IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.490 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 1451 of 2013

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Prabir Sinha, S/o Sri Permanand Sinha, resident of Pilu Niwas Shivajee Path, Near S.M. College, Khanjarpur, P.S - Barari, District - Bhagalpur.

.... Appellant/s

Versus

1. The State of Bihar.
2. Principal Secretary, Finance Department, Government of Bihar, Patna.
3. The I.G (Registration), Department of Registration Government of Bihar, Patna - 800001.
4. The Divisional Commissioner, Bhagalpur Division, Bhagalpur.
5. The Collector, Bhagalpur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Umesh Prasad Singh, Sr. Advocate.
Mr. Rajendra Kumar, Advocate.

For the State : Mr. Sanjay Pandey, GP 21.
Mr. Manish Kumar, AC to GP-21

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)
Date: 21-04-2016

Heard learned counsel for the parties.

2. The order dated 08.12.2014 passed by the learned single Bench of this Court in C.W.J.C. No. 1451 of 2013 is challenged in the present Letters Patent Appeal.

3. In an order under appeal, the claim of the appellant for refund of the amount of the Stamp Duty for the purposes of execution of the sale deed amounting to Rs. 17,57,832/-, was found to be beyond the period prescribed for claiming refund.

4. The appellant is said to have purchased the aforesaid

stamps for the purpose of execution of the sale deed in favour of the developers i.e. the appellant. The specific assertion of the appellant is that he requested the land owners to execute the land in favour of the developers i.e., the appellant, but the land owners failed to execute the sale deed. A legal notice was sent to the land owners on 06.06.2011 with a request to execute the sale deed within fortnight. Since, the sale deed was neither executed nor the consideration amount was refunded, the appellant also lodged an F.I.R.

5. The appellant also sought refund of the said stamp purchased on 01.08.2012. The claim of the appellant for refund of stamp was declined by the Commissioner on 10.11.2012 in terms of Bihar Stamp (Refund of Amount of Stamp Duty by Bank Challan) Rules, 2008 (hereinafter referred to as the 'Rules'). The learned single Bench dismissed the writ application on the ground that after a lapse of one year, no refund can be permitted.

6. In the present Letters Patent Appeal, the learned counsel for the appellant, firstly argued that the order dated 10.11.2012 is not by the Commissioner but by his Secretary and, therefore, it cannot be said to be a valid order. Secondly, that the Rules have not been published in the Gazette nor laid before the State Legislature, therefore, in the absence of publication of the Rules in the official Gazette and non compliance of provisions of Section 76 of the Stamp Act, 1899, it cannot be said to be enforceable in law. Thirdly, he also argued that refusing to refund the amount leads to forfeiture of the amount deposited, which is not

permissible except by authority of law, it being a property.

7. We do not find any merit in any of the arguments raised. It is not a case of forfeiture of the stamp duty. The appellant has purchased the stamp papers for the purposes of execution of sale deed, but since the sale deed was not executed, the appellant could apply for refund of the amount within the time prescribed. Rule 2 of the Rules contemplates that application for refund has to be filed within six months which is from the date of deposit of the amount of stamp duty by Bank Challan. Sub-rule (4) of Rules 2 contemplates that after expiry of six months, the application shall be filed before the Divisional Commissioner of the area but within one year from the date of deposit of amount in the Bank. The appellant has not applied for refund within the time prescribed by the Rules, therefore, such request has been rightly declined.

8. The order dated 10.11.2012 is a communication on behalf of the Secretary of the Commissioner, but it clearly recites that such communication is as per the orders of the Commissioner. Therefore, it cannot be said that the order is not of the Commissioner, but it is an order of the Commissioner which is communicated by his Secretary.

9. The appellant has not made a grievance in respect of the fact whether the Rules were published or not laid before the State Legislature in the writ application. The appellant cannot be permitted to enlarge the scope in the Letters Patent Appeal by raising new questions of fact which were never raised before the learned single Bench. However, we may state that the provisions of laying of Rules before the State Legislature

is directory and the efficacy of the Rules is not obliterated even if the Rules are placed before the State Legislature after some delay.

10. In respect of an argument that Rules were not published, suffice it to state that no such argument was raised before the learned Single Bench. The learned counsel for the appellant has referred to a publication by publisher “Lexis Nexis” containing such rules.

11. The publication of rules by a publisher is indicative of the fact that in fact rules were published more so when they were published by the private publisher as well.

12. In view thereof, we do not find any error in the order passed by the learned single Bench which may warrant interference in the present intra court appeal.

13. The Letters Patent Appeal stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Sujit/P. Kumar
N.A.F.R.

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