IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8466 of 2018

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Vijay Kumar Son of Ramji Prasad, Resident of Village- Tikulia, Post Office Police Station- Chanpatia, District- West Champaran.

... ... Petitioner/s

Versus

1. The State of Bihar through the Inspector General of Registration, Bihar, Patna
2. The Inspector General of Registration, Bihar, Patna.
3. The Assistant Inspector General of Registration, Tirhut Division, Muzaffarpur.
4. The District Registrar-cum-the Collector-cum-District Magistrate, West Champaran, at Bettiah.
5. The District Sub Registrar, Bettiah, West Champaran.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Akhileshwar Kumar Shrivastva, Advocate

For the Respondent/s : Mr.Vikash Kumar- SC11

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 08-08-2022

The present writ petition has been filed for quashing the order dated 30.01.2016, passed by the respondent no. 3 i.e. the Assistant Inspector General of Registration, Tirhut Division, Muzaffarpur in Case no. 265 of 2014-15, whereby and whereunder the respondent no. 3, by an *ex-parte* order, has directed the petitioner to deposit additional stamp duty to the tune of Rs. 24,882/- in connection with registration of sale deed dated 27.07.2007.

2. The petitioner has also prayed for quashing of the notice dated 14.03.2016, issued by the respondent no. 5 i.e. the District

Sub Registrar, Bettiah, West Champaran, whereby and whereunder the petitioner has been directed to not only deposit the aforesaid additional stamp duty and fine but has also been directed to deposit a sum of Rs. 5700/- for validation of the sale deed as well as a sum of Rs. 475.00 for SALAMI TALBANA.

3. The brief facts of the case are that on 27.07.2007, the petitioner purchased the land appertaining to Khata no. 262/1218, Khesra no. 2137, area 13.25 decimal, nature of land agricultural, situated in village-Tikuliya, P.S. Chanpatiya, from one Kedar Prasad after paying the consideration amount of Rs. 47,000/- for which stamp duty of Rs. 3,940/- was paid, as per the prevailing rate in the year 2007, whereafter, the said sale deed was registered and handed over to the petitioner by the respondent no. 5. The petitioner had then got the mutation done with regard to the aforesaid land in question and since then, he has been paying rent to the State of Bihar. It is the further case of the petitioner that suddenly, after 07 years of the date of registration of the aforesaid sale deed, the respondent no. 5 started an inquiry with regard to the nature of the land in question, as to whether the same is agricultural or residential in nature, whereafter he came to a finding that the land in question is a residential land valued at Rs. 3,32,000/-, for which, as per

MVR, stamp duty of Rs. 22,620/- was required to be paid, hence the respondent no. 5 sent the inquiry report, to the said effect, to the respondent no. 3 for passing appropriate orders and realizing the deficit stamp duty. After receipt of the said inquiry report, the respondent no. 3 initiated a case bearing Case no. 265 of 2014-15 and allegedly, issued notices to the petitioner vide letter dated 18.01.2016 under ***Section 47(A) of the Indian Stamp Act, 1899*** (hereinafter referred to as the "Act, 1899"), which was never served upon the petitioner. It is also submitted that after 11 days of issuance of the said notice dated 18.01.2016, the respondent no. 3 passed an *ex-parte* order dated 30.01.2016, directing the petitioner to pay additional stamp duty to the tune of Rs. 22,620/- and a fine of Rs. 2,262/- within 60 days, failing which the same was directed to be realized with interest @ 5% per annum.

4. The learned counsel for the petitioner has submitted that neither the petitioner was issued notice by the respondent no. 5, before holding inquiry with regard to the nature of the land in question nor any notices have ever been served upon the petitioner pertaining to the aforesaid case no. 265 of 2014-15 and an *ex-parte* order dated 30.01.2016 has been passed by the respondent no. 3 in haste i.e. just after 11 days of the alleged

issuance of notice dated 18.01.2016. The learned counsel for the petitioner has referred to ***Section 47(A)-(1) and (3) of Act, 1899***, which is reproduced hereinbelow :-

> *"47-A (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.*
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> *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 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 such 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.

