IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.168 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 11978 of 2007

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1. The State of Bihar, Through The Commissioner Cum Secretary Cum I.G. Registration, Bihar, Patna
2. Commissioner Cum Secretary Cum I.G. Registration, Bihar, Patna
3. Collector Cum District Registrar, Gopalganj
4. District Sub-Registrar, Gopalganj

.... Appellant/s

Versus

Smt. Tetra Devi, Wife of Yogendra Singh Resident Of Village- Maranpur, P.O.- Nawadah, P.S. Barauli, District- Gopalganj

.... Respondent/s

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Appearance :
For the Appellant/s : Mr. Hari Shankar Roy, Advocate
For the Respondent/s : Mr. Nikhil Kumar Agrawal, Mr. Santosh Kumar Mishra, Mr. Raju Giri and Ms. Aditi Hansria

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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: 19-05-2016

This Letters Patent Appeal is directed against an order dated 9th August, 2012 passed by the learned Single Judge in CWJC No. 11978 of 2007, whereby the writ petition was allowed and the impugned order directing the respondent herein, to deposit a sum of Rs.15,860/- as the deficient stamp duty and the fine of five times of the above amount imposed upon her, was set aside.

The respondent-applicant is the beneficiary of partition deed registered on 29th March, 2003 from one Mst. Ganga Kumar. After registration of the document, it was on 16.03.2007 the applicant

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received a show cause notice from the Collector regarding initiation of proceeding under Section 47A of the Indian Stamps Act, 1899 (hereinafter referred to as `the Act'). The notice was to the effect that District Sub Registrar has pointed out that deficiency of Rs.15,860/- of stamp duty in deed in question. It is also averred in the writ petition that in fact the Commissioner, respondent no. 2, vide order dated 22nd September, 2006 directed the Collector to initiate a proceeding under Section 47A of the Act.

The appellant contested the show cause notice by filing a reply but an order was passed by the Collector on 14th May, 2007 holding that there is deficient stamp duty of Rs.15,860/- and imposed penalty as five times of the deficient amount. It is the said order which was challenged by the applicant before the learned single Bench. The order has been set aside on the ground that the notice was issued after four years of registration of document, whereas in terms of Section 47A(3) of the Act the Collector can issue notice within two years only.

Learned counsel for the appellants argued that there is no period of limitation prescribed for issuing notice by the Sub Registrar. Therefore, the finding recorded that the service of notice is barred by limitation is not correct. Reference is made to the Division Bench judgment of this Court in the case of **Chandrakant C. Adesara vs.**

State of Bihar [1997(2) PLJR 16]. The Division Bench has relied upon the Supreme Court judgment in the case of **State of Punjab vs. Mahajan Sabha, Gurdaspur [AIR 1996 SC 2153].**

On the other hand, learned counsel for the respondent pointed out that the notice was issued by the Collector. Therefore, the Collector in exercise of his jurisdiction ought to have issued the notice within two years of registration of the document, whereas the notice was issued after four years. It is contended that the notice was issued by the Collector may be on the recommendation of the Sub Registrar or of the Commissioner, the Collector has jurisdiction to issue notice within two years of registration of the document. Reference was made to Bihar Stamp (Prevention of Under-Valuation of Instruments) Rules, 1995, wherein Rule-10(1) prescribes that if the value set forth in the instrument is according to the estimated minimum value indicated in the guidelines register supplied by the District Sub-Registrar but the registering officer has reason to believe that the market value is higher than the estimated minimum value he shall refer such instruments to the collector "at the time of admission" after recording his reasons in writing for fixation of appropriate market value as per procedure laid down in Rules 10 and 12. It is thus contended that the reference can be made by Sub-Registrar only at the time of registration of the document and not thereafter. Section 47A of the Act as discussed in

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the judgment referred to by learned counsel for the appellants has undergone substantial change in the year 2008 by virtue of Bihar Finance Act, 2008. However, such amendments are not relevant as the document was registered prior to the amendment. Even the show cause notice was issued prior to amendment. The un-amended provisions read as under:-

> **"47A. Instrument of conveyance.- (1)** Where the registering officer appointed under the Indian Registration Act, 1908 (XVI of 1908) while registering any instrument of conveyance, exchange, gift, partition or settlement, has reason to believe that the market value of the property which is the subject matter of such instrument has not been rightly set forth in the instrument he may, after registering such instrument refer the matter to the Collector for determination of the market value of such property and the proper duty payable thereon.
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> **(2)** On receipt of a reference under sub-section (1), the Collector shall, after giving one month's time 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:
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> Provided that no such person shall be required to pay any amount to make up the difference if the difference between the consideration of the market value as set forth in the instrument and the market value determined by the Collector does not exceed 10percent of the market value so determined.
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> **(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 the 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 :

