IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8594 of 2017

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Kaushalya Devi, Wife of Sri Vijay kumar Singh, Resident of Village- Sukki, Police Station- Khajauli, District- Madhubani.

... ... Petitioner/s

Versus

1. The State of Bihar through Inspector General of Registration Deptt. of Registration , Bihar Patna.
2. The Commissioner, Darbhanga Division, Darbhanga.
3. The Additional Inspector General Registration, Darbhanga Division, Darbhanga.
4. The Sub Registrar, Jainagar, District Madhubani.

... ... Respondent/s

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Appearance :

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

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

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date : 25-09-2020

Heard Mr. Abinash Kumar, learned counsel for the petitioner and Mr. Kumar Manish, learned SC 5 for the Respondent State.

The present writ application has been filed for setting aside the order dated 31.08.2016, passed by Respondent No.2, the Commissioner, Darbhanga Division, Darbhanga, in Miscellaneous (Stamp)/Stamp Deficit Appeal No. 14 of 2015, as contained in Annexure-2, whereby the appeal of the petitioner has been dismissed on the ground that 50% amount of payable deficit stamp duty has not been paid, which is mandatory under Section 47-A(6) of Indian Stamp Act, 1899 (hereinafter referred to as the Act). Further prayer has been made for setting aside the order dated 30.7.2015, passed by Respondent No.3, the Additional Inspector General, Registration, Darbhanga Division, Darbhanga, passed in Miscellaneous Case No. 60 of 2013-14, as contained in Annexure-1, whereby, in pursuance to the reference made by Sub-Registrar, Jainagar, under Section 47-A (1) of the Act, the petitioner has been directed to deposit the deficit stamp duty to the tune of Rupees One Lac within a period of sixty days, and in case of non-deposit of the same within the stipulated period, the petitioner has been directed to pay interest at the rate of 5% per month on the amount of deficit stamp duty.

The factual matrix of the case is that the petitioner purchased a piece of land measuring an area 13 dhurs (2.834 decimals) situated in Ward No. 2 (old) 9 (New) in Jainagar Municipal Area from one Rishi Narayan Singh after payment of proper consideration amount of Rupees Four Lacs through Registration Sale Deed no. 5155 dated 14.8.2013. After execution of the aforesaid deed on 13.8.2013, proper market value of Rs.22,09,000/- was shown on the deed and accordingly stamp duty and registration fees, total amounting to Rs.2,21,675/- was paid at the time of registration of the aforesaid deed. Accordingly, deed no. 5155 was registered on 14.8.2013 bearing Book No. 1, Volume No. 73, Page 142 to 150 in C.D. No. 12 of the year 2013.

The land in question, detailed in Column No. 5 of the deed no. 5155 dated 14.8.2013, consists of one old dilapidated asbestos roofed godown having an area 1200 sq.ft. having no use or inhabitable condition and was valued at Rs.6000/- at the time of registration of the deed. At the time of registration, the land in question measuring 2.834 decimals = 13 dhurs was valued at Rs.22,09,000/-, hence the total value of the property was Rs.34,59,000/-, of which the stamp was payable at Rs.1,76,720/-. The petitioner received a letter no. 150 dated 22.8.2015 from the office of the respondent no. 4, the Sub Registrar, Jainagar along with a copy of order dated 30.7.2015 passed by respondent no. 3, the Additional Inspector General, Registration, Darbhanga Division, Darbhanga, as contained in Annexure 1, with a direction that the petitioner has to pay Rs.100000/- towards the stamp and registration fees. The petitioner, on receipt of the said letter, made enquiry and subsequently submitted a representation before the Respondent no. 4 to consider the matter or to transmit the same to the Respondent no. 3. Ultimately, the petitioner preferred Appeal

No. 14 of 2015 before the Respondent No. 2, the Commissioner, Darbhanga Division, Darbhanga. The Commissioner dismissed the appeal vide order dated 31.8.2016 by holding that statutory amount, i.e. 50% amount of the payable deficient stamp duty as prescribed under Section 47-A(6) of the Act, has not been deposited. Hence the present writ application.