47-A (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 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 Bihar Stamp (Bihar Amendment) Ordinance, 1986.”*

5. It is thus submitted by the Ld. Counsel for the petitioner that reference can be made by the Registering Officer 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. 3 not only after registration of the sale deed on 27.07.2007 but after 07 years on 21.01.2015, hence the said reference itself is bad in law. It is also submitted by referring to ***Section 47-A (3) of the Act, 1899*** that the higher authority of the registration department can also *suo motu* call for and examine the instrument in question for the purpose of satisfying itself regarding the correctness of the market value of the property, which is the subject matter of such instrument and the duty payable thereon, within a period of two years from the date of registration, however in the present case, the said period has also stood expired, hence the respondents could not have enhanced the stamp duty duly paid by the petitioner at the time

of registration of the sale deed on 27.07.2007.

6. In this connection, the petitioner has referred to a judgment rendered by the learned Division Bench of this Court, reported in ***2018 (3) PLJR 136 (The State of Bihar and others v. Smt. Tetra Devi)***, paragraphs no. 14 and 15 whereof, are reproduced hereinbelow :-

> *"14. In the present case, it is the Collector who has issued notice on the ground that the document registered is deficient in stamp duty. He might have issued notice on the report of the Sub-Registrar or the Commissioner. The fact remains that he is exercising his suo motu power. Such notice could be issued only within two years of the registration of the document. Even if it is to be examined that the notice was issued at the instance of the Sub-Registrar, then the Sub-Registrar was bound to act at the time of registration of the document in terms of Rules 9 and 10 reproduced above. He cannot make recommendation after long delay, particularly when the officer registering the document has not made any reference at the time of registration of the document*
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> *15. Thus, we find that initiation of proceedings by the Collector suffers from patent illegality and has been rightly set aside by the learned Single Judge. We do not*

find any reason to interfere in the order passed by the learned Single Judge in the present Letters Patent Appeal."

7. The Ld. Counsel for the petitioner has also 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 paragraphs no. 6 to 9 whereof are reproduced 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 ofsuch 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."

8. *Per contra*, the learned counsel for the respondents has

submitted that the sale deed in question was registered on 27.07.2007, wherein the nature of land was mentioned as agricultural land. Subsequently, on 25.04.2014, one Pramod Singh had filed a written complaint before the District Sub-Registrar, Bettiah as well as before the Assistant Inspector General of Registration, Tirhut Division, Muzaffarpur, mentioning therein that the land in question is residential in nature, whereupon the Sub-Registrar had made an inquiry and vide letter dated 21.02.2015 had referred the deed in question, under ***Section 47-A(1) of the Act, 1899,*** to the Assistant Inspector General of Registration, Tirhut Division, Muzaffarpur i.e. the respondent no. 3, who had instituted Stamp Case no. 265 of 2014-15, whereafter he had, upon granting opportunities, passed an order dated 30.01.2016 directing the petitioner to deposit deficit stamp duty of Rs. 22,620/- with penalty of Rs. 2, 262/-. It is also submitted that though notices were issued to the petitioner but he did not appear before the respondent no. 3 to contest the case in question. It is further submitted that the respondent no. 3 has rightly calculated the deficit stamp duty to be paid by the petitioner.

9. I have heard the learned counsel for the parties and perused the materials on record. Upon a query being put to the

learned counsel for the respondents as to whether reference under ***Section 47-A(1) of the Act, 1899*** can be made for determination of the classification of the property, after the instrument has been registered, as has been done in the present case, the answer is in the negative. Admittedly, in the present case, a reference has been made by the respondent no. 5 on 21.02.2015, whereas the deed in question had stood registered on 27.07.2007, hence, admittedly, the respondent no. 5 had no authority/jurisdiction to refer the matter after lapse of about 07 years to the respondent no. 3 under ***Section 47-A(1) of the Act, 1899***. In any view of the matter, even the respondent no. 3 has got no power to *suo motu* review the amount of stamp duty, paid at the time of registration after a lapse of 02 years. In fact, the present case is squarely covered by a judgment rendered by the learned Division Bench of this Court in the case of ***Tetra Devi (supra)*** as also by a judgment rendered by a coordinate Bench of this Court in the case of Shahnaj Begam (supra). Thus, this Court finds that the action of the respondent no. 5 as also that of the respondent no. 3 is not only arbitrary and perverse but also against the mandate of ***Section 47-A of the Act, 1899***, hence the impugned order dated 30.01.2016, passed by the respondent no. 3 as also the consequential order dated 14.03.2016, passed by the respondent no. 5 are quashed and the respondents are debarred from proceeding any further in the matter.

10. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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