar P.S. & district Araria.
4. Ramanand Sah son of Dhan Lal Sah, resident of village Kharaiya P.S. & district Araria.

.... Petitioner/s

Versus

1. The State of Bihar .
2. The Collector, Araria.
3. The District Sub-registrar, Araria.
4. The Addl. Collector, Araria.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 2374 of 1999

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1. Md. Kalim Akhtar son of Ziaul Rahman, resident of village Belwat, P.S. Tarabar, District Araria.
2. Rajesh Kumar Rai son of Satya Narayan Rai, resident of Moh. Kali Bazar, P.S. & District Araria.
3. Md. Kasim Alam son of Zahuruddin, resident of Moh. Azad Nagar P.S. & district Araria.
4. Ramanand Sah son of Dhan Lal Sah, resident of village Kharaiya P.S. & district Araria.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary cum- Commissioner, Department of Revenue, Land Reforms.
2. The Collector, Araria.
3. The Additional Collector, Araria.
4. Shyam Bodh Mishra son of Sunder Kant Mishra, At Ram Nagar P.S.Sikty District Araria.
5. Amrit Bodh Mishra son of Sundar Kant Mishra resident of Ram Nagar, P.S. Sikty, District Araria.
6. Anjula Devi wife of Kamla Kant Mishra resident of Ram Nagar P.S. Sikty, District Araria.
7. Madhu Kant Mishra son of Kamla Kant Mishra, village Ram Nagar P.S. Sikty, District Araria.
8. Krishna Kant Mishra son of Kamla Kant Mishra, at Ram Nagar, P.S. Sikty, District Araria.
9. Rudra Kant Mishra son of Kamla Kant Mishra at Ram Nagar P.S. Sikty, District Araria.
10. Bimla Kant Mishra son of Kamla Kant Mishra, at Ram Nagar P.S. Sikty,

District Araria.

11. Prabha Kant Mishra son of Kamla Kant Mishra at Ram Nagar, P.S. Sikty, District Araria.
12. Sanjay Dutta son of Suresh Chandra Dutta at Hassanpur, P.S. Raniganj District Araria.
13. Dhananjay Dutta son of Suresh Chandra Dutta at Hassanpur P.S. Raniganj District Araria.
14. Bhawani Rani Dutta wife of Suresh Chandra Dutta at Hassanpur P.S. Raniganj District Araria.

15. Katki Dutta daughter of Suresh Chandra Dutta at Hassanpur P.S. Raniganj District Araria.

16. Chandra Rani Dutta daughter of Suresh Chandra Dutta at Hassanpur P.S. Raniganj District Araria.

17. Atoshi Dutta daughter of Suresh Chandra Dutta at Hassanpur P.S. Raniganj District Araria.
18. Uma Rani Dutta daughter of Suresh Chandra Dutta at Hassanpur P.S. Raniganj District Araria.

19. Mahaand Thakur son of Hari Nandan Thakur, resident of Ramai P.S. Forbesganj, District Araria.

20. Sk. Hefaz son of Jahoruddin Doria, Sonapura, P.S. Forbesganj district Araria.
21. Bibi Rayeesa daughter of Jaharuddin, village Doria, Sonapura, P.S. Forbesganj, District Araria.
22. Bibi Tajo daughter of Jahuruddin, village Doria, Sonapura, P.S. Forbesganj, District Araria.
23. Hasibur Rahman son of Latif, village Doria, Sonapura, P.S. Forbesganj, District Araria.
24. Shaukat Alam son of Latif, village Doria, Sonapura, P.S. Forbesganj, District Araria.
25. Mosh Mobina daughter of Latif, village Doria, Sonapura, P.S. Forbesganj, District Araria.
26. Ibrar Alam son of Tameejuddin, village Doria, Sonapura, P.S. Forbesganj, District Araria.
27. Touhid Alam son of Tameejuddin, village Doria, Sonapura, P.S. Forbesganj, District Araria.
28. Md. Shahid Alam son of Tameejuddin, village Doria, Sonapura, P.S. Forbesganj, District Araria.
29. Md. Jahid Alam son of Tameejuddin, village Doria, Sonapura, P.S. Forbesganj, District Araria.
30. Md. Wahid Alam son of Tameejuddin, village Doria, Sonapura, P.S. Forbesganj, District Araria.
31. Md. Halima wife of Tameejuddin, village Doria, Sonapura, P.S. Forbesganj, District Araria.
32. Md. Jalil son of Imdad Ali, Haria Tola Morballa, P.S. & District- Araria.
33. Jai Shankar Jha son of late Buchan Jha, Shankarpur, P.S-Bhargama, District-Araria