Learned counsel for the petitioner submits that the petitioner was neither noticed by Respondent No. 3 nor the representation submitted by her was considered and mechanically, without adopting the procedure prescribed under Rule 12 of Bihar Stamp (Under-Valuation) Rules, 1995 (hereinafter referred to as Rules), the learned Commissioner rejected the appeal of the petitioner on the technical ground that the petitioner has not paid 50% of the deficit court fee amount. It is further submitted that the instrument in question was properly valued and the property transferred through the sale deed in question is non-habitable. The re-classification has been done by the respondent authorities on irrational basis. Hence, the appellate authority ought to have remanded the matter back.

Mr. Kumar Manish, learned S.C. 5, relying upon the counter affidavit filed on behalf of Respondent Nos. 1, 3 and 4, submits that on the basis of spot verification, the land in question was found by the Sub Registrar, Jainagar to be a commercial land and the value of the same was found to be Rs.23,22,000 and the value of the building was assessed as Rs.11,37,000/-, total value being Rs.34,59,000/-. In this way, deficit stamp duty of Rupees One Lac was demanded.

Having heard learned counsels for the parties, the issue involved in the present writ application is:-

whether under Section 47-A(6) of the Act for filing appeal, 50% amount of the deficit stamp duty chargeable on the market value of the property as determined by the Collector is required only if the order is passed by the Collector under Section 47-A(3) or under Section 47-A(2) also

or whether the order passed by the Respondent No. 3, the Additional Inspector General, Registration, Darbhanga Division, as contained in Annexure 1, will be treated as an order under Section 47-A(2) or under Section 47-A(3) of the Act.

Here, it is relevant to quote Section 47-A of the Act, which reads as follows:

> "47-A Instrument of conveyance.- (1) 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 provision of this Act, he shall refer such instrument before registering it to the Collector for determination of th eproper market value of such propery and the proper duty payable thereon."

Provided that where the market value of the property of the instruments described above has been fixed at an amount which is not less than the value prescribed in the Guide Line Register of estimated minimum value prepared under the rules framed under the provisions of this Act, but the registering officer 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 or it is higher than the estimated proper reasons to the Collector for determination of proper market value of the property and the proper duty payable thereon."]

(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:

Provided that no such person shall be required to pay any amount to make up the difference if the difference between the consideration or the market value as set forth in the instrument [or is less than even the minimum value determined in accordance with any rules made under this Act] and the market value determined by the Collector does not exceed 10 per cent of the market value so determined.

(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, [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 in sub-section (2). The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty:

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.

(4) Any person aggrieved by an order of the Collector under sub-section (3) may appeal to the Commissioner concerned of the administrative division. Such appeal shall be preferred within sixty days of the order and shall be heard and disposed of by the Commissioner.

(5) For the purpose of this Act, Market value of any property shall be estimated to be the price which in the opinion of the Collector or the appellate authority, as the case may be, such property would have fetched or would fetch, if sold, in the open market on the date of execution of the instrument of conveyance, exchange, gift, partition or settlement.

[(6) Before filing an appeal under sub-section (4), the aggrieved party shall deposit 50% (fifty percent) amount of the payable deficient Stamp duty chargeable on the market value of the property as determined by the Collector.

(7) If after determination of the proper market value, it is established that the parties have deliberately concealed the actual description of property or the market value of the property or any other facts and circumstances affecting the changeability of the duty as required under section-27 of the Indian Stamp Act, 1899 [as amended by Indian Stamp(Bihar Amendment) Act, 1988], the collector, or in cases where appeal has been filed, the

appellate authority, may impose a fine equal to 10% (ten percent) amount of the deficient stamp duty.

(8) If an appeal is not filed under sub-section -(4) of Section 47-A, interest at the rate of 5% (five percent) per month shall be leviable on the deficient amount of stamp duty, if it is not deposited within sixty days from the date of order passed by Collector.

(9) If an appeal is filed as prescribed in sub-section (4) of Section-47A, interest at the rate of 5% (five percent) per month shall be payable from the date of the order of the appellate authority for deposit of deficient stamp duty if it is not paid within sixty days of such order.

(10) If the amount of deficient amount duty is not paid within sixty days from the date of order of the Collector in case an appeal is not filed against the said order, or within sixty days from the date of order of the appellate authority as the case may be, the amount of deficient stamp duty along with the amount of interest shall be recovered by the Collector as prescribed under Section-48 of the Act."

Now it would be relevant to appreciate the scope and intent of Section 47A of the Act.

