IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12671 of 2021

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Ravindra Kumar Srivastav Son of Late Bachcha Prasad, Resident of Village-Paroraha, Post Office- Goberaura, Police Station-Sathi Revenue Thana Shikarpur, District-West Champaran at Present resident of Mohalla-Banuchhapar, Police Station-Bettiah Mufassail (Banu Chhapar O.P.) District-West Champaran.

... ... Petitioner

Versus

1. The State of Bihar through the Inspector General of Registration, Government of Bihar, Patna.
2. The Inspector General of Registrar Government of Bihar, Patna.
3. The Assistant General of Registrar, Govt. of Bihar, Patna.
4. The Assistant Inspector General of Registration, Tirhut Division, at Muzaffarpur.
5. The District Registrar-cum-the Collector, District Magistrate, West Champaran at Bettiah.
6. The District Sub-Registrar, Registry Office, Bettiah, West Champaran.
7. The Certificate Officer-cum-Sub Divisional Officer Narkatiaganj, District-West Champaran.
8. Lallan Yadav Son of Sri Babu Lal Yadav, Resident of Village Jamunia, Post Office-Goberaura, Police-Station-Lauria District West Champaran.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Shiv Kumar Dwivedy, Advocate
For the Respondent/s	:	Mr. P.N. Shahi, AAG-6

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 02-08-2022

In the instant application, the petitioner has made the following prayers:-

> "A). To issue an appropriate writ preferably in the nature of Certiorari for setting

aside the order dated 16.05.2016 passed by the Assistant Inspector General of Registrar, Tirhut Division at Muzaffarpur in case no. 78/2015-16 whereby and where under the petitioner has been directed to deposit deficit stamp of worth Rs.47,520 (Forty Seven Thousand Five Hundred Twenty only) alongwith fine, in connection with Registered sale deed dated 16.03.2015, which was registered by Sub-Registrar Bettiah, District West Champaran.

B). To issue an appropriate writ preferably in the nature of certiorari for setting aside the consequential notice dated 10.10.2017 issued by Certificate Officer-cum-Sub Divisional Officer, Narkatiaganj, District West Champaran to deposit Rs.98,890 (Ninety Eight Thousand Eight Hundred Ninety only) in the light of order passed in Case No. 78/2015-16.

C). To hold and declare that the petitioner had deposited sufficient stamp at the time of registration of sale deed dated 16.03.2015.

D). To grant any other relief(s) which the petitioner may be found entitled to in the facts and circumstances of the case."

2. In brief, the case of the petitioner is that he had purchased 3 Katha of land under Khata No. 82, Khesara No. 760, situated at Mauza-Jamunia, Police Station- Lauriya, District- West Champaran at Bettiah through registered sale deed dated 16.03.2015 from Most. Anuja Baranwal @ Pinki after a payment of 1,96,000/-. He sold the aforesaid land to Harinder Yadav and Joginder Yadav, both sons of Late Bharat Yadav, residents of village – Jamunia, Police Station– Lauriya,

District –West Champaran, at Bettiah through registered sale deed dated 12.03.2016 on the same consideration amount of Rs. 1,96,000/-. Subsequently, one Lalan Yadav, son of Sri Babu Lal Yadav, resident of village – Gobraura, Police Station – Lauriya, District – West Champaran, at Bettiah submitted an application before the District Magistrate, West Champaran at Bettiah by which he alleged that on 16.03.2015 sale deed no.4351 had been executed on payment of deficit Court fee. Subsequently, on the order of Assistant Registrar General, Patna, the Sub-Registrar (Registry Office), Bettiah prepared an inquiry report on 25.07.2015 without compliance of Rules 10 & 11 of the Bihar Stamp (Prevention of Under-Valuation of Instruments) Rules, 1995 (for short '1995 Rules') inasmuch as no notice was issued to the petitioner much less in the prescribed form. The inquiry report dated 25.07.2015 is quite vague. There is no detail of contiguous land. The details of shop and its owner has not been mentioned in the inquiry report. The details of hut-met is also not mentioned. Whether it is being used for commercial purpose or not is also not clear.

3. The further case of the petitioner is that the inquiry report does not disclose the name of the persons in whose presence the inquiry was made and who identified the land in

question. Even the complainant Lallan Yadav did not appear during inquiry before the authorities as a witness. On the contrary, the complainant has filed an application on 31.07.2018 stating therein that no such complaint was filed by him. However, the respondent no.4 passed the impugned order without proper notice to the petitioner on presumption that the first notice might have been received by the petitioner.

4. Learned counsel appearing for the petitioner submitted that after receiving a notice from the Certificate Officer -cum- Sub-Divisional Magistrate, Narkatiaganj, West Champaran, the petitioner appeared before him in the month of March, 2018. After inquiring into the matter, he came to know about the Stamp Case No.78/2015-16. Thereafter, he applied for its certified copy on 04.04.2018, which was delivered to him on 23.05.2018. He contended that the impugned order passed by the learned Assistant Registrar, Tirhut is bad in law as the entire proceedings under the Indian Stamp Act, 1899 (for short 'Stamp Act') was made contrary to the provisions prescribed under the Stamp Act and the 1995 Rules. Neither the executant of the instrument nor the claimant in whose favour the instrument was executed nor the complainant who had made the complaint was noticed in terms of Rule 11 of the 1995 Rules in the proceeding

initiated under Section 47-A of the Stamp Act. He contended that in absence of the due process of law having been followed by the respondent no.4, the impugned order dated 16.05.2016 passed by him and the consequential notice dated 10.10.2017 issued by the Certificate Officer-cum-Divisional Officer, Narkatiaganj, District – West Champaran whereby he has raised a public demand of Rs.98,890/- from the petitioner in the light of the order passed in the Stamp Case No.78/2015-16 are bad in law. He urged that the respondent no.4 is not a Collector within the meaning of Section 2(9)(b) of the Stamp Act, as the Assistant Inspector General (Registration) has not been notified as Collector by the State Government. Hence, the impugned order dated 16.05.2016 passed by the respondent no.4 is without jurisdiction.