34 Dukh Mochan Jha son of late Buchan Jha, Shankarpur, P.S-Bhargama, District-Araria
35. Deo Shankar Jha son of late Buchan Jha, Shankarpur, P.S-Bhargama, District-Araria
36. Jaishankar Jha son of Sheoshankar Jha, Ramnagar, PS-Sikty, District-Araria
37. Raj Shankar Jha son of Sheoshankar Jha, Ramnagar, PS-Sikty, District-Araria
38. Raghu Shankar Jha son of Sheoshankar Jha, Ramnagar, PS-Sikty, District-Araria
39. Bimla Devi daughter of Sheoshankar Jha, Ramnagar, PS-Sikty, District-Araria

.... Respondent/s

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Appearance :
(In CWJC No. 2588 of 1999)
&
(In CWJC No. 2374 of 1999)

For the Petitioner/s : M/s. Bidhanesh Mishra & Tanuja Mishra, Adv.
For the Respondent/s : Mr. Kinkar Kumar, SC-27
Mr. Mahboob Ashraf, AC to SC-27

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 21-04-2015

Heard counsel for the petitioners and the respondents.

In both the cases, common question has been raised and the facts are also by and large same and similar, as such, they have been heard together and are being disposed of by this common order.

For brevity, the facts of CWJC No. 2588 of 1999 are being taken into consideration for decision of the case.

Prayer has been made to quash the order dated 1st March 1999 passed by the Collector, Araria in Impound Case Nos. 1 of 1989-99, 2 of 1998-99, 3 of 1998-99, 5 of 1998-99 and 12 of 1998-99 whereby and whereunder the Collector by a common order, in exercise of power under Section 47A of the Indian Stamp Act, rejected the registration of the sale-deeds as having sold being not acceptable for registration, as it is concerned with the official documents. Further prayer has been made for giving direction to the respondents to pass order in terms of Section 47A of the Indian Stamp Act with respect to the aforesaid cases.

In the present case, for dealing with the issue, few relevant facts are as follows:

Petitioner no.1 purchaser of Ex-intermediary right to received compensation and ad interim interest in compensation Case Nos.272/61-62, 273/61-62 179/55-56, 179/55-56, 179/55-56

221(A) 221(B) A B C

179/55-56, 179/55-56 179/55-56

D E F

Petitioner no.2 is the purchaser of the right of ex-intermediary to receive compensation of Ex-intermediary Sanjay Dutta and others in compensation Case Nos. 1336/68-69, 1336/68-69,

A B

1336/68-69, 1336/68-69, 1336/68-69, 1336/68-69, 1336/68-69.

C D E F G

Petitioner no.3 is the purchaser of the Ex-intermediary right to receive compensation and ad interim interest in compensation

Case Nos.

268/55-56,	268/55-56,	268/55-56,	268/55-56,	268/55-56,
A	B	C	D	E
268/55-56,	268/55-56,	268/55-56,	268/55-56,	268/55-56,
F	G	H	I	J
268/55-56,	268/55-56,	and $\frac{303/8A}{55-56}$		
K	L			

At last, petitioner no.4 is the purchaser of ex-intermediary right of Mahanand Thakur to receive payment of ad interim interest in compensation case No. 29/55-56.

After vesting of the estate of Ex-landlord, the Government of Bihar has issued bond for payment of compensation to the intermediary of the State and for that purpose, the vendors of these petitioners who were holders of intermediary right, were also granted bonds for receipt of compensation in terms of Bihar Land Reforms Act. The Ex-intermediaries were not being paid the compensation amount which compelled them to file writ petition being CWJC No. 10339 of 1994 through the Power of Attorney holders of ex-intermediary in which a direction was made for payment of entire compensation amount along with interest within three months from the date of production of the order.

The Ex-intermediary made all efforts but could not receive the same. Finally they have lost hope for receipt of the compensation amount even though there was an order passed by this Court in the writ application. Left with no other way out, they were compelled to transfer the bond to these petitioners to receive the compensation amount. It is also apparent that intermediary they have filed MJC No. 1877 of 1997 for flauting the order passed in writ petition during the pendency of the contempt application, the Collector and the Additional Collector intended to make payment of compensation amount of the bond to the Ex-intermediary which compelled the petitioners to intervene in the aforesaid contempt application which the Court has disposed of the matter with a direction to consider the application of the petitioners and pass the necessary orders from the date of receipt of application filed by the petitioners within one month and pay compensation amount within 15 days from the date of disposal of the application.

