IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1046 of 2017

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Lalita Devi Daughter of Sri Harendar Jha, resident of Village- Adarsh Gram Kolhua Paigambarpur, P.S.- Ahiyapur, District- Muzaffarpur.

... ... Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Commissioner, Tirhut Division, Muzaffarpur.
3. The Assistant Inspector of Registration, Tirhut Range-cum-Collector, Muzaffarpur.
4. The District Sub-Registrar, Muzaffarpur.
5. The Land Reforms Deputy Collector, Muzaffarpur.
6. The Circle Officer, Muzaffarpur.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Ajit Kumar
For the Respondent/s : Mr.Sajid Salim Khan-Sc25

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 19-09-2019

1. The present writ petition has been filed for quashing the order dated 26.07.2016 passed by the Commissioner, Tirhut Division, Muzaffarpur in Stamp Appeal no. 146 of 2016, whereby and whereunder the appeal of the petitioner has been dismissed and the order passed by the Assistant Inspector of Registration, Muzaffarpur has been upheld. The petitioner further prays for setting aside the order dated 10.06.2016 passed by the Assistant Inspector of Registration, Tirhut range-cum-Collector, Muzaffarpur, whereby and whereunder the petitioner has been directed to deposit the

deficit stamp duty, consequentially, the petitioner has also prayed for setting aside the demand notice dated 15.11.2016 as also the notice dated 19.05.2016.

2. The brief facts of the case, according to the petitioner, are that the petitioner had purchased 44 decimals of land pertaining to *khata* no. 208, *khesra* no. 1674, 1668, 1669 situated as *Mauja*-Dader Kolhua, Block-Kanti, PS-Ahiyapur, District-Muzaffarpur from the vendor namely, Pulice Sahni at a consideration of Rs. 15,00,000/- (Fifteen Lakhs) only. The sale deed for the said purposes was executed on 05.03.2014 and thereafter, the same was presented for registration before the District Sub-registrar, Muzaffarpur, however the registering authority did not register the said sale deed and kept sitting over the same. After lapse of more than two years, the petitioner received a notice dated 29.05.2016 in case no. 38/2016-17 from the office of the Assistant Inspector of Registration, Tirhut range-cum-Collector, Muzaffarpur, whereby and whereunder the petitioner was informed to appear on 10.06.2016 for furnishing reply and her evidence so that the correct market value and applicable stamp duty for the purposes of registration of the sale deed could be determined by the registering authority. Since the petitioner was out of the town, her husband had appeared before

the Assistant Inspector of Registration, Tirhut range-cum-Collector, Muzaffarpur on 10.06.2016, on which date, he was informed that a case has been instituted under the provisions of ***Section 47 A (1) of the Indian Stamp Act, 1899*** for the purposes of realization of deficit stamp duty. The husband of the petitioner had also informed the said Assistant Inspector of Registration that the land in question was "*Do fasla*" (two crops agricultural land) and not "*Vikashseel*" land (developing land), as mentioned in the sale deed, inadvertently, by the deed writer. The registering authority had asked the husband of the petitioner to produce evidence to substantiate his claim, however on the same day, the Assistant Inspector of Registration, Muzaffarpur has passed the impugned order dated 10.06.2016 stating therein that since the category of land in question was stated in the sale deed as "Vikashsheel", the petitioner was required to deposit deficit stamp duty amounting to a sum of Rs. 1,95,120/- as well as penalty totaling to a sum of Rs. 2,14,632/-, within a period of 60 days.

3. The petitioner is stated to have filed an appeal before the Commissioner, Tirhut Division, Muzaffarpur vide Stamp Appeal no. 146 of 2016, for setting aside the order passed by the Assistant Inspector of Registration, Muzaffarpur,

however the same has been dismissed by the impugned order dated 26.07.2016 and thereafter, the petitioner has been noticed to deposit the deficit stamp fees.

4. The learned counsel for the petitioner has submitted that the learned Assistant Inspector of Registration, Tirhut range-cum-Collector, Muzaffarpur has passed the impugned order dated 10.06.2016 by initiating proceedings under Section 47-A (1) of the Indian Stamp Act, 1899. It would be relevant to reproduce Section 47-A (1) & (2) of the Indian Stamp Act, 1899, hereinbelow :-

> *" 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 the proper market value of such 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."*

The learned counsel for the petitioner has further submitted that the Assistant Inspector of Registration, Tirhut range-cum- Collector, Muzaffarpur was obliged under ***Section 47(2) of Indian Stamp Act, 1899*** to hold an inquiry for determining the market value and category of the property in question, which is subject matter of the sale deed under consideration and only after his substantive satisfaction, in reference to the materials collected during the course of inquiry, the Assistant Inspector of Registration, Tirhut range-cum-Collector, Muzaffarpur could have determined the market value of the property and assessed the amount of stamp duty to be paid by the petitioner herein, however the Assistant Inspector of Registration, Muzaffarpur has abdicated his duties by not following the methodology contained in ***Section 47 A of the Indian Stamp Act, 1899,*** for the purposes of determining the market value of the property in question and fixing the stamp duty to be paid for the purposes of registration of the sale deed in question.

