IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5107 of 2016

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Vijay Kumar S/o - Late Harinarayan Purwe resident of Mohalla- Panda Sarai, P.S. - Laheria Sarai, Distt. - Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Registration and Excise Department.
2. The District Magistrate, Darbhanga.
3. The District Registrar, Darbhanga.
4. The Assistant Registrar, (IG), Darbhanga Pramandal, Darbhanga.

.... Respondent/s

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Appearance:
For the Petitioner/s : Mr. Binod Pd. Singh
For the Respondent/s : Mr. Mehtab Alam, AC to SC-20

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 02-12-2016

Heard Mr. Binod Prasad Singh, counsel for the petitioner and Mr. Mehtab Alam, Assisting Counsel to SC-20 for the State.

The petitioner is aggrieved by the order dated 31.12.2015 of the Assistant Inspector General of Registration, Darbhanga Division, Darbhanga whereby the petitioner has been charged for under valuing his transfer instrument and proceeded under Section 47A of the Indian Stamp Act, 1899 (hereinafter referred to as ‘the Act’). According to the Inspector General of Registration while the subject matter of the sale deed required a deposit of stamp duty to the tune of Rs. 3,40,680/- but the petitioner by under valuing the property and by incorrectly mentioning the area to be agricultural in nature, has deposited a stamp duty of Rs. 1,81,000/- which is deficit of by Rs. 1,59,680/-, recoverable from the petitioner. A copy of the order so passed is impugned at Annexure-1 to the writ petition.

It is the argument of Mr. Singh, learned counsel for the petitioner that the proceedings have been held behind his back inasmuch as no notice has been served upon the petitioner regarding the initiation of proceedings under Section 47A of 'the Act'. It is further the submission of Mr. Singh that following the order impugned, a proceeding has also been initiated under the provisions of the Bihar and Orissa Public Demands Recovery Act, 1914 (hereinafter referred to as 'the PDR Act') giving rises to Certificate Case No. 6 of 2016-17 which is pending before the District Certificate Officer, Darbhanga. He submits that a notice under Section 7 of 'the PDR Act' has been issued, a copy of which has been placed on record vide Annexure-2 to I.A. No. 6624 of 2016.

It is in consideration of the issues raised that Mr. Alam, learned State counsel was asked to produce the proceedings register to demonstrate whether or not the notice in the proceedings initiated by the Assistant Inspector General of Registration, Darbhanga Division, Darbhanga under Section 47A of 'the Act' has been served on the petitioner.

It is following the order of this Court that a Spot

Verification Register of 2013 has been placed on record by Mr. Alam which also encloses three notices issued in Stamp Case No. 61 of 2013-14 to the petitioner and which are dated 04.12.2013, 13.12.2013 and 30.6.2014. It is the submission of Mr. Alam, learned State counsel that while two of the notices were sent by ordinary course and do not indicate its service but the notice dated 13.12.2013 was sent by registered post to the petitioner and since the copy has not returned hence the presumption would be on service.

I have heard learned counsel for the parties and I have perused the records. A proceeding under Section 47A of 'the Act' is penal in nature for a stigma is attached on the person concerned as regarding evasion of stamp duty by under valuing the instrument.

Considering the nature of proceeding initiated under Section 47A of 'the Act' it is the bounden duty of the Presiding Officer who in the present case would be the Inspector General of Registration to satisfy himself on the service of notice on the person concerned. A mere issuance of notice either by ordinary post or by registered post, *ipso facto* cannot draw a presumption of service against a person concerned unless there are documents to substantiate its service.

Whether the declaration as to the nature of land and/or the stamp duty deposited on the instrument, on the basis of self declaration of the presenter, may or may not be correct but then the party concerned has to be afforded reasonable opportunity to defend his declaration. In the present case, there is apparent denial of such opportunity and although it has been argued by Mr. Alam that the petitioner has an appellate remedy available to establish the denial but considering that the non-service of notice to the petitioner, has forfeited his right to defend the sale deed in question by supporting documents, the order impugned dated 31.12.2015 passed by the Assistant Inspector General of Registration, Darbhanga Division, Darbhanga in Case No. 61 of 2013-14 becomes unsustainable, for it does not satisfy the principles of natural justice.

In the circumstances so discussed and in absence of any document to support service of notice on the petitioner, the order dated 31.12.2015 passed by the Assistant Inspector General of Registration in Case No. 61 of 2013-14 impugned at Annexure-1 to the writ petition cannot be upheld and is accordingly quashed and set aside. The matter is remitted back to the Assistant Inspector General of Registration, Darbhanga Division to proceed afresh in the matter and for its disposal in accordance with law.

The petitioner shall appear before the Assistant Inspector General of Registration, Darbhanga Division, Darbhanga along with his written statement and documents supporting his stand on or before ***27th December, 2016*** and whereafter the Assistant Inspector General of Registration, Darbhanga Division, Darbhanga shall proceed to dispose of the matter in accordance with law after affording opportunity of hearing to the petitioner.

It goes without saying that the proceeding in the Certificate Case No. 6 of 2016-17 pending before District Certificate Officer, Darbhanga shall remain in abeyance, until disposal of the matter by the Assistant Inspector General of Registration.

The writ petition is allowed with the directions and observations aforementioned.

I.A. No. 6624 of 2016 stands disposed of.

The original register produced by Mr. Alam is returned for his custody.

(Jyoti Saran, J)

S.Sb/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	