It will be appropriate to take into consideration that the question arose about the transfer of the bond to the 3rd party for the purpose of receipt of compensation in which the Government has taken decision that the right of receipt of compensation as well as the interim payment under the Bihar Land Reforms Act is actionable claim and thus, is transferable while considering the case of one Ishwari Prasad Singh and others who purchased the right of Ex-intermediary of one Ram Akhauri Sah and others. The letter itself makes it very clear the bonds are transferable and one who has purchased the bond from the Ex-intermediary cannot be denied the compensation arising from the same. The aforesaid sale-deeds were placed for registration before the Sub-registrar, Araria who was confused about the valuation and transferability of the actionable bonds and referred the matter to the Collector under Section 47A of the Indian Stamp Act for determination of proper registration fee of sale-deed executed by the intermediary in favour of petitioners.

The Collector issued notice to these petitioners whereupon they filed the show cause and regarding them, they have given proper stamp which is required under the Act. The Collector sought opinion of the Government Pleader, District Araria who found that the document is registerable.

As has been claimed by the writ petitioners, the Collector and the Additional Collector had made up their mind under conspiracy to make payment of the compensation amount to the original Ex-intermediary and under that scheme, the Collector had sought report from the Additional Collector, Araria who, in turn, submitted his report dated 27th February 1999 (Annexure-5) mentioning therein that the sale-deeds are defective as the recital does not mention about Tauzi Number, Khebat Number, Mobliqe and area. The sale-deed is not registerable as it has mentioned the purchase of compensation document which is a Government property, declared the sale and purchase to be illegal and the same cannot be registered. On receipt of the report of the Additional Collector, the Collector by the impugned order refused to register the sale-deed and thereby rejected the same reiterating the same facts in the impugned order. The said sale-deed was returned to the Sub-Registrar, Araria with endorsement that the proposed sale-deeds are unacceptable for registration as the same are concerned with the official documents.

Counsel for the petitioners submits that the action of the Collector is illegal and misdirected as the Collector in exercise of power conferred under Section 47A of the Indian Stamp Act could not have refused to register the documents on the ground that has been mentioned in the impugned order, whereas the bond itself is actionable, claim can be transferred to 3rd party for receipt of compensation amount. It has further been submitted that Section 47A of the Indian Stamp Act applies to a situation when the Registrar or Sub-Registrar is of the view that the documents in question does not furnish the appropriate stamp under the Indian Stamp Act. The ground that has been assigned in the impugned order is completely de horse to the provisions of Section 47A of the Indian Stamp Act and as such, it requires interference by this Court, whereas the State has submitted that though Section 47A of the Indian Stamp Act will not be applicable to the facts of the present case rather Section 76 of Indian Registration Act provides when recital of instrument placed for registration are completely vague can be refused for registration by the Registrar and the person aggrieved by the order of the Registrar, remedy lies to approach the civil court which has been provided under Section 77 of the Indian Registration Act.

For proper appreciation with respect to registration of bond, it will be appropriate to consider certain Sections of the Indian St amp Act. Section 2(5) of the Indian Stamp Act has defined the bond as follows:

Section 2(5) Bond. “Bond” includes –

(a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be:

(b) any instrument attested by a witness and nor payable to order or bearer whereby a person obliges himself to pay money to another, and

(c) any instrument so attached hereby a person obliges himself to deliver grain or other agricultural produce to another."

Section 8 of the Act provides that the bonds and debentures or other securities issued on loan under Act XI of 1979 provides that notwithstanding anything in this Act, any local authority raising a loan under the provisions of the Local Authorities Loans Act, 1979 (11 of 1879) or of any other law for the time being in force, by the issue of bonds, debentures or other securities, shall, in respect of such loan, be chargeable with a duty of one percentum on the total amount of the bonds, debentures or other securities issued by it, as such bonds, debentures or other securities need not be stamped, shall not be chargeable with any further duty on renewal, consolidation sub-division or otherwise.

This Section itself shows that the bond, debenture and other securities are transferable and require registration, provide the charge of stamp in such instrument.

