IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10558 of 2022

Udho Singh son of Jagarnath Singh Resident of Sareya Barti Tola, P.O. - Sareya Bazar, Ward No. 04, Sare Kash, East Champaran, Manguraha, (Bihar) Pin Code - 845458.

... ... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Registration, Excise and Prohibition, Govt. of Bihar.
2. I.G. Registration, Bihar.
3. I.G. Asst. Registrar, Tirhut Division, Muzaffarpur, Bihar.
4. The Commissioner, Tirhut Division, Muzaffarpur, Bihar.
5. District Magistrate cum District Registrar, Patna.
6. District Sub- Registrar, Patna.
7. Pramod Prasad son of Gulab Chandra Rajgariya, Resident of Town Bettiah, Mohalla - Lal Bazar, P.O. and P.S. - Bettiah, East Champaran, Bihar, Pin Code - 845438.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Md. Waliur Rahman, Adv.
		Mr. Nishant Kumar Sinha, Adv.
For the Respondent/s	:	Mr.Pawan Kumar (Ac To Ag)

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 06-12-2022

The present writ petition has been filed for setting aside the order dated 11.1.2022 passed in Case No. 8/2019-20 by the Assistant Inspector General of Registration, Tirhut Division, Muzaffarpur, whereby and whereunder the petitioner has been directed to deposit the deficit stamp fees along with penalty, totalling to a sum of Rs. 37,54,809/-.

2. The brief facts of the case, according to the petitioner, are that the Respondent No. 7 herein had gifted a piece of land vide registered Gift deed dated 8.3.2019, whereafter the petitioner had acquired the possession of the land in question and had started cultivating the same for his livelihood. The petitioner had then approached the Respondent authorities to get a copy of the registered gift deed dated 8.3.2019, but the Respondent authorities refused to give the same, however, it then, transpired that the District Sub-Registrar, West Champaran at Bettiah, had found that the valuation of the land in question had been wrongly done, hence, had referred the matter to the Assistant Inspector General of Registration, Tirhut Division, Muzaffarpur, vide letter dated 25.6.2019, for determination of the market value of such property and the proper duty payable thereon. Thereafter, the Assistant Inspector

General of Registration, Tirhut Division, Muzaffarpur, had initiated a case bearing Stamp Case No. 8/2019-20, whereafter, he has passed the impugned order dated 11.1.2022, directing the petitioner to pay a sum of Rs. 34,13,463/- as deficit stamp duty along with penalty of Rs. 3,41,346/-.

3. The learned counsel for the petitioner has raised a short legal issue for consideration by this Court to the effect that admittedly, the Gift deed in question was registered on 8.3.2019, hence, the District Sub-Registrar, West Champaran at Bettiah, 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 of Registration, Tirhut Division, Muzaffarpur, inasmuch as admittedly, he had referred the matter to the Assistant Inspector General of Registration, Tirhut Division, Muzaffarpur, vide letter dated 25.6.2019 i.e. after registration of the Gift deed on 8.3.2019.

4. In this connection, the learned counsel for the

petitioner has referred to 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.*"

5. Per contra, the learned counsel for the

Respondent-State has submitted that the land in question is situated on the flank of Bettiah-Chanpatia-Narkatiaganj Road and Commercial R.C.C. Buildings have been constructed over the same and upon valuation, the value of the land along with the structures present thereon, totals up to a sum of Rs. 6,45,91,050/-. In such view of the matter, the District Sub-Registrar, West Champaran at Bettiah had referred the matter, vide letter dated 25.6.2019, to the Assistant Inspector General of Registration, Tirhut Division, Muzaffarpur, to initiate a stamp case for recovery of the deficit stamp duty to the tune of Rs. 34,13,463/-, whereafter Stamp Case No. 8/2019-20 was initiated by the Assistant Inspector General of Registration, Tirhut Division, Muzaffarpur and vide order dated 11.1.2022, the petitioner has been directed to pay the deficit stamp duty along with penalty, totalling to a sum of Rs. 37,54,809/-. It is thus submitted that there is no illegality in the action taken by the Respondent authorities.

6. I have heard the learned counsel for the

parties and gone through the materials on record.

7. 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 8.3.2019, in the office of the District Sub-Registrar, West Champaran at Bettiah, however, the same was referred, by the District Sub-Registrar, West Champaran at Bettiah, to the respondent No. 3, under Section 47A(1) of the Indian Stamp Act, 1899, only on 25.6.2019 i.e. after lapse of about 4 months 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.

8. 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, West Champaran at Bettiah has made a reference to the Assistant Inspector General of Registration, Tirhut Division, Muzaffarpur, vide letter dated 25.6.2019 i.e. after registration of the Gift deed on 8.3.2019, 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:-
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>> "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."

9. Having regard to the facts and circumstances of the case, this Court finds that since the District Sub-Registrar, West Champaran at Bettiah, vide letter dated 25.6.2019, 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 8.3.2019, 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 11.1.2022, passed by the Assistant Inspector General of Registration, Tirhut Division, Muzaffarpur, 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.

10. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Ajay/-

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