IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1269 of 2019

==

Vikas Kumar Singh, aged about 40 Years, Male, S/O Shri Ram Lakhan Singh, R/o Mohalla-Chandanpura Colony, Civil Line Sasaram, Ward No. 09, P.O. Sasaram, P.S.-Sasaram, District-Rohtas, Bihar.

... ... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Prohibition Excise and Registration Act, Government of Bihar, Patna.
2. The Principal Secretary, Prohibition, Excise and Registration Act, Government of Bihar, Patna.
3. The District Magistrate, Rohtas.
4. The Assistant Inspector General of Registration, District Registration Office, First Floor, Patna Division, Patna.
5. The District Sub Registrar, Sasaram Rohtas.

... ... Respondents

==

Appearance :

For the Petitioner : Mr.Vagisha Pragya Vacaknavi, Advocate.
For the Respondents : Mr.Anil Kr. Sinha, G.A. 1.

==

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER

5 02.04.2019

In this writ petition the challenge being made to the order dated 25.05.2018, passed by The Assistant Inspector General of Registration, Patna Division, Patna, in case No. 20/2018, by which there has been a direction for depositing a sum of Rs. 3,73,234/- towards deficient stamp duty and fine within a period of 60 days, failing which the said amount shall be recovered together with interest @ 5% per month under the provisions of Bihar and Orissa Public Demand Recovery Act 1914, instituting a certificate case before the Collector.

The learned counsel for the petitioner submits that the petitioner purchased 1 ½ Katha (4.68 decimal) of land bearing Plot No. 37 appertaining to Khata No. 11, situated within Mauza Chanauthu, Revenue Thana No. 133, Circle- Sasaram, District-Sasaram from the vendor Ram Sakhi Devi by virtue of registered Sale Deed No. 9579 dated 09.09.2017, making payment of consideration of Rs. 28,13,000/-. The said land is of residential nature. It is further submitted that later on the petitioner learnt about a complaint being made in respect of the said sale-transaction and fine being also imposed upon him. Whereupon he made enquiry in the office of District Sub-Registrar, Rohtas, then came to know about the order under challenge dated 25.05.2018. The copy of the impugned order has not been served upon the petitioner, therefore, he obtained certified copy of the impugned order on 27.11.2018, and has moved before this Court.

It is further submitted on behalf of the petitioner that the petitioner had no knowledge about the case bearing no. 20/2018 instituted in terms of Section 47-A of the Indian Stamp Act, 1899 (hereinafter referred to as 'the Act') as no notice of any kind indicated in the impugned order being received by the petitioner and further there is nothing recorded in the impugned order about the valid service of notice upon the petitioner, therefore, the respondent no.4 wrongly proceeded ex-parte in the matter. So far the valuation of the land assessed and reported by the District Sub-Registrar, Rohtas, is concerned the same is unfounded and being excessive to the actual market value of the land under sale transaction. It is also contended on behalf of the petitioner that while deciding the matter the concerned authority did not follow the procedure prescribed under Section 47-A of the Act which inter-alia prescribes one month notice to the parties for the purpose of their representation in the proceeding, and to hold an enquiry as to determine the market value of the property. While passing the impugned order the procedure as envisaged under Rule 11 of the Bihar Stamp (Prevention of Under Valuation of Instrument) Rules, 1995 (hereinafter referred as to 'the Rules 1995') being not followed, as such the impugned order does not mention the basis for determination of the value of the property by the concerned authority.

The learned counsel for the petitioner lastly submits that mere issuance of notice either by ordinary post or by a registered post cannot *Ipso-facto* draw a presumption of service of notice against a person unless there are reports to substantiate the service of notice.

A counter affidavit has been filed on behalf of the State contending therein that the District Sub-Registrar, Rohtas, made local inspection of the property under transaction and found a double storied building being constructed over the land. Thus the valuation of the land and the building standing thereon being assessed of Rs. 69,01,000.00, hence, the deficient stamp duty of Rs. 3,39,304.00 was calculated. Thereupon, the District Sub-Registrar, Rohtas, referred the matter on 09.12.2017 to the Assistant Inspector General of Registration, Patna Division, in term of Section 47-A of the Act read with Rule 9 (2) and 10 (2) of the Rules 1995 for taking necessary decision. It is further contended that on the basis of reference dated 09.12.2017, the Assistant Inspector General of Registration, Patna Division, Patna, directed the parties to deposit Rs. 3,39,304.00 as deficient stamp duty and Rs. 33,930.00 towards fine, which comes to Rs. 3,73,234.00 within the stipulated period of 60 days.

In paragraph no.10 of the counter affidavit, it has been contended by the respondent that notices were sent to the petitioner vide Letter No. 188 dated 03.02.2018, Letter No.255 dated 20.02.2018, Letter No. 363 dated 15.03.2018 and Letter No. 428 dated 03.04.2018 through registered post as to enable the petitioner to participate/ represent in the pending proceeding before the Assistant Inspector General of Registration, Patna

Division, Patna, however, the petitioner did not appear in the said proceeding. In support of the contention, the letters referred above and the respective postal receipts have been brought on record vide Annexures-B, B/1, B/2, B/3.of the counter affidavit.

