

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1281 of 2019

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Raj Kumar Sharma Late Krishna Kumar Sharma Resident of Village and P.O.
Shahar Rampur, P.S. Naubatpur, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Revenue and Land Reforms, Patna.
2. The Inspector General of Registration, Govt. of Bihar, Patna.
3. The Collector-Cum- District Magistrate, Patna.
4. The Additional Inspector General of Registration, Patna, Bihar.
5. The District Sub- Registrar, Sub- Registry Office Bikram, District- Patna, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Ms.Prakritita Sharma, Adv.
For the Respondent/s	:	Mr.Rishi Raj Sinha, SC19
		Mr. Saurabh Kumar, AC to SC-19

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 02-08-2022

The present writ petition has been filed for quashing the order dated 29.5.2015, passed by the Additional Inspector General of Registration, Patna, i.e. the respondent No. 4 herein, in Case No. 21/2014 whereby and whereunder by an ex parte order, the reference made by the registering authority regarding valuation and deficit stamp duty has been allowed and the petitioner has been



directed to pay deficit stamp duty to the tune of Rs. 19,48,800/- along with fine of Rs. 1,94,880/-. The petitioner has also prayed for quashing the letter dated 04.06.2015, issued by the respondent No. 4, raising a demand of Rs. 21,43,680/-, upon the petitioner.

2. The brief facts of the case according to the petitioner are that the vendors Rajan Tiwari @ Ajay Kumar and others jointly advertised for the sale of their land at Thana no. 155, computer code-036, khata no. 316, khesra survey plot no. 1164, 1165, 1166, 1167 and 1168, area 1 acre and 56 decimals, equal to nearly 50 khatas, situated in Mauza- Govindpur Selhauri, P.S.-Naubatpur, District- Patna, in pursuance to which the petitioner showed interest and the matter was finalized for sale at the rate of Rs. 12,000/- per katha and accordingly the vendors jointly received a sum of Rs. 2 lakhs in advance as earnest money and executed a deed of Baibeyana (agreement to sell) in favour of petitioner on 10.3.2012. After receiving a sum of Rs. 4,85,000/- out of the total sale



consideration of Rs. 6 lakhs, the vendors refused to execute and register the Sale deed in favour of the petitioner, leading to filing of a Title Suit no. 119/2012 by the petitioner against the vendors, for specific performance of contract.

3. It is the further case of the petitioner that subsequently, a joint compromise petition was filed by the vendors and the vendee on 23.10.2013, in the aforesaid Title Suit no. 119/2012, whereafter a sale deed was presented for being registered in favour of the petitioner on 28.10.2013, pertaining to the aforesaid land, admeasuring an area of 1 acre 56 decimal, for a sale consideration of Rs. 6 lakhs and the description of the nature of property was mentioned therein as agricultural land, alongwith which, the petitioner had paid stamp duty to the tune of Rs. 48,000/-, as per the valuation of the property, whereafter the sale deed in question was also registered by the registering authority on 28.10.2013, as has been categorically stated in paragraph No.1 of the impugned order dated 29.05.2015, passed by the Additional



Inspector General of Registration, Patna.

4. The District Sub-Registrar, Bikram is stated to have referred the matter pertaining to registration of the instrument of the property in question, purportedly under Section 47A(1) of the Indian Stamp Act, 1899, considering the land in question to be a progressive land and entailing levy of higher registration fees, leading to initiation of a case bearing case no. 21/2014, against the petitioner, by the Assistant Inspector General, Registration, Patna, i.e. the respondent No. 4. Thereafter, a notice dated 09.09.2014 was sent to the petitioner, whereafter the petitioner had appeared before the respondent No. 4 and pleaded that the land in question is an agricultural land and the valuation fixed by the Sub-Registrar, Bikram is arbitrary, since he has assigned no reason for considering the said land to be a progressive land. However, without following any procedure, as prescribed under the "Bihar (Prevention of Under Valuation of Instruments) Rules, 1995 (hereinafter referred as the "Rules, 1995"), the respondent No.



4 passed an ex parte order dated 29.5.2015, in case no. 21/2014, accepting the reference made by the District Sub-Registrar, Bikram and determined the value of the property to be a sum of Rs. 2,49,60,000/- as also directed the petitioner to pay deficit stamp duty to the tune of Rs. 19,48,800/- along with fine of Rs. 1,94,880/- within 60 days else an interest would be imposed at the rate of 5% per month on the deficit amount.

