IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9294 of 2018

Savitri Devi Wife of Shri Swatantra Kumar Gupta Resident of Village 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

Appearance :

For the Petitioner/s	:	Mr.Akhileshwar Kumar Shrivastva, Adv.
		Mr. Amrit Kirti, Adv.
For the Respondent/s	:	Mr.Rewti Kant Raman, AC to SC-11
		Mr. Pyush Kumar Pandey, Adv.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 29-08-2022

The present writ petition has been filed for quashing the order dated 27.4.2017, passed by the Assistant Inspector General of Registration, Tirhut Division, Muzaffarpur whereby and whereunder the petitioner has been directed to deposit deficit stamp duty along with fine totalling to a sum of Rs.

59,224/- in connection with registration of a sale deed, which had taken place on 10.10.2007. The petitioner has also prayed for quashing of the notice issued by the Respondent No. 5 dated 23.5.2017 whereby and whereunder a demand for the aforesaid deficit stamp duty along with validation fees etc. totalling to a sum of Rs. 72,714/- has been raised.

2. The brief facts of the case are that on 9.10.2007, the petitioner had purchased a land, appertaining to Khata No. 536/1222, Khesra No. 2130 area, 36.5 decimal, nature of land agricultural, from one Kedar Prasad, through a registered sale deed no. 15351 dated 10.10.2007, after paying the consideration amount of Rs. 2,62,000/- for which, the requisite stamp duty of Rs. 21,160/- was also paid, as per the prevailing rate of stamp duty in the year 2007 and the said sale deed was registered, whereafter, the same was handed over to the petitioner by the respondent no. 5.

3. It is the further case of the petitioner that

after seven years of registration of the sale deed in question, purportedly upon a private complaint made in the year, 2014, the Respondent No. 5 had initiated an enquiry with regard to the category of the land as to whether the same is agricultural or residential and after conclusion of the said enquiry, he had come to the conclusion that the land in question is not an agricultural land, but a residential land, hence, had valued the said land at Rs. 9,37,500/-, as per the MVR and the requisite stamp duty to be paid, was calculated as Rs. 75,000/-, whereafter he had referred the matter to the Respondent No. 3 under Section 47(A)(1) of the Indian Stamp Act, 1899 on 21.1.2015. The Respondent No. 3 had then initiated a case bearing Case No. 266/2014-2015 and on 18.1.2016, a notice was issued to the petitioner under Section 47(A) of the Indian Stamp Act, 1899. Thereafter, the petitioner had appeared before the Respondent No. 3 and filed his objection, nonetheless, the Respondent No. 3 had passed the impugned order dated 27.4.2017, upholding the reference made by the Respondent No. 5 and had issued a direction to the petitioner to pay additional stamp duty to the tune of Rs. 59,224/-.

4. The learned counsel for the petitioner has submitted that 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. 3 not only after registration of the sale deed on 27.07.2007 but after more than 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 purposes 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. In this connection, it would be apt to refer to Section 47(A)(1) and (3) of the Indian Stamp Act, 1899 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.

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. The learned counsel for the petitioner has referred to two judgments rendered by this Court on the subject matter, one rendered by the learned Division Bench of this Court, reported in 2018(2) PLJR 136 (The State of Bihar & Others vs. Smt. Tetra Devi) and the other, rendered by a coordinate Bench of this Court, reported in 2018(2) PLJR 293 (Shahnaz Begam vs. The State of Bihar & Ors.).

6. Per Contra, the learned counsel for the Respondents has submitted that on 25.4.2014, one Pramod Singh, had filed written complaint before the Sub-Registrar, Bettiah i.e. the Respondent No. 5, alleging therein that the said land in question is residential in nature, whereupon enquiry was held by the Respondent No. 5 and then, he had referred the matter vide reference no. 194 dated 21.2.2015 to the Respondent No. 3, whereupon stamp case no. 266/2014-2015 was initiated and after affording opportunities to the petitioner, he had passed the impugned order dated 27.4.2017, directing the petitioner to deposit the deficit stamp fees to the tune of Rs. 53,840/- along with penalty of a sum of

Rs. 5,384/-

7. I have heard the learned counsel for the parties and gone through the materials on record from which it is clear that a reference can be made under Section 47(A)(1) of the Indian Stamp Act, 1899, with regard to determination of the classification of the property, only before registration of the sale deed in question and not thereafter, as is clear from Section 47(1)(A) of the Indian Stamp Act, 1899 & moreover, this aspect of the matter stands covered by a judgment, rendered by a coordinate Bench of this Court in the case of Shahnaz Begam (supra), as also by the one rendered by the learned Division Bench of this Court in case of Tetra Devi (supra). This Court finds that admittedly, the Respondent No. 5, without any authority or jurisdiction, has referred the matter to the Respondent No. 3, under Section 47(A)(1) of the Indian Stamp Act, 1899, after more than seven years which is itself contrary to the mandate of Section 47(A)(1) of the Indian Stamp Act, 1899. In any view of the matter, even the Respondent No. 3

has got no power to suo motu review the correctness of the market value of the property which is the subject matter of the instrument in question & the duty payable thereon, after a lapse of two years from the date of registration of such instrument.

Consequently, this Court finds that the action of the Respondent No. 3 as also that of the Respondent No. 5 is not only arbitratory but also perverse and illegal and is in the teeth of Section 47(A)(1)&(3) of the Indian Stamp Act, 1899, hence, the impugned order dated 27.4.2017, passed by the Respondent No. 3 and the one dated 23.5.2017 passed by the Respondent No. 5 are quashed and the respondents are debarred from proceeding any further in the matter.

8. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Ajay/-

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