IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.962 of 2012
IN
Civil Writ Jurisdiction Case No. 7782 of 2006

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Islamia Educational & Social Welfare Trust, Siwan At M.M. Nagar Colony, P.O. And P.S.- Siwan, District- Siwan, Through Its Secretary Ansar Amin Nourani S/O Md. Aminullh Nourani R/O Village- Naya Kila Nawalpur, P.O. & P.S.- Siwan, District- Siwan

.... Appellant

Versus

1. The State Of Bihar
2. The Commissioner, Saran At Chapra, District- Saran
3. Assistant Inspector General Of Registration Department Government Of Bihar, Patna
4. The Collector, Siwan, District- Siwan
5. The District Sub-Registrar, Siwan, District- Siwan

.... Respondents

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Appearance :

For the Appellant/s : Mr. Ranjeet Kumar, Adv.
Mr. Dilip Kumar, Adv.

For the Respondent/s : Mr. Nirbhay Prashant, AC to SC-17

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date: 10-04-2018

This appeal under Clause 10 of the Letters Patent of the High Court of Judicature at Patna arises from the judgment and order of the learned Single Judge dated 21.4.2011 passed in C.W.J.C.No. 7782/2006, whereby upholding the order put to challenge, the writ petition was dismissed.

Before we express our opinion on the merits of the appeal we deem it proper to briefly deal with the issues raised in the writ petition.

18 sales deeds were executed by the respective land holder situated in the district of Siwan in favour of the petitioner, the details of which finds mentioned in paragraph 5 of the writ petition. The District Sub Registrar exercising jurisdiction under proviso to sub-section (1) of Section 47-A of the Indian Stamp Act, 1899 (hereinafter referred to as 'the Act') expressing dissatisfaction on the valuation of the land(s), referred the matter to the Collector for determination of the market value of the land(s) leading to equal number of reference cases. The Collector, Siwan exercising jurisdiction under section 47-A(2) of 'the Act' while upholding the objection constituted an Enquiry Committee who submitted their report with an assessment of valuation at Rs.2500/- per katha. The Collector accepted the report and determined the valuation in exercise of powers so vested at Rs.2500/- per katha. Feeling aggrieved the petitioner moved the Commissioner, Saran Division but his appeal was dismissed. These facts are undisputed and together with the orders so passed, are enclosed in the writ petition.

The matter put at rest with none complaining, that the petitioner was served with a notice issued by the Commissioner, Saran Division in Registration Appeal No. 112/2005-06 initiated at the instance of the Assistant Inspector General, Registration. Even though there were 18 sale deeds put up under reference before the Collector by the District Sub Registrar giving rise to equal number of reference cases and accordingly, carried opinion of the Collector thereon with 18 appeals being preferred by the petitioner feeling aggrieved by such valuation, yet by a single appeal, the Assistant Inspector General, Registration chose to question the opinion of the District Collector in determining the valuation.

Be that as it may, the Commissioner, Saran Division vide judgment and order passed on 15.4.2006 in reversal of his earlier opinion, proceeded to allow the appeal and enhance the earlier valuation given by the District Collector to value the lands at Rs.9480/- per katha. Be it noted that this exercise had been initiated simply on an audit objection raised by the Accountant General and without holding any fact finding enquiry thereon rather it is riding on the opinion of the Accountant General that the appeal was preferred and has been upheld. Such is the stand of the writ petitioner and not contested. It is feeling aggrieved by the order of the Commissioner passed in Registration Appeal No. 112/2005-06 that the petitioner came before this Court through the writ petition in question and which has been dismissed and feeling aggrieved he is before this Court in this Intra-Court appeal.

We have heard Mr. Ranjeet Kumar, learned counsel appearing for the appellant- writ petitioner and Mr. Nirbhay Prashant, learned AC to SC-17, for the State.

Mr. Ranjeet Kumar besides questioning the order of the Commissioner on absence of jurisdiction under 'the Act' to reopen concluded proceedings, submits that the State realizing the lapse and appreciating the legal position existing, has chosen to move the Board of Revenue under section 56 of 'the Act' giving rise to Stamp Act Appeal No. 29/2009. He submits that in view of the self realization by the State as to the lack of jurisdiction in the Commissioner to reopen concluded proceeding and to prefer the Stamp Act Appeal under section 56 of 'the Act', the order of the Commissioner itself had become non est for obviously there could not be two separate orders on the same issue. It is submitted that though this position was placed on record by the petitioner through rejoinder to the counter affidavit filed on 20.4.2011 but the learned Single Judge has failed to appreciate the consequences thereof and to dismiss the writ petition. He informs that the appeal filed by the respondents before the Board of Revenue is against the same order of the Collector at Annexure 3 which had already been questioned by the petitioner before the Commissioner earlier but was dismissed vide Annexure 4. It is submitted that the appeal has been adjourned sine die by the Board of Revenue by virtue of pendency of the present proceedings.

Learned counsel for the State even while supporting the order passed by the Commissioner is not in a position to justify its sustainability in view of legal recourse taken by the State before the Board of Revenue in filing a Stamp Act Appeal. He is also not in a position to satisfy this Court as to the source of power in the Commissioner and the foundation thereof to exercise powers to reopen proceedings which stood concluded by dismissal of the appeal on 16.3.2004 preferred by the writ petitioner as against the valuation of the Collector which order has been enclosed at Annexure 4 to the writ petition.

We are not persuaded to hold ourselves to any further discussion because the order passed by the Commissioner is wholly without jurisdiction, inasmuch as he has neither powers vested to review his order nor there is any provision present in 'the Act' which enables him to suo moto review his own order. The order of the Commissioner thus is an order without legal sanction, not backed by any provision and suffers from serious jurisdictional error. We would stop here for any opinion by us on the relative merit of the case would prejudice case of either of the parties pending in the statutory appeal before the Member, Board of Revenue. We, thus, refrain ourselves from expressing any opinion on the merits of the exercise as well as on the foundation thereof. Nonetheless we persuaded to hold that confirmation by the learned Single Judge to an otherwise illegal order of the Commissioner which lacks on jurisdiction cannot be sustained and accordingly, while setting aside the judgment and order of the learned Single Judge, we proceed to quash the order of the Commissioner, Saran Division, Chapra dated 15.4.2006 in Registration Appeal No. 112/2005-06 impugned in the writ petition and consequentially the writ petition is allowed.

Since the matter whether or not issue can be reopened remains pending in Stamp Act Appeal No. 29/2009 before the Chief Controlling Revenue Authority, Board of Revenue, Bihar, as observed we reiterate to refrain from expressing any opinion thereon.

The parties would be at liberty to raise all issues as raised herein in the pending appeal before the Chief Controlling Revenue Authority.

The Letter Patent Appeal is accordingly allowed with no order as to costs.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
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