IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22322 of 2014

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Smt. Shail Devi W/o - Shri Akhilesh Singh resident of village- Sipah, P.S.- Basantpur, District- Siwan.

... ... Petitioner/s

Versus

1. The State Of Bihar
2. The Commissioner Saran Division at Chapra.
3. The Collector District Siwan.
4. Assistant Inspector General Registration Saran at Chapra.
5. The District-sub-Registrar-Siwan.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ashok Kumar Singh

For the Respondent/s : Mr.Sc26- Amar Nath Deo

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 30-11-2022

The present writ petition has been filed for quashing the order dated 23.7.2014, passed by the Assistant Inspector General (Registration), Saran Division Chapra, in Stamp Case No. 15/2014, whereby and whereunder the petitioner has been directed to deposit the deficit stamp fees along with penalty to the tune of Rs. 19,08,000/-.

2. The brief facts of the case, according to the

petitioner, are that the donors, namely, Ramnath Singh and Smt. Kailasho Devi, had executed a deed of gift in favour of the petitioner, who is the daughter-in-law of the said donors and in pursuance thereof, the deed of gift was registered by the District Sub-Registrar, Siwan on 5.5.2014.

3. The legal issue raised by the learned counsel for the petitioner for consideration by this Court is that admittedly, the gift deed in question was registered on 5.5.2014, hence, the District Sub-Registrar, Siwan, thereafter, had no authority under the law to refer the matter, pertaining to fresh determination of the market value of the property in question & the duty payable thereon, to the Assistant Inspector General (Registration), Saran at Chapra, inasmuch as admittedly, the District Sub-Registrar, Siwan had referred the matter to the Assistant Inspector General (Registration), Saran at Chapra, vide letter dated 11.6.2014, as has been stated in the impugned order dated 23.7.2014 i.e. after registration of the Gift deed on 5.5.2014.

4. Per contra, the learned counsel for the Respondents has submitted that the order dated 23.7.2014, passed by the Assistant Inspector General (Registration), Saran at Chapra in Stamp Case No. 15/2014 does not suffer any infirmity and has been rightly passed for recovery of the deficit stamp duty, inasmuch as the District Sub-Registrar, Siwan had obtained a report from the concerned C.O., Basantpur to the effect that the land in question is situated besides the State Highway and has got commercial and residential value, hence, the land in question was undervalued by the petitioner for the purposes of registration of the gift deed in question. Thus, it is submitted that the Assistant Inspector General (Registration), Saran at Chapra, has rightly directed the petitioner to deposit the deficit stamp fees, vide order dated 23.7.2014 passed in Stamp Case No. 15/2014.

5. I have heard the learned counsel for the parties and gone through the materials on record from which it is apparent that the District Sub-

Registrar, Siwan had referred the matter to the Inspector General (Registration), Saran Division, Chapra, vide letter dated 11.6.2014, as has been recorded in the impugned order dated 23.7.2014, purportedly under 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], which is reproduced 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."

6. It is apparent from a bare perusal of Section 47A(1) of the Indian Stamp Act, 1899 that the registering authority can refer the matter, only 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 Gift deed in question was registered on 5.5.2014, in the office of the District Sub-Registrar, Siwan, however, the same was referred, by the District Sub-Registrar, Siwan to the respondent No. 4, under Section 47A(1) of the Indian Stamp Act, 1899, only on 11.6.2014 i.e. after lapse of more than one month of registration of the Gift deed in question, which in any view of the matter is illegal and contrary to the provisions contained in the Indian Stamp Act, 1899.

7. 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 District Sub-Registrar, Siwan has made a reference to the Assistant Inspector General (Registration), Saran Division, Chapra vide letter dated 11.6.2014 i.e. after registration of the Gift deed on 5.5.2014, thus there is a clear cut 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 vs. The State of Bihar & Ors., reported in 2018(2) PLJR 293.*** This aspect of the matter has not been controverted by the Ld. State counsel. 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."

8. Having regard to the facts and circumstances of the case, this Court finds that since the District Sub-Registrar, Siwan, vide letter dated 11.6.2014, has referred the matter, purportedly under Section 47A(1) of the Indian Stamp Act, 1899, much after registration of the gift deed in question on 5.5.2014, the said reference is contrary to the provisions contained in Section 47A(1) of the Indian Stamp Act, 1899, hence, the same is bad in law. Consequently, the order dated 23.7.2014, passed by the Assistant Inspector General (Registration), Saran Division, Chapra, being illegal and contrary to law, is quashed. Accordingly, all the consequential action taken by the Respondent authorities are also declared to be null and void.

9. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	3.1.2023
Transmission Date	NA