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Rules 9, 10 and 11 of the Rules read as under :-

“**9**.(1) Instruments in which the value setforth is less than the estimated minimum value indicated in the Guidelines Register supplied by the District Sub-Registrar shall be referred by the Registering officer to the District Sub-Registrar at the time of admission for determination of appropriate market value as per procedure laid down under rules 11 and 12.

(2) The registering officer shall refer such instruments to the Collector along with Form I referred to in the appendix of the rules and maintain a copy of the form in his office as record and shall also maintain a register in Form VI.

10. (1) If the value set forth in the instrument is according to the estimated minimum value indicated in the Guidelines register supplied by the District Sub-Registrar but the registering officer has reason to believe that the market value is higher than the estimated minimum value, he shall refer such instruments to the Collector at the time of admission after recording his reasons in writing for fixation of appropriate market value as per procedure laid down in Rules 10 and 12. (*Emphasis supplied*)

Learned counsel for the appellants admitted that the reference was made to the Collector by the District Sub-Registrar after registration of the document by a different officer and not by the person who registered the document. The Sub-Registrar in terms of sub-Section (1) of Section 47 of the Act read with Rules 9 and 10 of the Rules was required to make reference to the Collector at the time of registration of such an instrument. However, the reference has not been made by the Sub-Registrar who registered the document but by another officer and that too four years after registration of the document.

The Rule contemplates that the Sub-Registrar shall refer the document at the time of admission but not after registration of the document. Since no reference was made immediately after registration of the document or within a reasonable period thereafter, the show cause notice has rightly been found by the learned Single Judge as beyond the period of limitation.

It is well settled that even it is assumed that no period is fixed under Section 47(1) of the Act to make reference to the Collector, but keeping in view the well established principles of law that where there is no time fixed reference has to be made within a reasonable period thereafter. Reasonable period can be said to be a few days, or months, but not years.

In the three-Judge Bench judgment in the case of **State of Gujarat vs. Patil Raghav Natha [(1969) 2 SCC 187],** the question examined was whether the Commissioner can revise an order made under Section 65 of the Code at any time. It was held that the Commissioner must exercise his power within a few months of the order of the Collector. The Court observed as under:-

> **"11.** The question arises whether the Commissioner can revise an order made under Section 65 at any time. It is true that there is no period of limitation prescribed under section 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised.
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> **12.** It seems to us that Section 65 itself indicates the length of the reasonable time within which the Commissioner must act under Section 211. Under Section 65 of the Code if the Collector does not inform the applicant of his decision on the application within a period of three months the permission applied for shall be deemed to have been granted. This section shows that a period of three months is considered ample for the Collector to make up his mind and beyond that the legislature thinks that the matter is so urgent that permission shall be deemed to have been granted. Reading Sections 211 and 65 together it seems to us that the Commissioner must exercise his revisional powers within a few months of the order of the Collector. This is reasonable time because after the grant of the permission for building purposes the occupant is likely to spend money on starting building operations at least within a few months from the date of the permission. In this case the Commissioner set aside the order of the Collector on October 12, 1961 i.e. more than a year after the order and it seems to us that this order was passed too late."

The Supreme Court in a Judgment reported as ***Mansaram v. S. P. Pathak, (1984) 1 SCC 125*****,** held that where power is conferred to effectuate a purpose, it has to be exercised in a reasonable manner and the reasonable exercise of power inheres its exercise within a reasonable time. The Court held as follows:-

> "But as stated earlier, where power is conferred to effectuate a

> purpose, it has to be exercised in a reasonable manner and the reasonable exercise of power inheres its exercise within a reasonable time. This is too well established to need buttressing by a precedent. However, one is readily available in *State of Gujarat* v. *Patil Raghav Natha (1969) 2 SCC 187.* In that case Commissioner exercised suo motu revisional jurisdiction under Section 211 of the Bombay Land Revenue Code which did not prescribe any period of limitation for exercise of revisional jurisdiction. The Commissioner exercised revisional jurisdiction one year after the Collector made the order which was sought to be revised. The High Court set aside the order of the Commissioner. In the appeal by State of Gujarat, this Court declined to interfere holding inter alia that the revisional power in the absence of prescribed period of limitation must be exercised within a reasonable time and period of one year was held to be too late".