5. The learned counsel for the petitioner has submitted that as per the mandate of Section 47A(1) of the Indian Stamp Act, 1899, reference can be made by the Registering authority for determination of the proper market value of the property in question, if he is satisfied that the classification of the property or the measurement of the structure contained in the property is wrong or the market value of the property has been set forth at a lower rate than the Guideline register of Estimated Minimum Value, only before registering the instrument in question, however in the present case, the respondent no. 5 has referred the matter



to the respondent no. 4 after registration of the sale deed on 28.10.2013, hence the said reference itself is bad in law. In this regard, the learned counsel for the petitioner has relied on a judgment, rendered by a coordinate Bench of this Court in the case of Shahnaz Begam vs. The State of Bihar & Ors., reported in 2018(2) PLJR 293.

6. The learned counsel for the petitioner has further submitted that Section 47A(1) of the Indian Stamp Duty Act, 1899 provides that the market value of the property is to be decided on the date of presentation of such document for registration, as per the list of the Govt. estimated minimum market rate fixed per decimals. In the present case, the rate of agricultural land at Thana-Govindpur Selhauri was prescribed @ Rs. 65,000/- per decimal for the period 01.04.2011 to March, 2012, however, no rate was prescribed for the period of 01.04.2012 to 31.03.2013 and 01.04.2013 to 31.03.2014. Thus, it is the case of the petitioner that without making any inquiry with regard to the nature of the land, the Sub-Registrar,



Bikram, Patna has fixed the nature of the land in question to be progressive and further the respondent No. 4, without compliance of any of the provision contained in the Rules, 1995, has accepted the valuation so fixed by the Sub-Registrar and passed the impugned order dated 29.05.2015, which is arbitrary, illegal and bad in law, hence not sustainable in the eyes of Law. It is also submitted that Rule 6 of the Rules, 1995 was amended vide Amendment Rules, 2013 on 26th March, 2013 i.e. 7 months before the presentation of the instrument in question and the same deals with the process of fixation of estimated minimum market value which is to be fixed on the recommendation of the District Valuation Committee which functions under the guidance and supervision of the Central Valuation Committee at State level, however, the District Valuation Committee, as far as the present case is concerned, for the first time, after the aforesaid amendment, decided the nature and extent of progressive land on 30.9.2014, which is not



applicable to the case of the petitioner, in terms of the provisions contained in Section 47A of the Indian Stamp Act, 1899, since the petitioner presented the document for registration on 28.10.2013 and the reference was made on 01.09.2014. In this regard, the learned counsel for the petitioner has relied on a judgment, rendered by this Court in the case of Prashant Kumar Mahensaria vs. The State of Bihar & Ors., reported in 2019 (3) PLJR 1094.

7. The Ld. Counsel for the petitioner has also contended that a bare perusal of Annexure-5 series to the writ petition would show that no circle rate for agricultural land was fixed on the date of presentation of the instrument in question thus, the petitioner cannot be saddled with the burden to pay deficit stamp duty, fixed arbitrarily without any basis, by changing the nature of the land. It is further contended that a bare perusal of Annexure-7 to the writ petition, issued by the three men committee of the District of Patna, would show that the process of fixation, which has to be undertaken



every year after the amendment was made in the Rules, 1995, in the year 2013, is being followed by the Committee, however, its decisions as also the circle rates being fixed by it are being ignored, not only by the District Sub-Registrar but also by the authority deciding the cases, upon reference. It is thus submitted that the impugned order dated 29.05.2015, passed by the respondent No. 4 is contrary to law and fit to be set aside.

8. Per contra, the learned counsel for the Respondents has submitted that the land in question falls under the category of progressive developing land, hence, the Assistant Inspector General, Registration Patna, vide order dated 29.05.2015, has rightly calculated the deficit stamp duty to be a sum of Rs. 19,48,800/-, hence, there is no illegality in the said order dated 29.05.2015. It is also submitted that the petitioner could have filed appeal against the impugned order dated 29.05.2015, as is provided for under Section 47A of the Indian Stamp Act, 1899. Lastly, it is submitted that the Sub-Registrar, Bikram



under the prescribed format had referred the matter under Section 47A (1) of the Act, 1899, read with Rule-9(2) and 10(2) of the Rules, 1995 to the respondent No. 4 for taking proper action in respect of realization of deficit stamp duty amounting to a sum of Rs. 19,48,800/-, whereafter, the respondent No. 4 had initiated the aforesaid case no. 21/2014 and has, by the impugned order dated 29.05.2015, directed the petitioner to pay the deficit stamp duty to the tune of Rs. 19,48,800/- along with penalty of a sum of Rs. 1,94,880/-.