Section 47-A of the Act was inserted by the Bihar (Amendment) Act 15 of 1988 and it was further amended by Indian stamp (Bihar Amendment) Act, 1991. Subsequently, after certain amendments during the interregnum, Section 47 A came to be amended by Bihar Finance Act, 2008, published in Bihar Gazette (Extraordinary) dated 02/04/2008, whereby sub-section (1) of Section 47A of the of the Act, 1899, came to be substituted in the present form as quoted above. Furthermore, sub-section (6) of the Section 47A was also added, as is quoted above. The intent and purpose behind insertion of Section 47A of the Act, was to check and neutralize the effect of under valuation of the instrument, sought to be registered, or in some cases already registered. The intent was also to check the over valuation of such instrument since such under valuation or over-valuation, which also ultimately caused loss to state revenue and exchequer.

Section 47A (1) of the Act was substituted by Act 5 of 2013, as it exists presently.

A fair understanding of Section 47A of the Act would make it clear that when a document is presented for registration then the Registering Officer has to look into the claim and has to form a prima facie opinion that the market value as depicted in the document, is the market value prescribed under the Valuation Rule. If he finds or records an opinion that the valuation given in the document does not depict real or correct market value, then he may refer the matter to the Collector for determination of the market value of the property and for passing of an order by the Collector, with respect to proper duty payable thereon.

Now, here in the present case in hand, the long and short of the proceeding as it emanates from Annexure-1, which is the order passed by the Assistant Inspector General, Registration, Darbhanga Region, who would be the Collector (as per Section 47-A), it appears that the Sub-registrar, who is the Registering Officer (as per Section 47A) has determined the market value of the instrument to the tune of Rs.34,59,000/- upon which the proper duty payable has been calculated by the Sub-registrar (the Registering Officer) to the tune of Rs.2,76,720/- and as such the deficit of Rs.1,00,000/- has been claimed, since the payment of Rs.1,76,720/- only, has been made as stamp duty.

Only after such determination of market value and the duty payable thereon, the instrument has been taken up for consideration by the Collector, as is apparent from Annexure-1 to the writ application. Post-determination of market value of the registered instrument in question by the Registering Officer, the Collector has issued notices to the petitioner, who did not appear, as gets conveyed from the order impugned, and, as such, the Collector under the Act has adjudicated and upheld the determined value of the property, as has been determined by the Registering

Officer under the Act, and the Collector under the Act has thus asked the petitioner to deposit the deficit amount of Rs.1,00,000/-.

What is required to be appreciated here, whether the action has been taken in accordance with the manner and procedure as has been stipulated in Section 47A of the Act and whether the impugned orders, as contained in Annexures 1 and 3, are within the legal framework and ambit and scope of Section 47A.

As per Sub-section (1) of Section 47A, the satisfaction of the registering officers has to be exercised, while registering any instrument of conveyance of any form, in the following two contingencies:-

Firstly, when the classification of the property, or the measurement of the structure contained in the property, which is the subject matter of the instrument to be registered, has been set forth wrongly;

Secondly, when the market value of the property, which is the subject matter of such instrument, has been set forth at a rate lower than the Guideline Register of estimated minimum value, prepared under the Rules Framed under the Provision 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.

Hence, Section 47A(1) of the act, visualizes a situation, wherein, in case of any doubt, with regard to, either wrong determination of classification of property or the measurement of structure or with regard to under-valuation of the instrument proposed to be registered, the Registering Officer is empowered to refer such instrument to the Collector for determination of proper market value of such instrument and the duty payable thereon.

However, the proviso to Sub-Section 1 of Section 47A, provides that, in the circumstance where, the market value of the property to be registered, has been fixed at an amount, which is not less than the value prescribed in the Guide Line Register of Estimated minimum value prepared under the rules framed under the provisions of the Act, but the Registering Officer has reasons to believe that the market value of such property has not been rightly set forth, or is valued higher than the estimated minimum value, then in such a circumstance the registering officer is empowered to refer it to the Collector, after registering the instrument, to the Collector, for determination of proper market value of such property and the duty payable thereon.

Hence, as per Section 47 A(1), at the stage of pre-registration, the registering officer is empowered to refer the instrument to the Collector, if the Registering Officer has reason to believe that the property to be registered is under-valued, or is wrongly classified, or the structure on such property is wrongly measured.

