IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19517 of 2016

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Shahnaz Begam, W/o Saiyad Manir Alam, Resident of village - Ahwar Sheikh, P.O. Alamganj, P.S. Majhaulia, District - West Champaran

.... Petitioner/s

Versus

1. The State of Bihar, through the Inspector - General of Registration, Bihar, Patna
2. The Inspector General of Registration, Bihar, Patna
3. The Assistant Inspector General of Registration, Tirhut Division, Muzaffarpur
4. The District Registrar - Cum - the Collector - Cum - District Magistrate, West Champaran at Bettiah
5. The District Sub - Registrar, Bettiah Registry office, West Champaran, Bettiah

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar, Adv.

For the Respondent/s : Mr. Kumar Manish- SC-5

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL ORDER

4 07-11-2017 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks to quash the order dated 16.05.2016, as contained in Annexure- 4, by which the AIG, Registration has passed an order in Case No. 05/2015-16 directing the petitioner to deposit an additional stamp and fine of Rs. 79,904/- in connection with the sale deed dated 07.03.2015 which was registered with the District Registration, Bettiah.

Learned counsel for the petitioner submits that subsequent to the registration effected with regard to the lands bearing Khata No. 266/252, Plot No. 7613 measuring 4.5 dhur (0.70 dismal) falling within Mahawat Toli, Mauza of Bettiah Anchal of West Champaran district, when the petitioner went to obtain her sale deed, the same was not granted to her. Subsequently, a notice dated 25.05.2015 was issued from the office of the respondent no. 3 (The Assistant Inspector-General of Registration, Tirhut Division, Muzuffarpur) with regard to initiation of the stamp case bearing Stamp Case No. 05/2015-2016. The said case is said to have been initiated on the report of the respondent no. 5 (The District Sub Registrar, Bettiah Registry Office, West Champaran, Bettiah). Learned counsel for the petitioner, thus, submits that subsequent to the registration, it was not open to the District Sub Registrar to refer the matter to the Collector for making enquiries with regard to the valuation. At best, under provisions of Section 47A(1) of the Indian Stamp Act, the District Sub Registrar could have referred the matter for enquiry and further valuation under such circumstances could be done only before the registration had been effected. As such, any proceeding which followed the registration being against the statutory provisions was a nullity and could not be sustained in the eye of law. He further submits that even the AIG, Registration (respondent no. 3) has not bothered to initiate any enquiry and the petitioner's request for making a proper enquiry was rejected and the valuation as granted by the District Sub Registrar was held to be correct and valid and the impugned order has been issued directing her to deposit a further amount of Rs. 72,640/- being the fine at the rate of 10 per cent. It is further submitted that the entire proceeding drawn against the petitioner was against the statutory provisions and, therefore, fit to be set aside.

A counter affidavit has been filed in this case in which it has been contended that the petitioner had wholly undervalued his documents and when it was found that the petitioner had so registered her land on the basis of undervaluation, the District Sub Registrar referred the matter to the AIG, Registration, who is now the Collector under the Act as per the said notification and it was only thereafter that the Case No. 05/2015-2016 was registered and notices were duly served to her. The petitioner's case having been found to be undervalued on account of the fact that there was a double storied building on the said plot. The impugned order has been passed which is wholly legal and valid and does not warrant interference under Article 226 of the Constitution of India. He further submits that there is also a provision of appeal which can well be availed by the petitioner, and, therefore, the writ application is devoid of any merit and fit to be dismissed.

Having heard learned counsel for the petitioner and learned counsel for the State, it would be relevant and in the interest of justice to refer to the different provisions of Indian Stamp Act particularly, Section 47A(1) is quoted hereunder for ready reference:-

> ***"47-A Instrument of Conveyance – Where the registering officers appointed under the Registration Act, 1908 while registering any instrument of conveyance, exchange, gift, partition or settlement is satisfied that the classification of the property and/or the measurement of the structure contained in the property which is subject matter of such instrument has been set forth wrongly or the market value of the property, which is subject matter of such instrument has been set forth at a lower rate than the Guideline Register of Estimated Minimum Value prepared under the rules framed under the provisions of this Act, he shall refer such instrument before registering it to the Collector for determination of the proper market value of such property and the proper duty payable thereon".***

It, thus, follows that the Registering Authority can only refer the matter before registering it to the Collector for determination of the proper market value of such property and the proper duty payable thereon. In the present case, it is quite clear that the registration was already effected and it was only thereafter that the reference was made to the Collector/AIG Registration for determination of the correct value. Furthermore, if at all, a proceeding was to have been initiated after registration by the Collector suo motu within the provisions of Section 47A(3), the same could have been done within a period of two (2) years from the date of registration of such instrument already referred to him under Sub Section (1). Provisions as stated in Section 47A(3) is as follows:-

> ***"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 , '[or is less than even the minimum value determined in accordance with any rules made under this Act] 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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> ***Provided that nothing in this sub-section shall apply to any instrument registered before the date of commencement of the Indian Stamp (Bihar Amendment Ordinance, 1986)."***

It appears from the counter affidavit filed that it is not a proceeding initiated rather it was a reference to the Collector under Section 47A (1).

In that view of the matter, since the provisions clearly state that such enquiry can be made only before registering it to the Collector for determination of the proper market value of such property and the proper duty payable thereon. The entire reference is made against the statutory provisions and cannot be sustained in the eye of law. Thus, in the considered opinion of the Court, the impugned order dated 16.05.2016 as contained in Annexure- 4 is wholly illegal and arbitrary and has to be quashed.

Accordingly, the impugned order dated 16.05.2016 as contained in Annexure- 4 stands quashed. The writ application is allowed. No costs.

(Anjana Mishra, J)

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