5. Though the respondents were directed to file counter affidavit by an order dated 01.08.2019 passed in the present case, however no counter affidavit has been filed, hence this Court, being left with no option, has proceeded to hear the matter on the basis of the materials available on record.

6. *Per contra*, the learned counsel for the respondents has submitted that there is no illegality or infirmity in the impugned orders dated 10.06.2016 passed by the Assistant Inspector of Registration as also the appellate order dated 26.07.2016 passed by the Commissioner, Tirhut Division Muzaffarpur in Stamp Appeal no. 146 of 2016, inasmuch as the land in question has been considered to be a "*vikashseel*" land, as has been stated in the sale deed and accordingly, the stamp duty has been fixed.

7. I have heard the learned counsel for the parties and perused the materials on record and I find from a bare perusal of ***Section 47-A of the Indian Stamp Act, 1899***, specially Sub-clause (2) thereof, that the Assistant Inspector of Registration, Tirhut range-cum- Collector, Muzaffarpur was required to hold an inquiry for the purposes of determining the category and the market value of the land/ property in question

which is the subject matter of the sale deed in question and only after his substantive satisfaction, arrived at by considering the materials so collected during the course of inquiry, he was required to not only determine the market value of the property in question but also determine the stamp duty payable for the purposes of registration of the sale deed in question pertaining to the property in question, however in the present case, the Assistant Inspector of Registration, Muzaffarpur has simply considered the nature of the plot in question as a "vikashseel" land, merely on the basis of the said word written in the sale deed depicting the category of the land, without holding any inquiry in order to find out as to whether the land in question is a "*vikashsheel*" land or "*do fasla*" land, as claimed by the petitioner herein, hence the impugned order dated 10.06.2016 is in teeth of the mandate of the provisions of law contained in ***Section 47-A of Indian Stamp Act, 1899*** and on this ground alone, the impugned order dated 10.06.2016 passed by the Assistant Inspector of Registration, Tirhut range-cum-Collector, Muzaffarpur is fit to be set aside and is accordingly, quashed. Moreover, the husband of the petitioner is said to have appeared before the Assistant Inspector of Registration, Muzaffarpur on the first date of hearing i.e. 10.06.2016 and had sought time for filing evidence as also filing reply and for appearance of his wife, however without waiting for production of evidence or submission of reply on behalf of the petitioner herein, the Assistant Inspector of Registration, Muzaffarpur, on the same day, has passed the impugned order dated 10.06.2016, in violation of the principles of natural justice. It is intriguing as to under what compulsion, the Assistant Inspector of Registration, Tirhut range-cum-Collector, Muzaffarpur was in such a great hurry to pass the impugned order dated 10.06.2016, so as to even bypass the minimum requirement of compliance of the principles of natural justice, hence on this ground as well, the impugned order dated 10.06.2016 is illegal and fit to be quashed. Infact, the impugned order dated 10.06.2016, passed by the Assistant Inspector of Registration, Tirhut range-cum-Collector, Muzaffarpur does not show any application of mind, inasmuch as in a mechanical manner, he has considered the category of the land in question to be "*vikashseel*" since the sale deed mentions the category to be "*vikashseel*" but has not bothered to find out as to whether the said land in question, is "*do fasla*" land or not, as claimed by the petitioner herein by making/ holding an inquiry as per the mandate of ***Section 47-A(2) of the Indian Stamp Act, 1899***.

8. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, the order dated 10.06.2016 passed by the Assistant Inspector of Registration, Tirhut range-cum-Collector, Muzaffarpur is set aside, consequently the appellate order dated 26.07.2016 is also bound to fall, having no legs to stand and is also accordingly, quashed. As a result of quashing of the original order dated 10.06.2016 passed by the Assistant Inspector of Registration, Tirhut range-cum-Collector, Muzaffarpur as also setting aside of the order dated 26.07.2016 passed by the Collector, Tirhut Division, Muzaffarpur in ***Stamp Appeal no. 146 of 2016***, all the consequential actions of the respondents contained in notice dated 15.11.2016 issued by the District Sub-Registrar, Muzaffarpur, the notice dated 19.05.2016 issued by the Assistant Inspector of Registration, Tirhut range-cum-Collector, Muzaffarpur and any other form of coercive steps being taken against the petitioner herein, are also set aside.

It is needless to state that on account of the quashing of the original order dated 10.06.2016 passed by the Assistant Inspector of Registration, Tirhut range-cum-Collector, Muzaffarpur as also the appellate order dated 26.07.2016, passed by the Commissioner, Tirhut Division, Muzaffarpur, the matter in question stands remanded back to the Assistant Inspector of Registration, Tirhut range-cum-Collector, Muzaffarpur with liberty to him to hold an inquiry, grant sufficient opportunity to the petitioner to produce evidence and file her reply as also grant her opportunity of hearing in connection with case no. 38 of 2016-17 and thereafter, pass a just, legal and a reasoned order, after considering the case as put put forth by the petitioner herein and the materials collected by him during the course of inquiry.

9. The writ petition stands allowed to the aforesaid extent.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	14.10.2019
Transmission Date	NA