So far as proviso to Section 47 A(1) is concerned, it visualizes a circumstance at the stage of pre-registration itself, but in the case where the market value of such property is over-valued or has not been rightly set forth, though in such circumstance, the matter is to be referred to the Collector, only after registration of such property.

The exercise of power under Sub section (2) of Section 47A, arises only on receipt of a reference under Sub Section (1), by the Registering authority to the Collector, wherein one month's time is given to the parties to represent their stand and besides this an enquiry is held by the Collector to determine the value of the property, which is the subject matter of such instrument. Hence, it can be appreciated that Sub-section (2) of Section 47A comes into play, only after the reference being made by the Registering officer, either under Section 47A (1), or under the proviso to Section 47A(1). Though, in the eventuality of reference being made under Sub section (1), the Collector is to exercise his jurisdiction while determination of market value i.e., at pre-registration stage, whereas, so far as the proviso to Section 47A

(1) is concerned, the reference is made post registration and thereafter the Collector is required to exercise his jurisdiction by issuing notice to the parties and conducting an enquiry.

In the proviso to sub section (2) of Section 47A, it has been provided that in case the difference between the consideration of the market value as set forth in the instrument and the market value as determined by the Collector, if the same does not exceed 10 %, then such person shall not be required to pay any amount, to make up the difference. Hence, it can be appreciated that in cases of under valuation, where the difference does not exceed 10%, there is no requirement of making the payment of difference of amount and the liability would arise only in the circumstance where the under valuation drastically exceeds 10 %.

It can well be appreciated that under Sub section (1) of Section 47A, it is the Registering officer, upon whose satisfaction, the instrument is referred to the Collector for further action, in case of wrong classification of property or measurement of structure contained in the property or in case of market value of such property being set forth at a lower rate. Thus, it can be said that under Section 47A (1) the matter gets initiated at the end of the Registering officer, on the basis of which the Collector acts, as has been prescribed under Section 47A (2).

Now, on perusal of Section 47A (3), it can be appreciated that under Sub section (3), it is the Collector, at whose end the matter gets initiated, suo motu and that too at the post-registration stage. Under Section 47 A(3) of the Act, the Collector can suo motu, within two years from the date of registration of such instrument, which has not been referred to him under Sub section (1), under such circumstance, the Collector can call for and examine such instrument for the purpose of satisfying himself, with regard to the correctness of the market value of the property, which is the subject matter of such instrument. The Collector shall also satisfy himself with regard to the duty payable on such instrument, which has been registered. After such examination, if the Collector has reasons to believe that the market value of such property, has not been rightly set forth in the instrument, in other words the market value of the instrument is under-valued, then under such circumstance, the Collector may determine the market value and the duty of such property, as per the procedure established by law. In such circumstance, the person concerned would be liable to pay the difference, if any, in the amount of duty.

Hence, on bare appreciation of Section 47A (3) of the Act, it is apparent that the exercise of authority under this provision is discretionary, which could be exercised on the own satisfaction of the Collector, but such power can be exercised only within two years of registration of such instrument. Thus, the power vested under Sub section (3) of 47A, is exercisable only at post registration stage, unlike Sub section (1), where the Collector acts only after reference is made to him by the Registering officer, while determination of market value of such instrument at the time of registration i.e. at pre-registration stage. As per the provision stipulated under Sub section (3), it is mandatorily required that whatever may be the difference, the person concerned has to make the payment of such difference in amount of duty, i.e. under valuation.

Sub-section (4) of Section 47A provides that any person, who is aggrieved by the order of the Collector passed under Sub-section (3) of Section 47A, may appeal to the Commissioner within sixty days.

While Sub-section (6) of Section 47A, which has been inserted vide Bihar Finance Act, 2008, provides that before filing an appeal under Sub-Section (4) to Section 47A, 50 % of the amount of the payable deficient stamp duty has to be deposited by the aggrieved party.

Under sub-section 6 of Section 47(A) of the Act, if an appeal is preferred against an order passed under section 47(3) of the Act by the Collector exercising, suo motu, power for under valuation of the instrument, then the aggrieved person has to prefer appeal by pre-appeal deposit. This is because if the Collector, within 2 years of registration finds that the instrument is undervalued then he passes order under sub-section 2 of Section 47(A) upon a reference under Section 47(1) on the ground of defect in classification or measurement, etc., then there is no question of depositing 50% deficit stamp duty as it is at pre-registration stage/reference. The power of section 47(A) visualizes two conditions post-registration of the instruments viz :-

(1) If the instrument is not rightly set forth; or

(2) If it is overvalued

Hence in such circumstances the question of deficit stamp duty chargeable on market value of property does not arise.

