

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6310 of 2019

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Anjani Devi D/o Rajandhari Singh, Resident of Vill- Padari- Bihta, Dist- Patna. At present residing at Shanti Kunj, Road No. 01A, S-1/3 Sheopuri, behind A.N. College Patna- 23. P.S.- Shastri Nagar, Town and 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.Anil Kumar Sinha (GA 1)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
DATED: 17.11.2022

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. 22/2014 whereby and where-under 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. 10,15,040/- along with a fine of Rs. 1,01,504/-. The petitioner has also prayed for quashing the letter dated 04.06.2015, issued by the respondent No. 4, raising a demand of a sum of Rs.



11,16,544/-, upon the petitioner.

2. The petitioner is stated to have purchased a land appertaining to Thana no. 155, Computer Code-036, Khata No. 118, Khesra survey plot No. 1132, 1134, 1135, and Khata No. 70, Khesra survey plot No. 1136, 1137, 1138, 1142 area 26 katha equal to 81.25 Decimals, situated at Mauza-Govindpur Selhauri, Pargana- Baliya, P.S. Naubatpur, Dist.- Patna and with regard to the same, the vendor had jointly received the consideration amount and executed a sale deed in favour of the petitioner on 27.01.2014.

3. 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. 22/2014, against the petitioner, by the Additional Inspector General, Registration, Patna, i.e. the respondent No. 4.



Subsequently, the impugned order dated 29.05.2015 came to be passed by the Respondent No. 4.

4. The learned counsel for the petitioner has submitted that 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, which is in fact agricultural land. It is also submitted that the procedure prescribed under the "Bihar (Prevention of Under Valuation of Instruments) Rules, 1995 (hereinafter referred to as the "Rules, 1995") has also not been followed by the respondent No. 4 while passing the impugned order dated 29.5.2015, in case no. 22/2014, accepting the reference made by the District Sub-Registrar, Bikram and determining the value of the property to be a sum of Rs. 1,30,00,000/-.

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 27.01.2014, 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. 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 Additional Inspector General, Registration Patna, vide order dated 29.05.2015, has rightly calculated the deficit



stamp duty to be a sum of Rs. 10,15,040/-, thus, it is submitted that there is no illegality in the said order dated 29.05.2015. As far as the issue raised by the petitioner to the effect that no reference can be made after registration of the sale deed, the learned counsel for the Respondent State has submitted that if the petitioner was/is aggrieved by the impugned order dated 29.05.2015, he could have preferred an appeal.

7. 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."

8. 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 27.01.2014, in the office of the Sub-Registrar, Bikram, however, reference was made by the Sub-Registrar, Bikram to the respondent No. 4 under



Section 47A(1) of the Indian Stamp Act, 1899 only, thereafter, which in any view of the matter is illegal & contrary to the provisions contained in the Act, 1899.

9. 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 / 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, after the registration of the sale deed on 27.01.2014, 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."*

10. 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 yet another illegality to have 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 registration of the sale deed on 27.01.2014 and prior to 31.03.2014, 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, as is apparent from annexure-5 to the writ petition,



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 vs. The State of Bihar & Ors., reported in 2019(3) PLJR 1094, 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 categorization 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,.....".

11. 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.

It is needless to state that the sale deed in question shall be handed over to the petitioner forthwith, if not already delivered to her.

12. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	31.12.2022
Transmission Date	N/A