9. I have heard the learned counsel for the parties and gone through the materials on record. At the outset, it would be relevant to reproduce Section 47A (1) of the Indian Stamp Act, 1899 (as amended by the Indian Stamp (Bihar Amendment) Act, 2013, published in the gazette on 03.05.2013, herein below:-

" (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."

10. It is apparent from a bare perusal of Section 47A(1) of the Indian Stamp Act, 1899 that the registering authority can only refer the matter before registering the document in question to the Collector / the Assistant Inspector General, for determination of the proper market value of such property and the duty payable thereon. As far as the present case is concerned, it is an admitted fact that the sale deed in question was registered on 28.10.2013, in the office of the Sub-Registrar, Bikram, however, the same was referred by the Sub-Registrar, Bikram to the respondent No. 4



under Section 47A(1) of the Indian Stamp Act, 1899 only on 01.09.2014 i.e. after lapse of about 11 months of registration of the sale deed in question, which in any view of the matter is illegal & contrary to the provisions contained in the Act, 1899.

11. This Court further finds that if at all any proceeding is required to be initiated after registration, the same can be done by the Collector / Assistant Inspector General Registration, who can suo motu, within two years from the date of such registration, under Section 47A(3) of the Indian Stamp Act, 1899, 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, however, this is not the case here, inasmuch as in the present case, the Sub-Registrar, Bikram has made a reference to the Assistant Inspector General, Registration, Patna vide letter dated 01.09.2014, after the registration of the sale deed on 28.10.2013, thus there is a clear contravention of Section 47A(1) of the Indian Stamp Act, 1899. This Court is of the view that the present case is



squarely covered by the law laid down by a coordinate Bench of this Court in the case of Shahnaz Begam (supra), which the Ld. State counsel has not been able to controvert. It would be apt to reproduce paragraphs no. 6 to 9 of the said judgment herein below:-

"6. It, thus, follows that the Registering Authority can only refer the matter before registering it to the Collector for determination of the proper market value of such property and the proper duty payable thereon. In the present case, it is quite clear that the registration was already effected and it was only thereafter that the reference was made to the Collector/AIG Registration for determination of the correct value. Furthermore, if at all, a proceeding was to have been initiated after registration by the Collector suo motu within the provisions of Section 47A(3), the same could have been done within a period of two (2) years from the date of registration of such instrument already referred to him under Sub Section (1). Provisions as stated in Section 47A(3) is as follows:-

“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 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).”

7. It appears from the counter affidavit filed that it is not a proceeding initiated rather it was a reference to the Collector under Section 47A (1).

8. In that view of the matter, since the



provisions clearly state that such enquiry can be made only before registering it to the Collector for determination of the proper market value of such property and the proper duty payable thereon. The entire reference is made against the statutory provisions and cannot be sustained in the eye of law. Thus, in the considered opinion of the Court, the impugned order dated 16.05.2016 as contained in Annexure-4 is wholly illegal and arbitrary and has to be quashed.

9. Accordingly, the impugned order dated 16.05.2016 as contained in Annexure-4 stands quashed. The writ application is allowed. No costs."

12. Though the impugned order dated 29.5.2015, passed by the respondent No. 4 is fit to be quashed on the aforesaid ground alone, however, this Court finds that yet another illegality has been committed by the respondents inasmuch as the Assistant Inspector General, Registration, Patna has passed the impugned order dated 29.05.2015 in haste i.e. without either calling for a report from the concerned Circle Officer with regard to the nature / category of the land in question or without complying with the provisions contained in Rule 5



and Rule 6 of the Bihar Stamp (Prevention of Under Valuation of Instruments) Rules, 1995 inasmuch as estimated minimum market value had not been fixed since there was no recommendation of the District Valuation Committee prior to 30.9.2014 as is apparent from Annexure-7 to the writ petition and prior to 30.09.2014, the minimum market rate of agricultural land at Thana- Govindpur Selhauri was prescribed @ Rs. 65,000/- per decimal for the period 01.04.2011 to March, 2012, however, no rate was prescribed for the period of 01.04.2012 to 31.03.2013 and 01.04.2013 to 31.03.2014, hence, the order dated 29.5.2015, passed by the Assistant Inspector General, Registration, Patna, is fit to be set aside on this ground as well. This aspect of the matter is squarely covered by the judgment rendered by this Court in the case of Prashant Kumar Mahensaria (supra), paragraphs No. 5 to 9 whereof are reproduced herein below:-