After appreciating the ambit and scope of Section 47A and the relevant stipulations thereunder, applicable to the facts of the present case, it requires to be tested whether the orders impugned, meet the requirements, as provided, so as to qualify to be within the ambit and scope of Section 47A.

At the very outset, it is to be appreciated that the instrument in question was already registered vide Registration Sale Deed No.-5155 dated 14/08/2013 by the Sub-Registrar, Jainagar (the Registering Officer). Hence, apparently the matter has been referred to the Collector (the Assistant Inspector General, Registration), post-registration, wherein the Registering officer (the Sub-Registrar, Jainagar) has initially determined the market value and the actual stamp duty payable thereon and has thereafter referred the matter to the Collector for registration of the deficit amount. As per Sub-section (1), in case of under valuation being found, the Registering officer on being satisfied, can at best refer, while determining the market value, i.e., at pre-registraton stage, to the Collector for determination of actual market value of the instrument conveyed. Hence, it is prima facie apparent that the Registering Officer has erred in exercising his jurisdiction and has wrongly exercised the jurisdiction vested in the Collector by determining the market value himself. Such assuming of jurisdiction not vested in the Registering Officer, itself renders the order void and to be a nullity in the eyes of law. The provision is specific and clear to the extent that the power of reference vests with the Registering Officer and in case of his satisfaction with regard to under-valuation of the instrument, he can only refer to the Collector for determination of market value and the stamp duty payable thereon and he cannot assume such jurisdiction into himself, in case of under-valuation.

Secondly, the Registering Officer can definitely refer the instrument for determination of market value, after registering such property, but only in case of over-valuation of market value of such instrument or in case of the market value of such instrument not being rightly set-forth. But, it is not the case in the matter under concern. The instrument was referred to the Collector only on the premise and determination of market value of the instrument being under-valued.

The Registering Officer has not only committed over-reach of jurisdiction, but has also conducted the matter in a manner, which is absolutely alien to what has been provided under Section 47A and subsequently, the Collector has also not been able to take note of such jurisdictional over-reach and blatant violation of statutory provision. For better appreciation, the error apparent on the face of it, can be specified, as follows :-

Firstly, on being satisfied about the under-valuation, the Registering Officer has determined the market value and the stamp duty payable thereon, which could not have been done by the Registering Officer but only by the Collector; and;

Secondly, the Registering Officer has registered the instrument under question and only thereafter, the mater has been taken up by the Collector, but only for the purpose of realization of determined stamp duty of the instrument. Such registration itself by the Registering Officer, on his satisfaction of under-valuation, is bad in the eyes of law.

Apparently, Annexure-1, which is the first order impugned has been passed after the determination of market value of the instrument and it does not appear to have been passed on the basis of any reference by the Registering Officer.

Moreover, it is apt to repeat that in case of instrument being found under-valued, the determination of market value cannot be done by the Registering Officer.

Lastly, what is astonishing is that, although Sub-section (2) and (3) specifically provides to the effect that not only the person concerned has to be noticed but the Collector has also to hold an enquiry to determine the market value of the instrument. But, neither Annexure-1 nor Annexure-3, suggests that any enquiry at the end of the Collector, was at all held by the Collector, though the orders suggest that notices were issued to the petitioner, but she chose not to appear. But the same does not absolve the Collector from conducting an enquiry at his end and uphold the determination of market value of the instrument by the Registering Officer. Moreover, Annexure-1, on the face of it, is sans any reason or rationale, as to why such determination of market value of the instrument, is being upheld. Such order, by the Collector is apparently perfunctory and has seemingly been passed in the most cavalier and routine manner.

