IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4224 of 2015

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1. Ajay Kumar Gupta son of Bhola Prasad, resident of village and Police Station Nokha, District Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Bihar Patna.
2. The Collector, Rohtas.
3. The Deputy Registrar, Registry Office, Sasaram.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Kamal Nayan Choubey, Sr. Adv.
Mr. Ambuj Nayan Chaubey, Adv.

For the Respondent/s : Mr. Sajid Salim Khan, S.C.25.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 09-12-016

Heard Mr. Kamal Nayan Choubey, learned Senior counsel for the petitioner and Mr. Sajid Salim Khan learned S.C.25 for the State.

With the consent of the parties the writ petition has been heard with a view to final disposal at the stage of admission itself.

The petitioner is aggrieved by the order dated 26.12.2014 (Annexure-6) passed by the Collector, Rohtas in Impound Case No. 1 of 2009 whereby the Collector in exercise of power vested under Section 33 read with Section 40 of the Indian Stamp Act, 1899 (hereinafter referred to as ‘the Act’) has directed the petitioner to pay a Stamp duty of Rs.7,54,160/- on the cancellation deed so filed by him together with penalty of 4% thereon, within a period of one month from the date of order. A copy of the order is impugned at Annexure-5 to the writ petition.

Facts of the case briefly stated is that the petitioner executed a sale deed in favour of his wife Ragini Gupta in relation to some lands situated in village Nokha in the district of Rohtas on 28.8.2006. For some reason, not explained, the petitioner proceeded to cancel the sale deed so executed on 28.8.2006 and for which the deed of cancellation in question was filed for registration on 10.4.2007 together with a stamp duty of Rs. 250/- as prescribed under the Schedule attached to 'the Act', in force at the relevant time. The deed of cancellation in question was not registered rather was impounded under Section 33(1) of 'the Act' and a proceeding ensued giving rise to Impound Case No. 1 of 2009. The petitioner in such circumstances filed an application on 26.2.2010 praying for withdrawal of deed of cancellation but even the said prayer was refused and by the order impugned dated 26.12.2014 passed in Impound Case No. 1 of 2009 the petitioner has been directed to pay the Stamp Duty of Rs. 7,54,160/- allegedly found deficit on the sale deed registered on 28.8.2006 together with 4% penal interest vide order impugned at Annexure-5 and the petitioner feeling aggrieved is before this Court.

I have heard learned counsel for the parties and perused the records and while Mr. Khan learned Standing Counsel has tried to justify the action of the respondents in reference to the explanation present at paragraph 5 of the counter affidavit but the statement makes the situation even worse for the respondents. According to the respondents, the petitioner had undervalued the sale deed executed on 28.8.2006 by not correctly placing the nature of land and it is only when the deed of cancellation was presented that the wisdom has dawned on the registering authority to realise this mistake and through the deed of cancellation, they now seek to recover the deficit stamp duty which was allegedly payable on the sale deed executed on 28.8.2006.

A rather peculiar and unheard method of recovery of revenue has been adopted by the Collector, Rohtas if I may observe. Even though the Collector is empowered under Section 47A of 'the Act' to initiate proceedings on an undervalued instrument but no objections were raised in this regard at any stage and the sale deed in question was registered on 28.8.2006. It is when the petitioner seeks to cancel the said sale deed that the cancellation instrument has been impounded to enforce recovery of stamp duty payable on the sale deed executed on 28.8.2006. There cannot be a better case of abuse of statutory power by the Collector, Rohtas and it certainly is not a case of ignorance of statutory jurisdiction.

Section 3 of 'the Act' provides for the duty chargeable on instruments and Item No. 17 of schedule 1 provides for the duty payable on a cancellation instrument. According to the petitioner, a deed of cancellation carried stamp duty of Rs. 250/- which has since been amended vide S.O. dated 15.2.2013 to read as Rs. 1000/-. There is nothing in the Schedule which enables the Collector to realize a stamp duty on a cancellation instrument beyond the duly prescribed duty. What is even worse is that the petitioner was not allowed to even withdraw the cancellation deed.

Calling the action impugned illegal, would be an under statement and with much reluctance I restrain myself from imposing cost on the officer responsible for such absurdity. There is no jurisdiction vested in the Collector under 'the Act' to recover a duty payable on a sale deed, while registering a deed for cancellation of the sale deed.

For the reasons aforementioned, the order dated 26.12.2014 passed by the Collector, Rohtas in Impound Case No. 1 of 2009 is absolutely illegal and is accordingly quashed and set aside. The writ petition is allowed. The Collector, Rohtas is directed to consider the prayer of the petitioner on the cancellation deed or the withdrawal of cancellation deed, as the case may be, and dispose of the same in accordance with law within a period of four weeks from the date of receipt/production of a copy of this order. The choice is with the petitioner either to pursue the cancellation deed or the withdrawal of cancellation deed.

The writ petition is allowed.

(Jyoti Saran, J)

Bibhash/-

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CAV DATE	
Uploading Date	23.12.16
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