

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23206 of 2018

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Arun Kumar Singh Son of Late Ram Krishna Singh Resident of Village-
Khaprail Chak, P.O. and P.S.-Parsa Bazar, District-Patna, Pin-804453.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Secretary-cum-Inspector General of Registration, Bihar, Patna.
3. The Assistant Inspector General of Registration, Patna Division, Patna.
4. The Collector-cum-District Registrar, Patna.
5. The District Sub Registrar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Bal Bhushan Choudhary, Advocate
For the Respondent/s : Mr.Vivek Prasad, GP-7

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date: 10.11.2022

The present writ petition has been filed for quashing the order dated 13.08.2018, passed by the Assistant Inspector General of Registration, Patna Division, Patna i.e. respondent no. 3 in Case No. 63 of 2018, whereby and whereunder the respondent no. 3 has directed the petitioner to deposit additional stamp duty to the tune of Rs. 7,66,800/-, in connection with registration of sale deed dated 04.04.2018. The petitioner has also prayed for directing the respondent no. 5 to release the registered sale deed no. 3707 of 2018 to the petitioner.

2. The brief facts of the case are that the petitioner



purchased a land from one Shri Ashok Kumar Singh, admeasuring 0.90 acre, appertaining to Plot No. 1249, Khata No. 192, Thana No. 92, situated at village Simara, Circle-Phulwarisharif, District-Patna, after paying the sale consideration amount. The sale deed pertaining to the said land was registered on 04.04.2018, for which stamp duty to the tune of Rs. 5,29,200/- was paid. Nonetheless, the Sub-Registrar, Phulwarisharif, Patna referred the matter relating to registration of the sale deed in question, purportedly under Section 47-A (1) of the Indian Stamp Act, 1899, to the Assistant Inspector General, Registration, Patna Division, on 09.04.2018 i.e. after the sale deed in question had been registered. The Assistant Inspector General of Registration, Patna Division, had thereafter, initiated a case bearing Case No. 63 of 2018, whereafter notices were issued to the petitioner and then the respondent no. 3 has passed the impugned order dated 13.08.2018, directing the petitioner to deposit deficit stamp duty to the tune of Rs. 7,66,800/- plus (+) penalty of a sum of Rs. 76,680/-. The learned counsel for the petitioner has referred to Section 47-A (1) and (3) of the Indian Stamp Act, 1899, which is reproduced herein below:-



“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.”

3. It is thus submitted by the Ld. Counsel for the petitioner that reference can be made by the Registering Officer/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 Sub-Registrar, Phulwarisharif has referred the matter to the respondent no. 3 after registration of the sale deed on 04.04.2018, hence the said reference is itself 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 04.04.2018.

4. 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 vs. Smt. Tetra Devi)**, paragraphs no. 14 and 15



whereof, are reproduced herein below:-

“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.

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.”

5. 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 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."



6. Per contra, the Ld. counsel for the respondent-State has submitted that though the sale deed in question was registered on 04.04.2018, however, the Sub-Registrar, Phulwarisharif had then made a spot inspection as also verified the M.V.R., whereupon he had found that the land in question is residential in nature and its value totals up to a sum of Rs. 2,16,00,000/- and accordingly, he had calculated the deficit stamp duty to the tune of Rs. 7,66,800/-, whereafter, he had referred the matter, under Section 47-A(1) of the Indian Stamp Act, 1899, to the respondent no. 3, who had then initiated a case bearing Case No. 63 of 2018, whereupon he had issued notices to the petitioner and had then passed the impugned order dated 13.08.2018, directing the petitioner to deposit a sum of Rs. 8,43,480/-, as aforesaid.

7. As far as the legal issues raised by the petitioner in the present case is concerned, the learned counsel for the respondent-State has neither been able to controvert the same nor has shown any provision of law, under which the Sub-Registrar, Phulwarisharif had the authority to refer the matter to the Respondent No. 3, though he had stood denuded of any power to make a reference, after registration of the sale deed



in question on 04.04.2018.

8. I have heard the Ld. counsel for the parties and perused the materials on record. This Court had specifically put a query to the Ld. counsel appearing for the respondents as to whether reference under Section 47-A (1) of the Indian Stamp Act, 1899, can be made for determination of the classification of the property & fixation of deficit stamp duty, 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, reference was made by the Sub-Registrar, Phulwarisharif only on 09.04.2018 i.e. after the sale deed in question had already stood registered on 04.04.2018, hence indisputably the Sub-Registrar, Phulwarisharif had no authority/jurisdiction to refer the matter to the respondent no. 3 under Section 47-A(1) of the Indian Stamp Act, 1899.

9. In any view of the matter, now even the respondent no. 3, after a lapse of two years, stands denuded of any power to *suo moto* review/ examine the correctness of the market value of the property which is the subject matter of the instrument in question and the duty payable thereon. 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 ***Shahnaz Begam*** (supra), thus this Court finds that the action of the Sub-Registrar, Phulwarisharif as also the respondent no. 3 is not only arbitrary and perverse but also against the mandate of Section 47-A of the Indian Stamp Act, 1899, hence the impugned order dated 13.08.2018, passed by the respondent no. 3, is quashed and the respondents are directed to hand over the registered sale deed to the petitioner, forthwith.

10. The writ petition stands allowed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	N/A
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