For determining such market value, the parameters have been given in Rule 12 of the Rules which suggests that after examining the records produced and carefully considering all factors and evidences adduced, the Collector shall pass the order and while doing so, he may conduct enquiry with regard to the value of adjacent land or lands in the vicinity, average yield of the land, the nature and number of crops, nearness to road or market, distance from village, site, level of land, transport facilities, irrigation facilities, use of land domestic, commercial, industrial agricultural purposes and other things. Rule 12 of Rules reads as follows:

> "12. Order of determination of market value- (1) Considering the objections and representation received from the persons to whom the notice is given under sub-rule (a)(i)(ii) of Rule 11 and
>
> (i) after examining the records produced; and

(ii) after carefully considering all factors and evidences adduced.

The Collector shall pass an order in writing determining the market value of the properties and duties payable on the instrument, communicate the order to the parties and take steps to collect the difference in the duties payable. The basis on which the market value was arrived at shall be clearly indicated in the order.

(2) A copy of the order shall be communicated to registering officer for his record.

(3) The Collector shall, after collecting the difference in amount of Stamps Duty, if any, give a certificate in form V by endorsement of the instrument.

(4) The Collector shall, as far as possible, have also regard to the following points in arriving at the final market value in addition to the factors enumerated under rule-3.

(a) In the case of land.

(i)Points, if any, mentioned by the parties to the instruments or any other persons, or which come to light through records and evidence in course of enquiry which requires special consideration;

(ii) Value of adjacent land or land in the vicinity;

(iii) Average yield of the land, the nature and number of crops nearness to road or market, distance from village, site, level of land, transport facilities, irrigation facilities and susceptibility of foods, water logging and drought;

(iv) The use of land domestic, commercial, industrial, agricultural purposes and the likely appreciation of value when in agricultural land is being converted to a residential, commercial, industrial use

(b) In case of house sites:-

(i)The general value of house-sites in the locality;

(ii) Nearness to roads, railway station;

(iii) Nearness to market, shops and the like;

(iv) The use of land, domestic, commercial, industrial, agricultural purposes and likely appreciation of value when a agricultural land is being converted to a residential, commercial industrial use;

(v) Development activities, industrial improvements in vicinity;

(vi) Land and valuation of sites with reference to taxation records of the local authorities concerned;

(vii) Any other features having a special bearing on the valuation of the site; and

(viii) Any special feature of this case represented by the parties.

(c) In the case of buildings:-

(i)All the points enumerated in clause (a) above;

(ii)The possibility of conversion of building after transfer from residential to commercial or industrial use;

(iii) Property tax/municipal tax/water tax/wealth tax both current and recent enhancement made in any of them;

(iv)Rate of depreciation;

(v)Any other special feature of the case which has come to light in course of investigation.

(d) Properties other than land, house sites and buildings:-

(i)The nature and conditions of the property;

(ii) Purpose for which the property is being put to use; and

(iii) Any other special features having a bearing on the valuation of the property."

Rule 11 of the Rules prescribes the procedure to be followed while deciding reference under Section 47-A(1) of the Act or exercising the *suo motu* power under Section 47-A(3) of the Act.

Rule 11 of the Rules reads as follows:

> "11. Procedure to be followed under section 47- A (1) and (3) of the Act on receipt of reference:
>
> (a) In the matter of instruments, referred by the Registering officer to the Collector under Section 47- A(1) of the Act for determination of the market value or the instruments called for by the Collector under section 47-A (3) of the Act notice will be given to the following persons by the Collector in Form II or III (as the case may be) amended to the rules:
>
> (i) Every executant by whom the instrument is executed.
>
> (ii) Every claimant in whose instrument is executed.
>
> (b) Through the above notice the parties or the person concerned will be directed by the Collector to file their representation and adduce evidence regarding the value of the property.
>
> (c) If the Collector considers it necessary he may record the statement of any person to whom the notice is given under sub-rule (a).
>
> (d) For the purpose of enquiry the Collector:-
>
> (i) may call for information or record from any office or a government office or office of autonomous bodies.
>
> (ii) may examine any government official or authority and record their statements.
>
> (iii) may inspect properties after giving notice to the parties concerned."