Section 25 deals with valuation in case of annuity etc where an instrument is execute d to secure the payment of an annunity or other sum payable periodically, or where the consideration for a conveyance is an annuity or other sum payable periodically, the amount secured by such instrument or the consideration for such conveyance, as the case may be, shall, for the purpose of this Act where the sum is payable for a definite period so that the total amount to be paid can be previously ascertained such total amount and Clause(b) and (c) deal with in a different situation of annuity.

Section 29 which falls within Chapter-E and deals with the duties by whom proper stamp shall be borne, one of the items is Bond and Section 33 falls in Chapter –IV, deals with the instrument not duly stamped which provides that every person having, by law or consent of parties, authority to receive evidence, and every person in charge of public office, except an officer of Police, before whom an instrument, chargeable in his opinion, with duty is produced or comes in the performance of his function, shall if it appears to him that such instrument is not duly stamped, impound the same and for that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in India, when such instruments was execute d or first execute d.

Section 47 under which power has been exercised by the Collector requires a detailed consideration. Section 47 A is as follows:

Section 47A : Instrument of conveyance.—(1)

Where the registering officer appointed under the

Registration Act, 1908 (Act 16 of 1908) while registering any instrument of conveyance, exchange, gift, partition or settlement is satisfied that the market value of the property which is the subject matter of such instrument has been set forth at a lower rate than the Guide Line Register of estimate minimum value prepared under the rules framed under the provisions of this Act, he shall refer such instrument before registering it, to the Collector 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 prescribe 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.

(2) On receipt of a reference under sub-section(1), the Collector shall, after giving one month's notice to the parties for making their representation and after holding an enquiry determine the market value of the property which is the subject matter of such instrument and the duty as aforesaid. The difference if any, in the amount of duty, shall be payable by the person liable to pay the duty:

Provided that no such person shall be required to pay any amount to make up the difference if the difference between the consideration or the market value as set forth in the instrument and the market value determined by the Collector does not exceed 10 per cent of the market value so determined.

(3) 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 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, 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).

(4) Any person aggrieved by a order of the Collector under sub-section (3) may appeal to the Commissioner concerned of the administrative division. Such appeal shall be preferred within sixty days of the order and shall be heard and disposed of by the Commissioner.

(5) For the purpose of this Act, Market value of any property shall be estimated to be the price

which in the opinion of the Collector or the appellate authority, as the case may be, such property would have fetched or would fetch, if sold, in the open market on the date of execution of the instrument of conveyance, exchange, gift partition or settlement.

(6) Before filing an appeal under sub-section(4), the aggrieved party shall deposit 50 per cent amount of the payable deficient St amp duty chargeable on the market value of the property as determined by the Collector.

(7) If after determination of the proper market value, it is established that the parties have deliberately conceale3d the actual description of property or the market value of the property or any other facts and circumstances affecting the chargeability of the duty as required under section 27 of the Indian St amp Act, 1899, the collector, or in cases where appeal has been filed, the appellate authority, may impose a fine equal to 10 per cent amount of the deficient stamp duty.

(8) If an appeal is not filed under sub-section(4) of Section 47A, an interest at the rate of 5

per cent per month shall be leviable on the deficient amount of stamp duty if it is not deposited within sixty days from the date of order passed by the Collector.

(9) If an appeal is filed as prescribed in sub-section(4) of section 47A, interest at the rat e of 5 per cent per month shall be payable from the date of the order of the appellate authority for deposit of deficient stamp duty if it is not paid within sixty days of such order.

(10) If the amount of deficient stamp duty is not paid within sixty days from the date of t he order of the Collector in case an appeal is not filed against the said order, or within sixty days from the date of the order f the appellate authority as the case may be, the amount of deficient stamp duty along with the amount of interest shall be recovered by the collector as prescribed under Section 48 of the Act."

On analysis of Section 47A it appears it basically mandates the registering Officer under the Registration Act, 1908 (Act 16 of 1908) while registering any instrument of conveyance, exchange, gift, partition or settlement will ensure proper stamp as per market value of the property which is the subject matter of such instrument has been set forth at a lower rate than the Guide Line Register of estimate at minimum value prepared under the rules framed under the provisions of this Act, he shall refer such instrument to the Collector for determination of the proper market value of such property for sole purpose to ensure proper duty payable.

So Section 47A of the India Stamp Act deals with a situation when an instrument is produced before the Registering Officer and he finds that value mentioned in the instrument, in his view, is below the market value, will refer the matter for proper determination to the Collector who will give the difference if any, in the amount of duty, shall be payable by the person liable to pay the duty.

