IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10002 of 2013

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Anand Bhushan, S/o Birendra Prasad Singh, resident of Mohalla - Mahadeva House, Bypass Road, Aurangabad, P.S.- Aurangabad Town, District – Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Commissioner, Magadh Division, Gaya.
3. The Inspector of Registration, Magadh Range -cum- Collector, Gaya.
4. The District Sub-Registrar, Aurangabad.
5. The Land Reforms Deputy Collector, Aurangabad.
6. The Circle Officer, Aurangabad.
7. Sanoj Kumar Singh, S/o Binayak Singh, resident of Mohalla - New Area Aurangabad, P.S. - Aurangabad Town, District – Aurangabad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bibhuti Prasad Pandey, Sr. Advocate with
Mr. Ajay Kumar Singh and
Mr. Rakesh Kumar, Advocates

For the Respondent/s : Mr. Ranjan Kumar, AC to AAG-4

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 08-01-2015

Heard Mr. Bibhuti Prasad Pandey, learned senior counsel appearing on behalf of the petitioner and Mr. Ranjan Kumar, learned Assisting Counsel to Additional Advocate General No.4 for the State.

With the consent of the parties the writ petition has been considered at the stage of admission itself with a view to its final disposal by way of this judgment.

The petitioner has questioned the order dated 14.2.2013 passed by the Commissioner, Magadh Division, Gaya in exercise of appellate powers vested under the provisions of section

47-A (4) of the Indian Stamp Act, 1989 (hereinafter referred to as 'the Act'), whereby the statutory appeal preferred by the petitioner has been rejected *inter-alia*, on grounds of non-compliance of the statutory provisions underlying section 47-A (6) of 'the Act' which requires an aggrieved party to deposit 50% of the amount of deficit stamp duty determined by the Collector. The petitioner has also sought to question the order passed by the Collector under 'the Act' i.e. the Inspector of Registration, Magadh Range, Gaya, dated 22.9.2012 in Reference Case No.2 of 2010-11, whereby he has determined the deficient stamp duty of Rs.12,25,120/- payable by the petitioner through bank *challan* in favour of the State Bank of India, Aurangabad failing which he would be liable to interest at the rate of 5% per month.

Facts of the case briefly stated is that a sale deed was executed in favour of the petitioner on 3.12.2010 by the respondent no.7 in respect of a piece of land bearing khata no.98, plot no.02 having an area of 1 acre $56^{1}/_{2}$ decimals situated in Mauza Jasuiya in the district of Aurangabad for a consideration amount of Rs.7,80,000/-. The nature of the land was mentioned as agricultural land. The sale deed was presented before the District Sub-Registrar, Aurangabad, i.e. the registering authority on 3.12.2010 but he referred the matter under section 47-A (1) of 'the Act' to the

Inspector of Registration, Magadh Range, Gaya, respondent no.3 for determination of the valuation at market rate and which was numbered as Reference Case No.2 of 2010-11. During the pendency of the reference case an enquiry was made into the nature of the land by the Circle Officer, Aurangabad on the direction of the District Sub-Registrar and who submitted his report on 5.7.2011 mentioning the plot in question to be agricultural in nature. A second enquiry was directed by the Inspector of Registration, Magadh Range, Gaya vide order dated 30.7.2011 following which a spot verification was done by the District Sub-Registrar, Aurangabad who submitted his report which again was in tune with the enquiry report submitted by the Circle Officer earlier. Not being satisfied, the Inspector of Registration, Magadh Range, Gaya vide letter dated 5.6.2012 required a report to be submitted this time by the Deputy Collector, Land Reforms, Aurangabad and who submitted his report on 8.7.2012 which, according to the petitioner, was again in tune with the earlier report with modification as to the registration value in between Mauza Rampura and Mauza Manjurahi. The respondent no.3 on the basis of the report so received determined the valuation of the land at Rs.1,60,94,000/- and determined the deficit stamp duty payable by the petitioner to the tune of Rs.12,25,125/- vide order passed on 22.9.2012 in exercise of powers vested under section 47-A (2) of ‘the Act’. The petitioner being aggrieved by the order passed by the respondent no.3, the Inspector of Registration as a Collector under ‘the Act’ preferred a statutory appeal giving rise to Appeal No.309 of 2012 and which has been dismissed by the impugned order dated 14.2.2013 passed by the appellate authority i.e. the Commissioner, Magadh Division, Gaya *inter alia*, on grounds of non-deposit of 50% of the deficit stamp duty in terms of section 47-A (6) of ‘the Act’ and hence this writ petition.

Mr Pandey, learned senior counsel appearing on behalf of the petitioner with reference to the provisions underlying section 47-A of ‘the Act’ has submitted that whereas the provisions of sub-section (1) enables the registering authority i.e. the Sub-Registrar to refer the matter of under-valuation for appropriate determination by the Collector under ‘the Act’, the determination upon such reference has to be made in terms of the modalities provided under sub-section (2) of section 47-A of ‘the Act’ and after giving an opportunity to the concerned party of making his representation. He submits that sub-section (3) of section 47-A empowers the Collector under ‘the Act’ to exercise *suo motu* powers for determining the valuation of the instrument within two years of its registration if the instrument has not been already referred to him under section 47-A (1) of ‘the Act’ and any person aggrieved by such *suo motu* determination is entitled to prefer an appeal under section 47-A (4) of ‘the Act’ before the Commissioner of the Division, and in such cases the appellant is required to make a pre-deposit of 50% of the deficit stamp duty determined by the Collector under ‘the Act’ in exercise of powers vested under section 47-A (3) of ‘the Act’.