Rule 13 of the Rules prescribes the format and list of documents required for filing appeal. Rule 16 of the Rules prescribes the order to be passed while exercising the jurisdiction by the Collector under Section 47-A(2) and 47-A(3) of the Act. Rule 16 and Rule 13 of the Rules read as follows:

> "13. Appeals – (1) In preferring appeal against the order of the Collector the following particulars shall be given :-
>
> (a) Full name, Father's name or husband's name, occupation and address, of the appellant;
>
> (b) Full name, Father's name or husband's name, occupation and address of every person executing the instrument;
>
> (c) Full name, Father's name or husband's name, occupation and address of every person claiming under the instrument;
>
> (d) Date and nature of the instrument;
>
> (e) Name of town or village in which the property is situated together with the name of the Halka and the registration sub-districts;
>
> (f) Number and date of the Collector's order which is appealed against;
>
> (g) Market value of the property as determined by the Collector.
>
> (2) Every appeal shall be accompanied by:-
>
> (a) Certified copy of the order appealed against;

(b) The original or a certified copy of the instrument ; and

(c) Memo of ground of appeal.

(3) Every appeal shall be presented in person or by an advocate or by an authorised agent or sent by registered post to the appellate authority having jurisdiction, which shall endorse the date of receipt.

16. Order in Appeal.- After considering all the evidences adduced and representation made on behalf of the appellant and the Collector and examining the records of the case, the Appellate authority shall decide whether or not the market value of the properties as determined in the order of the Collector under sub-section (2) or sub-section (3) of Section 47-A is correct. In case, the Appellate authority does not accept the valuation of the properties made by the Collector, it shall determine the correct market value of the properties and the duty payable on the instrument. The Appellate authority shall embody its decision and the reasons thereof in an order and communicate it to the appellant, the Collector and the registering officer concerned."

Though Section 47-A of the Act does not provide the provision of appeal against an order passed under Section 47-A(2) of the Act but Rule 16 of the Rules stipulates as if the appeal is also maintainable against an order passed under Section 47-A(2) of the Act.

In view of this Court, if the Act does not prescribe a forum of appeal against the order under Section 47-A(2) of the Act, then by virtue of stipulation under Rule 16 of the Rules, such forum cannot be created. However, the same is not an issue in the present writ application. Moreover, usually the appeal is entertained by the appellate authority on order passed either under sub-section (2) or (3) of Section 47(A) of the Act. Hence, this Court leaves this issue open to be decided in appropriate proceeding.

Furthermore, from perusal of the order impugned as contained in Annexure 1, it appears that the Respondent no. 3 has exercised the *suo motu* jurisdiction under Section 47-A(3) of the Act, however, in the counter affidavit filed on behalf of Respondent nos. 1, 3 and 4, a specific statement has been made in paragraph 6 thereof that on reference being made vide Reference no. 1/2014 by the Registering authority to the Additional Inspector General of Registration, Darbhanga on 19.2.2014, notices were issued by Respondent no. 3 in Case No.60 of 2013-14, though the order passed by Respondent no. 3 as contained in Annexure 1 does not stipulate that the said order has been passed on reference by sub-registering authority. Statements made in paragraph 6 of the counter affidavit read as follows:

> "That it is further submitted that on spot verification of purchased land by the Sub Registrar, Jaynagar, the land was found as commercial land and on that basis the value of the land was assessed as 2,32,2000/- and value of the building was assessed as 1,13,7000/- total Rs- 3,45,9000/- M.V.R. was estimated and in this way the deficit market value of Rs-1,25,000/- regarding the deficit stamp of Rs.-1,00,000/-. Accordingly for the recovery of the deficit amount, the sale deed was referred to the Additional Inspector General of Registration, Darbhanga Division vide reference no. 01/2014 dated 19.02.2014 where notice was issued to the petitioner in case no. 60/2013-14 fixing date 24.03.2014, 27.02.2015, 19.03.2015, but the petitioner remained absent and as such order was passed on 30.07.2015."

Hence, from a bare perusal of Section 47-A(3) of the Act, it appears that the Collector can pass *suo motu* order only if it appears from bare perusal of records within two years of registration and not on reference being made by the registering authority under Section 47-A(1) of the Act. Hence, in the present case, a peculiar high-breed procedure has been adopted by Respondent no. 3.

However, this Court is not inclined to give any finding on this issue since the appeal of the petitioner has not been decided on merits. In any view of the matter, the order has been passed by the Respondent no. 3, as contained in Annexure 1, at post-registration stage, whereas, such order can be passed on reference under Section 47-A(2) of the Act, only if the instrument has not rightly set forth the market value of the property or if it is higher than the estimated value. Hence, this Court treats the order passed by the Respondent no. 3 as an order passed under Section 47-A(2) of the Act though there is no provision of appeal under the Act but Rule 16 stipulates that order can be passed if an appeal is preferred against the order passed under 47-A(2) and 47-A(3) of the Act. Hence, in the present case, the petitioner is not required to deposit 50% amount of the payable deficient stamp duty, as prescribed under Section 47-A(6) of the Act which is mandatory if appeal is preferred.