Before deciding the issue emerged herein, I must take notice of the relevant provisions of the Indian Stamp Act,1899. Section 47-A of the Act reads as under:-

> **"47-A Instrument of conveyance- (1)** Where the registering officer appointed under the Registration Act, 1908(Act 16 of 1908) while registering any instrument of conveyance exchange, gift, partition or settlement is satisfied that the market value of the property which is the subject matter of such instrument has been set forth at a lower rate than the Guide Line Register of estimate minimum value prepared under the rules under 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:
>
> Provided that where the market value of the property of the instrument described above has been fixed at an amount which is not less than the value prescribed in the Guide Line Register of estimate minimum value prepared under the rules framed under the provisions of this Act, but the registering officer has reasons 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 minimum value, he, after registering instrument, shall refer it by assigning 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 percent 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 of the purpose of satisfying himself as to the correctness of the market value of the property which is 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:

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, it 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 chargeablity 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 actual to 10% (ten percent) amount of the deficient stamp duty.
(8) If an appeal is not filed under sub-section (4) of the Section 47-A, an interest at the rate of 5% (five percent) per month shall be liable on the deficient amount of stamp duty if it is not deposited within sixty days from the date of order passed by the Collector.
(9) If an appeal is filed as prescribed in sub-section (4) of Section 47-A, interest at the rate of 5% (five percent) per month shall be payable from the date of 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 stamp duty is not paid within sixty days from the date of the

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

For the purpose of Section 47-A of the Indian Stamp Act, 1899, in exercise of power conferred under Section 75 of the Act, the State of Bihar has made a Rules i.e., Bihar Stamps (Prevention of Under-Valuation of Instruments) Rules, 1995. Rule 9, 10 and 11 of the said Rules read thus:

'9(1) Instruments in which the value set forth is less than the estimated minimum value indicated in the guidelines Register supplied by the Collector shall be referred by the Registering Officer to the Collector 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 alongwith 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 setforth in the instrument is according to the estimated minimum value indicated in the guidelines register supplied by the Collector 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.

(2) The registering officer shall refer such

instruments to the Collector alongwith Form I referred to in the appendix of rules and maintain a copy of the same in his office as a record.

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.

From bare reading of the aforesaid provisions of the Act, it appears that on receipt of a reference under Sub-Section (1), the authority shall issue notice giving one month's time to the parties for making their representation and before determining the market value he shall hold an enquiry in respect of the valuation of subject matter of such instrument and the stamp duty payable thereon.

Rule 11 of the Rules 1995 prescribes the procedure to be followed under Section 47-A of the Act, which stipulates that in the matter of determination of the market value of the instrument referred by the Registering Officer under Section 47-A of the Act, notice will be given to the every executant and every claimant in whose favour instrument being executed, for the purposes of their representation in the proceedings and as to adduce evidence regarding the value of the property. Before determination of the market value of the subject matter of the instrument, the concerned authority has to consider the objections and representations of the persons to whom notices being given under Rule 11 and further after carefully considering all factors and evidences adduced regarding the value of the property, necessary order shall be passed determining the market value of the properties and duties payable on the instrument. Rule 12 of the said Rules 1995 further stipulates that such order shall be communicated to the parties and the basis on which the market value was arrived at shall clearly indicated in the order. Sub-rule (4) of Rule 12 also provides the factors which require to be considered while determining the market value of the property.

I should also take notice of the provision which prescribes manner of service of notice under rule 11 of the Rule 1995. Rule 19 of the said Rules reads as under.

"19. Manner of service of notice and orders to the parties.- Any notice under rule 11 or order under rule 12 shall be served in the following manner, namely-

(a) In the case of any company, society or association of individuals, whether incorporated or not be served:-

(i) On the Secretary or any Director or other Principal Officer of the Company, Society or Association of individuals as the case may be; or

(ii) By leaving it or sending it by registered post acknowledgement due addressed to the Company, Society or Association of individuals as the case may be at the registered office, or if there is no registered office, then at the place where the Company, Society or Association of individuals as the case may be, carries on business.

(b) In the case of any firm, be served:-

(i) Upon any one or more of the partner; or

(ii) At the Principal place at which the Partnership business is carried on, upon any person having control or management of the partnership business at the time of service.

(c) In the case of a family, be served upon the person in management of such family or of the property of such family in the manner specified in clause (d).

(d) In the case of an individual person be served.-

(i) By delivering or tendering the notice or order to the person concerned of his counsel or authorized agent; or

(ii) By delivering or tendering the notice or order to some adult member of the family; or

(iii) By sending the notice or order to the person concerned registered post acknowledgment due; or

(iv) If none of the aforesaid modes of service is practicable by affixing the notice or order in some conspicuous part of the last known place of residence or business of the person concerned."

Considering the facts and provisions of law referred above, I am the considered opinion that while passing the order made to challenge hereunder contained in Annexure-P/1 to this writ petition, the respondent no. 4 was obliged under law to follow the manner prescribed for service of notice to the parties concerned in terms of Rule 19 of the said Rule 1995, which mentions various mode of service of notice in case of an individual person. In absence of receipt of acknowledgment due of the registered post or any other kind of postal report regarding service of notice, there cannot be a valid presumption of service of notice upon the parties. I further find that the order impugned does not clearly indicate the basis on which the market value was arrived at, which is required to be indicated in the order as per Rule 12 of the said Rules 1995. I also find that no notice being given to the executant by whom the instrument was executed, which has been made necessary in terms of Rule 11(a) (i) of the said Rules 1995. Therefore, accordingly, the order under challenge dated 25.05.2018, passed by Respondent No. 4, is set aside and the matter is remanded back to the Assistant Inspector General of Registration, Patna Division, Patna, for afresh consideration in accordance with law.

The writ application is, accordingly, allowed.

(Sudhir Singh, J)

U.K./-

U			