The short submission made by Mr. Pandey to question the impugned order is that whereas there is no requirement of any pre-deposit of any amount for preferring an appeal against an order passed under section 47-A (2) of ‘the Act’, it is only in circumstances where an appeal is preferred against an order passed by the Collector under ‘the Act’ in exercise of *suo motu* powers vested under section 47-A (3) of ‘the Act’ that an appellant is required to make deposit of 50% of the deficit stamp duty. Mr. Pandey with reference to the provisions of the Bihar Stamp (Prevention of Under-Valuation of Instruments) Rules, 1995 (hereinafter referred to as ‘the Rules’) framed in exercise of powers conferred under section 75 of ‘the Act’ for carrying out the purpose of section 47-A of ‘the Act’ and with reference to rules 10 to 16 thereof submits that appeals other than the appeals preferred against an order passed under section 47-A (3) of ‘the Act’ would be governed by rule 13 of 'the Rules' and which does not require a pre-deposit of 50% of the deficit stamp duty. He submits that the documents to accompany such appeal are mentioned in rule 13 (2) of 'the Rules' and there is no requirement of deposit of 50% of the deficit stamp duty in case of an appeal preferred against an order passed under section 47-A (2) of 'the Act'. He thus submits that the order of the appellate authority in dismissing the appeal on grounds of non-deposit of 50% of the deficit stamp duty is on a misconception of legal provisions.

The argument of Mr. Pandey has been contested by Mr. Ranjan Kumar, learned counsel appearing for the State and who submits that the statutory provisions has to be given a broader interpretation inasmuch as when the statute provides for deposit of an appellate fee in case of an appeal preferred under section 47-A (4) of 'the Act' the said requirement would apply to all appeals preferred under the provision and would equally extend to an appeal preferred against an order passed under section 47-A (2) of 'the Act'.

I have heard learned counsel for the parties and I have perused the materials on record.

The limited issue posed before this Court is, whether the appeal preferred against an order passed on a reference under section 47-A (2) of ‘the Act’ would require a pre-deposit of 50% of the deficit stamp duty. The provisions of section 47A of ‘the Act’ was incorporated in the Indian Stamp Act vide Bihar Amendment Act, 1988. There were some further amendments made in the provision subsequently but the provisions of section 47-A (4) and 47-A (6) of ‘the Act’ have remained intact. Meaning thereby a condition of pre-deposit of 50% of the deficit stamp duty would only be applicable to appeals filed against an order passed by the Collector under ‘the Act’ in exercise of *suo motu* powers vested under section 47-A (3) of ‘the Act’. In fact it is following the incorporation of section 47-A in the statute book that ‘the Rules’ were framed by the State of Bihar in 1995 for carrying out the purposes of section 47-A. Rule 11 provides for the procedure to be followed by the statutory authority for passing an order under section 47-A (1) and (3) of ‘the Act’. Rule 12 provides for determination of market value by the Collector after making such enquiry and rule 13 provides for filing of an appeal against the order passed by the Collector. Rule 14 provides for the procedure for the disposal of appeals, rule 15 provides for hearing of an appeal and rule 16 provides for an order to be passed by the appellate authority in an appeal preferred against an order passed by the Collector under sub-sections (2) or (3) of section 47A of 'the Act'. 'The Rules' are comprehensive and take into consideration both the circumstances whether an appeal is preferred against an order on a reference under section 47-A (1) and (2) or an order passed in exercise of *suo motu* powers vested in Collector under sub-section (3) of section 47-A of 'the Act'.

Considering the statutory provisions underlying 'the Act' and 'the Rules' framed thereunder it would manifest that the legislature has been conscious in mandating a pre-deposit of appellate fee, limited to appeals preferred against an order passed in exercise of *suo motu* powers vested under section 47-A (3) of 'the Act' and has consciously exempted the appeals preferred against an order passed under section 47-A (2) of 'the Act' on a reference, from any such liability. 'The Rules' framed for carrying out the purpose of section 47-A of 'the Act' in its rule 13 again while listing the documents to accompany an appeal, does not make any mention regarding deposit of any appellate fee. The circumstances thus which manifests from the plain reading of the statutory provisions is that whereas in case of an appeal preferred against an order passed by the Collector in exercise of powers vested under section 47A(3) of 'the Act', the appellant is required to deposit 50% of the determined deficit stamp duty amount but in cases where the document is yet to be registered and has been referred to the Collector for determination of market value of such property as well as the duty payable thereon under section 47A(1) and (2) of ‘the Act’, there is no statutory requirement of pre-deposit of 50% of the deficit stamp duty and such appeals have been exempted from payment of any appellate fee.

The statutory authorities being creatures of the statute under which they function, they are bound to act within the parameters of the statute and cannot impose any condition or create any liability which is foreign to the enactment.

In view of the statutory provisions of ‘the Act’ and ‘the Rules’ framed thereunder it is manifest that the order impugned passed by the appellate authority i.e. the Commissioner, Magadh Division, Gaya dated 14.2.2013 in Appeal No.309 of 2012 is upon misappreciation of the legal provisions and cannot be upheld and is accordingly set aside. The matter is remitted back to the appellate authority for consideration and disposal of the matter afresh in accordance with law and without insisting upon pre-deposit of appellate fee amount.

The petitioner shall appear before the appellate authority i.e. the Commissioner, Magadh Division, Gaya along with a copy of this order on or before 19.1.2015 and whereafter the appellate authority i.e. the Commissioner, Magadh Division, Gaya shall proceed to fix a date for disposal of the matter in accordance with law and after giving opportunity of hearing to the petitioner. Considering the nature of the case, an expeditious disposal within a period of three months from the date of receipt/production of a copy of this order would be appreciated.

In the result, the writ petition is allowed but in the circumstances there shall be no order as to costs.

(Jyoti Saran, J)

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