5. On the other hand, learned counsel for the State submitted that as per the direction of the respondent no.4, on 26.09.2014, the District Sub-Registrar, Bettiah himself had inquired about the authenticity of the Sale Deed No.4351 which was executed in favour of the writ petitioner and had found that the land is commercial in nature and, therefore, Rs.43,200/- had to be paid as the deficit stamp fee. The District Sub-Registrar, Bettiah, West Champaran, on 25.07.2015 referred the matter

under Section 47-A of Stamp Act before respondent no.4 for initiation of stamp case and for recovery of deficit court fee from the petitioner mentioning therein that at the time of execution of the deed stamp fee of Rs.43,200/- had not been paid by the petitioner. Thereafter, the respondent no. 4 issued notice upon the petitioner in Stamp Case No. 78/2015-16 and directed him to remain present in the office on 27.08.2015 at 10:00 AM with all the relevant documents and further directed that if he would fail to appear then the case would be decided on its own merit. The said notice was duly served upon the petitioner. He contended that on 27.08.2015, neither the petitioner nor his advocate appeared nor any Pairvi had been done on his behalf. Thereafter, the respondent No. 4 finally passed the order dated 16.05.2016 and directed the petitioner to pay Rs.43,200/- as additional deficit stamp duty and penalty of Rs.4,320/- that is total Rs. 47,520/- within 60 days otherwise 5 per cent monthly interest would also be recovered and in case of non-payment of the said amount certificate proceeding shall be initiated against him. He contended that even after the service of notice on the petitioner, when he did not choose to deposit the deficit court fee, the Sub-Divisional Officer-cum- Certificate Officer, Narkatiaganj was requested to initiate a certificate case for recovery of a public demand of Rs.98,890. He contended that the entire proceedings were done after complying with the procedure laid down under the law and after giving due opportunity of hearing to the petitioner. He has produced before us the notifications issued by the State Government in order to show that the impugned order passed by the respondent no.4 is not without jurisdiction because he has been notified as Collector.

6. We have heard learned counsel for the parties and carefully perused the record.

7. Sub-section (1) of Section 47-A of the Stamp Act provides the registering officers appointed under the Registration Act, 1908 that 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. Sub-section (2) of Section 47-A of the Stamp Act provides that on receipt of a reference under Sub-section (1), the Collector shall, after giving one month's time to the parties for making their representation and after holding an enquiry determine the market value of the property which is the subject matter of such instrument and the duty as aforesaid. The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty.

9. The proviso to sub-section (2) of Section 47-A of the Stamp Act provides that no such person shall be required to pay any amount to make up the difference, if the differences between the consideration or the market value as set forth in the instruments and the market value determined by the Collector does not exceed 10 per cent of the market value so determined.

10. Sub-Section (3) of Section 47-A of the Stamp Act provides that 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.

11. Sub-section 4 of Section 47-A of the Stamp Act provides that any person aggrieved by an order of the Collector under sub-section (2) or sub-section (3) may appeal to the Commissioner concerned of the administrative division. Such appeal shall be preferred within sixty days of the order and shall be heard and disposed of by the Commissioner.

12. In course of argument, an objection was raised on behalf of the petitioner that respondent no. 4 is not a Collector within the meaning of Section 2(9)(b) of the Stamp Act as the Assistant Inspector General Registrar (Registration) has not been notified as Collector in the official gazette by the State Government.

13. The State has produced before us S.O. No. 140

dated 25th June, 1997 notified in the extraordinary Gazette of the State of Bihar in exercise of powers conferred by Section 2(9)(b) of the Stamp Act whereby the State Government has conferred the powers of Collector to the Inspector of Registration Officers exercisable subject to general or special direction of the Secretary, Registration Department for the districts of their respective jurisdiction from the date of notification in the official Gazette. Subsequently, the State Government has notified all the Assistant Inspector General of the State of Bihar to be Collector in terms of Section 2(9)(b) of the Stamp Act vide Notification no. 102 dated 27.12.2012.

14. In view of the aforesaid notifications, the impugned order passed by the respondent No. 4 cannot be termed to be an order without jurisdiction.

15. In case the order is not without jurisdiction and there is a dispute as to whether notices were duly served upon the parties in terms of Rule 11 of 1995 Rules or not, in the opinion of this Court, the petitioner ought to have resorted to the statutory remedy as provided under sub-section (4) of Section 47-A of the Stamp Act and agitated his grievance before the Commissioner against the order passed by the Collector under sub-section (2) of Section 47-A of the Stamp Act.

16. In view of an equally efficacious statutory remedy being available to the petitioner for the redressal of his grievance, we are not inclined to entertain the present application in extraordinary writ jurisdiction.

17. Accordingly, the writ petition is disposed of with liberty to the petitioner to assail the order passed by the respondent No. 4 before the concerned Commissioner within six weeks from today. In case such an appeal is filed before the Commissioner within the stipulated period of six weeks, the Commissioner shall be required to hear and decide the appeal on merits in accordance with law expeditiously, and preferably within three months from the date of its filing.

(Ashwani Kumar Singh, J)

(Shailendra Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.08.2022
Transmission Date	NA