"5. I have heard the learned counsel for the parties and perused the materials on record. At this juncture, it would be relevant to reproduce Rule 5 of the Bihar Stamp



(Prevention of Under Valuation of Instruments) Rules, 1995 herein below:-

“5. Guidelines register of minimum value.- For the purpose of assisting the Registering Officer in finding out actual market value of properties (as accurately as may be possible) the District Sub-Registrar within the area of his district shall after classifying the lands of rural or urban area prepare a register showing estimated minimum value of the land/ properties of the category as per procedure laid down in Rule 6”.

6. Rule 6 of the aforesaid Rules, 1995 prescribes the process for fixation of estimated minimum market value in every district on the recommendation of District Valuation Committee established for this purpose under the chairmanship of the Collector of the district which in turn functions under the overall guidance and supervision of Central Valuation Committee constituted at State level.

7. Admittedly, in the present case, the minimum valuation register, as prescribed under Rules 5 and 6 of the Bihar Stamp (Prevention of Under Valuation of Instruments) Rules, 1995, does not prescribe any rate in the category of irrigated/



agricultural land of Nagar Panchyat, Gogri, however, according to the petitioner, the minimum valuation register pertaining to Mauza-Jamalpur (Annexure-1/A to the writ petition) shows the rate of irrigated land under the district of Jamalpur whereas on the other hand, the respondents have relied upon a letter dated 02.04.2012 issued by the Circle Officer, Gogri wherein the land in question along with other Khesras have been shown as "NAC" i.e. non-agricultural/ commercial lands and, accordingly, the rate has been decided on the basis of commercial rate prescribed for Ward No.12 in the MVR. This Court finds that the respondent no.2 in the impugned order dated 27.01.2016 has nowhere referred to the aforesaid letter of the Circle Officer, Gogri dated 02.04.2012 which, in fact, is a general letter showing various khesras to be either nonagricultural or commercial land or agricultural/ irrigated land, hence the respondents cannot be permitted to improve their case by supplementing their arguments by way of the counter affidavit filed in the present case and introducing the said letter of the Circle Officer dated 02.04.2012, for the simple reason that an order has to be judged on its own merits, considering the contents thereof. Therefore, this Court finds that the



respondent no.2, in the impugned order dated 27.01.2016, though has referred to the letter/report of the Circle Officer, Gogri dated 05.03.2014 showing the land in question to be “do fasla irrigated land”, submitted in response to the letter of the District Sub-Registrar, Khagaria calling for a report from him regarding the nature and category of the land in question, but he has failed to rely upon the same and instead has relied upon the opinion of the Registration Officer to the effect that the land in question is situated in Nagar Panchayat Ward No.12.

8. Admittedly, there is no categorization of the land in question i.e. as to whether the said land is irrigated/ agricultural land or urban land or non-agricultural land or commercial land. The respondents, in their counter affidavit, have shown the land in question as belonging to the category of “commercial/ residential”, which is not decipherable, in as much as a plot of land cannot be both commercial and at the same time residential. This position has been stated in paragraph-9 of the counter affidavit filed on behalf of the respondent nos. 3 and 4. Thus, this Court finds that there has been neither any fixation of estimated market value of the plot in question nor there has



been any categorisation of the irrigated/ agricultural plots of Nagar Panchayat, Gogri District Khagaria. Moreover, this Court finds that the impugned order dated 27.01.2016 does not show that the respondent no.2 has conducted any enquiry before passing the said order, in compliance of the provisions as contained in Section 47(A)(ii) of the Indian Stamp Act, 1899. Lastly, this Court is of the opinion that the impugned order dated 27.01.2016 is cryptic and does not show any application of mind by the respondent no.2 in declaring that there is deficit stamp duty of Rs. 25,01,868/-, which is recoverable from the petitioner herein.

9. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, the writ petition is allowed and the order dated 27.01.2016 passed by the respondent no.2 is quashed,.....".

13. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, this Court finds that the order dated 29.05.2015, passed by the Assistant Inspector General of Registration, Patna, is illegal and contrary to law, hence, the same is quashed.



Accordingly, all the consequential action taken by the respondent authorities are also declared to be null and void.

14. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	5.9.2022
Transmission Date	NA