Section 47A of the Act is holding the field when there is a dispute with regard to deficit payment of the stamp duty. The Collector has to only confine his enquiry on the valuation of the property maintained in the instrument.

It will be appropriate to quote Section 76 of the Indian Registration Act which is as follows:

> Section 76 : Order of refusal by Registrar. –(1) Every Registrar, refusing –(a) to register a document except on the ground that the property to which it relates is

not situate within his district or that the document ought to be registered in the office of a Sub-Registrar, or

(b) to direct the registration of a document under Section 72 or Sec.75. shall make an order of refusal and record the reasons for such order in his Book No.2 and, on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

(2) No appeal lies from any order by a Registrar under this section or Sec.72.

Section 76 falls in Chapter XII of the Registration Act which deals with refusal to registration.

Section 71 provides that every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his Book No.2, and endorse the words "registration refused", on the document; and, on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

Section 72 of the Registration Act deals with a situation where refusal is made except on the ground of denial of execution, an appeal shall lie to the Registrar against an order of a Sub-Registrar refusing to admit a document to registration. Registrar may reverse or alter such order.

Section 73 deals with a situation where the Sub-registrar has refused to register document on the ground mentioned therein, an application may be filed within 30 days to the Registrar to whom to whom such Sub-Registrar is subordinate.

Section 74 of the Registration Act relates to the procedure of Registrar on such application. This Section empowers the Registrar to make an enquiry under what circumstances refusal was made to register the document. Particularly Section 76 deals with a situation where Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his district or that the document ought to be registered or direct the registration of a document under Section 72 or section 75 shall make an order of refusal and record the reasons for such order in his Book No.2 and on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded. Section 77 of the Registration Act enables party aggrieved may file suit for decree to direct for registration of document.

In the present case, it is not the case of the State that direct application was filed before the Registrar to register the document but the Collector under Section 47A of the Indian Stamp Act, on the report of the Additional Collector, has directed for impounding of the document for reason that the instrument does not bear the details of the instrument, such as names of village, Tauzi Number, Khebat Number and the area of the land relating to interest so much so that the document of transaction is the Government document which cannot be put to sale and purchase by any person.

As this Court has already dealt with above, the bond and annuity is an instrument, can be subject matter of transfer, subject to payment of necessary stamp as provided under the Indian St amp Act. As discussed above, the bond has specifically been mentioned in Section 2(5) and Sections 29 and 25 deals with ammunity are actionable claim can be transferred.

In the present case, the compensation to the intermediary either in the shape of bond or it may be an annuity payable periodically or it may be paid at once and these are instruments which can be transferred on payment of appropriate stamp under the Indian Stamp Act.

This Court is of the view that the Registrar and the

Sub-registrar or any authority can refuse to register the document on a reasonable and proper ground and discretion by an authority cannot be exercised in pedantic manner de hors to the provisions of the Indian Stamp Act impinging upon provision of the Registration Act as well as the Indian Stamp Act. If the reason assigned is tested on the touchstone of the Indian Stamp Act and the Registration Act, it does not qualify the parameter under the Indian Stamp Act then the order passed by the authority is not sustainable in law.

Annexure-4 series shows that the report was submitted to the Collector giving details of document and its valuation after subtracting administrative charges. The documents are bonds given to intermediary for extracting the amount of compensation is no longer a government document but an instrument of private person is a transferable document. In such a situation it cannot be said that the documents are Government document, vague, stamp duty cannot be properly collected and if the Collector was of the view that appropriate stamp was not given by the petitioners. He ought to have asked the petitioners to affix deficit stamp with the instrument and in failure to affix the proper stamp only in that situation the Collector could have opted course, as chosen at present and pass the impugned order.

In the present case the Collector misconstrued

Section 47A of the Act, has passed the order for impounding of the document and refuse to get it registered on a ground which is not sustainable as it is against the purpose and tenor of provided under Section 47A of the Indian Stamp Act. The Collector has passed the order under Section 47A of the Indian Stamp Act which deals with calculation of the stamp duty. In such a situation the order of the Collector is set aside and t he matter is remanded back to the Collector to pass order in terms of Section 47A of the Indian Stamp Act in accordance with law within a period of three months from the date of receipt/production of copy of this order.

With the above observation/direction, these petitions are allowed.

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(Shivaji Pandey, J)