IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1888 of 2018

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Smt. Kastura Devi Wife of Shri Kanhaiya Prasad, Resident of Village-Bhekas, Post-Akhlaspur, Police Station-Bhabhua, District-Bhabhua. At Present residing at Mohalla-Road No.2, New Colony, Chitragupta Nagar, Police Station-Patrakar Nagar, District-Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Revenue & Land Reforms Department, Government of Bihar, Patna
2. The Deputy Inspector General, Department of Registration, Government of Bihar, Vikas Bhawan, Bailey
3. The Assistant Inspector General, Department of Registration, Government of BIhar, Vikas Bhawan, Bai
4. The Divisional Commissioner, Patna Division, Patna.
5. The Collector-Cum-District Registrar, Patna.
6. The District Sub-Registrar, Patna.
7. The Sub-Divisional Officer, Sadar, Patna.
8. The Circle Officer, Sadar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajesh Kumar Singh, Advocate
For the Respondent/s : Mr.P.N. Shahi- AAG-6
Mr. Manish Kumar, AC to AAG-6

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 16-08-2022

The present writ petition has been filed seeking quashing of the order dated 03.06.1997, whereby and whereunder the District Magistrate, Patna has granted permission for registration, subject to deposit of stamp fees, as recommended by the Sub-Divisional Officer, Patna Sadar. The petitioner has also sought quashing of the appellate order dated 10.10.2017, passed by the learned court of Divisional Commissioner, Patna in Stamp Appeal no. 295 of 2008, whereby and whereunder the appeal of the petitioner has been rejected.

The legal issue raised by the learned counsel for the petitioner for consideration by this Court is that admittedly, the sale deed in question was registered on 14.07.1994, hence the District Sub-Registrar, Patna had no authority under the law to refer the matter pertaining to deficit court fees to the Collector, Patna, thus the reference made by the District Sub Registrar, Patna vide letter no. 995 dated 02.04.1996 is itself *non est* in the eyes of law.

In this regard, the learned counsel for the petitioner has referred to the unamended ***Section 47-A(1) of the Indian Stamp Act, 1899***, which is reproduced hereinbelow :-

> *"47-A* ***Instrument of conveyance****.- (1) Where the registration officer appointed under the Indian Registration Act, 1908 (XVI of 1908) while registering any instrument of conveyance, exchange, gift, partition or settlement, has to believe that the market value of the property which is the subject matter of such instrument has not been rightly set forth in the instrument [or is less than the minimum value determined in accordance with any rules made under this Act] he may (at the time admitting) such instrument refer*

> *the matter to the collector for determination of the market value of such property and the proper duty payable thereon."*

It is thus submitted that it is clear from ***Section 47-A(1)*** of the un-amended Section of the ***Indian Stamp Act, 1899***, as was existing prior to the year 2006 that the registering authority has the power to refer the matter to the Collector for determination of the market value of such property and for fixing the stamp duty payable thereon, in case he 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 in the instrument, but the said power can be exercised only at the time of admitting such instrument and not thereafter. The learned counsel for the petitioner has also relied upon a judgment rendered by the Ld. Division Bench of this Court, reported in ***2018 (3) PLJR 136 (The State of Bihar and others v. Smt. Tetra Devi).***

Per contra, the learned counsel for the respondent State has though submitted that the Collector has the power to *suo motu* call for and examine the instrument in question 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, upon a query put forth by this Court as to whether the District Sub- Registrar, Patna could have referred the matter to the Collector for determination of the deficit stamp fees after the sale deed had already stood registered on 14.07.1994, the learned counsel for the respondent State has submitted that ***Section 47-A(1) of the Indian Stamp Act, 1899*** does not say so.

Having regard to the facts and circumstances of the case, this Court finds that since the District Sub- Registrar, Patna vide letter no. 995 dated 02.04.1996 has referred the matter, purportedly under ***Section 47-A(1) of the Indian Stamp Act, 1899***, which though is after registration of the sale deed on 14.07.1994, thus the said reference is contrary to the provisions contained in ***Section 47-A(1) of the Indian Stamp Act, 1899***, hence the entire reference is bad in law. Consequently, the order of the District Magistrate dated 03.06.1997 and the appellate order dated 10.10.2017, have also got no legs to stand, thus are bad in the eyes of law, hence are quashed.

The writ petition stands allowed.

(Mohit Kumar Shah, J)

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CAV DATE	
Uploading Date	18.08.2022
Transmission Date	