IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.69 of 2018
In
Civil Writ Jurisdiction Case No. 23067 of 2013

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1. The State of Bihar through its Chief Secretary, Govt. of Bihar, Patna.
2. The Inspector General, Registration Department, Government of Bihar, Patna.
3. The District Registrar –Cum- District Magistrate, District- Patna.
4. The District Sub -Registrar, Registration Office, Patna, District- Patna.

.... Appellants

Versus

1. Bipin Bihari, S/O Mr. Bishwanath Tiwary, (Membership No. 305) Resident of Flat No. 405A, Hope, Narayani Apartment, Vijay Nagar, Rukunpura, Patna- 800014.
2. Asha Agrawal (Membership No. 304), W/O Late P.N. Agrawal, at present residing at 202A, Hope Narayani Apartment, Vijay Nagar, Rukunpura, Patna- 800014.
3. Priti Priya (Membership No. 328), W/O Alok Kumar, Flat No. 203A, Hope Narayani Apartment, Vijay Nagar, Rukunpura, Patna- 800014.
4. The Municipal Commissioner, Patna, District- Patna.
5. Sri Rakesh Kumar, Director, M/S Hope Co-operative Housing Society Limited, Patna Registered Office at 49, Ashiyana Galaxy, Exhibition Road, Patna.

.... Respondents

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Appearance :
For the Appellant/s : Mr. Patanjali Rishi, AC to AAG 6
For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER
(Per: HONOURABLE THE CHIEF JUSTICE)

3 22-11-2018 Heard Shri Patanjali Rishi, learned Counsel for the State and learned Counsel for respondent no. 5-Society.

This appeal questions the correctness of the impugned judgment dated 21st June, 2016, whereby learned Single Judge has arrived at the conclusion that the subsequent transfer of the units to its members does not require any payment of stamp duty by them, keeping in view the exemption granted to the members of the Co-operative Society under the 2nd proviso to Section 9A of the Indian Stamp Act as inserted by Bihar Amendment Act, 1988.

We have considered the submissions raised and it is urged that as a matter of fact since the Co-operative Society in turn had not paid the stamp duty, the said liability can be imposed and realized from the members.

The learned Single judge has held that this would not be possible keeping in view the proviso referred to hereinabove.

It is not necessary to extract the provisions as they are already quoted in the impugned judgment of the learned Single Judge and we do not find any such reason so as to reverse the decision keeping in view the fact that what cannot be permitted to be done directly, and rather has been exempted affirmatively under the statutory provisions, cannot be permitted to be realized indirectly as submitted on behalf of the State. We, therefore, do not find any reason for allowing the State to compulsorily exact stamp duty from the members who stand exempted in terms of the 2nd proviso to Section 9A as referred to above.

We find no infirmity in the impugned judgment. This appeal is accordingly dismissed.

(Amreshwar Pratap Sahi, CJ)

(Jyoti Saran, J)

Surendra/Archana

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