In another judgment reported as ***Santoshkumar Shivgonda Patil v. Balasaheb Tukaram Shevale, (2009) 9 SCC 352*,** the Court held that it seems to be fairly settled that if a statute does not prescribe the time-limit for exercise of revisional power, it does not mean that such power can be exercised at any time; rather it should be exercised within a reasonable time. The Court held as follows:-

> "**11.** It seems to be fairly settled that if a statute does not prescribe the time-limit for exercise of revisional power, it does not mean that such power can be exercised at any time; rather it should be exercised within a reasonable time. It is so because the law does not expect a settled thing to be unsettled after a long lapse of time. Where the legislature does not provide for any length of time within which the power of revision is to be exercised by the authority, suo motu or otherwise, it is plain that exercise of such power within reasonable time is inherent therein."

In a recent judgment in the case of ***Joint Collector, Ranga Reddy District vs. D Narsingh Rao [(2015) 3 SCC 695],*** while considering the *suo motu* revisional power the Supreme Court held that where no limitation is prescribed for exercise of power revisional or otherwise such must be exercised within a reasonable period. Speaking for the Court, Hon'ble Mr. Justice Nagappan observed as under :-

> "**17.** In the light of what is stated above we are of the view that the Division Bench of the High Court was right in affirming the view of the learned Single Judge of the High Court that the suo motu revision undertaken after a long lapse of time, even in the absence of any period of limitation was arbitrary and opposed to the concept of rule of law."

Hon'ble Mr. Justice T S Thakur while concurring with the view of Hon'ble Mr. Justice Nagappan, observed as under :-

> "**25.** The legal position is fairly well settled by a long line of decisions of this Court which have laid down that even when there is no period of limitation prescribed for the exercise of any power, revisional or otherwise, such power must be exercised within a reasonable period. This is so even in cases where allegations of fraud have necessitated the exercise of any corrective power. We may briefly refer to some of the decisions only to bring home the point that the absence of a stipulated period of limitation makes little or no difference in so far as the exercise of the power is concerned which ought to be permissible only when the power is invoked within a reasonable period."
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> "**31**. To sum up, delayed exercise of revisional jurisdiction is frowned upon because if actions or transactions were to remain forever open to challenge, it will mean avoidable and endless uncertainty in human

affairs, which is not the policy of law. Because, even when there is no period of limitation prescribed for exercise of such powers, the intervening delay, may have led to creation of third-party rights, that cannot be trampled by a belated exercise of a discretionary power especially when no cogent explanation for the delay is in sight.. Rule of law it is said must run closely with the rule of life. Even in cases where the orders sought to be revised are fraudulent, the exercise of power must be within a reasonable period of the discovery of fraud. Simply describing an act or transaction to be fraudulent will not extend the time for its correction to infinity; for otherwise the exercise of revisional power would itself be tantamount to a fraud upon the statute that vests such power in an authority."

In **Mahajan Sabha's** case (supra), the judgment referred to by learned counsel for the appellants, the principles of law that if no period of limitation is prescribed, action is still required to be taken within a reasonable time, was not brought to the notice of the Court. The Division Bench of this Court in **Chandrakant C. Adesara** (supra) followed the judgment in **Mahajan Sabha's** case. In view of the judgments on the question including of a larger Bench that where no period of limitation is prescribed, action has to be taken within a reasonable period, we find no error in the order of the learned Single Judge.

In the present case, it is the Collector who has issued notice on the ground that the document registered is deficient in stamp duty. He might have issued notice on the report of the Sub-Registrar or the Commissioner. The fact remains that he is exercising his suo motu power. Such notice could be issued only within two years of the registration of the document. Even if it is to be examined that the notice was issued at the instance of the Sub-Registrar, then the Sub-Registrar was bound to act at the time of registration of the document in terms of Rules 9 and 10 reproduced above. He cannot make recommendation after long delay, particularly when the officer registering the document has not made any reference at the time of registration of the document.

Thus, we find that initiation of proceedings by the Collector suffers from patent illegality and has been rightly set aside by the learned Single Judge. We do not find any reason to interfere in the order passed by the learned Single Judge in the present Letters Patent Appeal.

The appeal is accordingly dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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