The issue was considered by a Single Bench of this Court in the case of Anand Bhushan Vs. The State of Bihar and Ors. (CWJC No. 10002 of 2013) disposed of on 8.1.2015, wherein it has been held that the appeal preferred against the order passed under sub-sections (2) of Section 47-A of the Act under Rule 13, the person concerned has not to deposit 50% amount of the payable deficient stamp duty chargeable on the market value of the property as the same is applicable only when the appeal is against the order passed by the Collector under sub-section (3) of

Section 47-A of the Act. Relevant portion of the order reads as follows:

> "Considering the statutory provisions underlying 'the Act' and 'the Rules' framed thereunder it would manifest that the legislature has been conscious in mandating a pre-deposit of appellate fee, limited to appeals preferred against an order passed in exercise of *suo motu* powers vested under section 47-A (3) of 'the Act' and has consciously exempted the appeals preferred against an order passed under section 47-A (2) of 'the Act' on a reference, from any such liability. 'The Rules' framed for carrying out the purpose of section 47-A of 'the Act' in its rule 13 again while listing the documents to accompany an appeal, does not make any mention regarding deposit of any appellate fee. The circumstances thus which manifests from the plain reading of the statutory provisions is that whereas in case of an appeal preferred against an order passed by the Collector in exercise of powers vested under section 47A(3) of 'the Act', the appellant is required to deposit 50% of the determined deficit stamp duty amount but in cases where the document is yet to be registered and has been referred to the Collector for determination of market value of such property as well as the duty payable thereon under section 47A(1) and (2) of 'the Act', there is no statutory requirement of pre-deposit of 50% of the deficit stamp duty and such appeals

have been exempted from payment of any appellate fee.

The statutory authorities being creatures of the statute under which they function, they are bound to act within the parameters of the statute and cannot impose any condition or create any liability which is foreign to the enactment."

The order of the learned Single Judge came to be challenged by the State of Bihar in LPA No. 815 of 2015 (The State of Bihar and Ors. Vs. Anand Bhushan and Anr.) and a Division Bench of this Court upheld the order of the learned Single Judge in following manner:

"A perusal of Section 47-A as inserted by Bihar Finance Act, 2008 shows that sub-section (6) contemplates that before filing an appeal under sub-section (4), the aggrieved party shall deposit 50% amount of the payable as deficient stamp duty. The provision under sub-section (4) provides that any person aggrieved by an order of the Collector under sub-section (3) may appeal to the Commissioner concerned. The order under sub-Section (3) is passed by the Collector suo motu within two years from the date of registration of instrument.

The order passed under Sub-Section 2 of Section 47A of the Act is not such an order which warrants deposit of 50% of the deficient stamp duty.

> In the present case, the Collector has not exercised suo motu jurisdiction after registration of the instrument but it was the Registering Authority who at the time of registration of the document found that the instrument is undervalued. Therefore, the reference was made under sub-section (1) of Section 47-A of the Act. Such proceedings lead to an order under sub-section (2) of Section 47-A of the Act and such provision does not contemplate pre-deposit of 50% deficient stamp duty.
>
> In view thereof, we do not find any error in the order passed by the learned Single Bench which may warrant interference in the present Letters Patent Appeal and is accordingly, dismissed."

In view of the discussions made above, since this Court, prima facie, holds that the order impugned has been passed by Respondent no. 3 under Section 47-A(2) of the Act, as a result, the petitioner is not required to deposit 50% amount of the payable deficient stamp duty as prescribed under Section 47-A(6) of he Act.

Accordingly, the order of the Collector dated 30.7.2015 and the order dated 31.8.2016 passed by the appellate authority are set aside. The appeal of the petitioner is restored. The learned Commissioner, Darbhanga Division is expected to pass a fresh order in appeal in accordance with law.

This writ application is, accordingly, allowed.

(Dinesh Kumar Singh, J)

Amrendra/-Anil/

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	