IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1758 of 2023

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Shashi Prabha W/o Amit Kumar Rai, Resident of Village-Namapur, Ward No. 12, P.S.-Chakmehsi, District-Samastipur.

... ... Petitioner/s

Versus

1. The State of Bihar through the Inspector-General of Registration, Bihar, Patna.
2. The Inspector General of Registration, Bihar, Patna.
3. The Assistant Inspector General of Registration, Darbhanga Division, Darbhanga.
4. The District Registrar-cum-Collector-cum-District Magistrate, Samastipur.
5. The District Sub-Registrar, Kisanpur, District-Samastipur.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ranjan Kumar Dubey, Advocate

For the Respondent/s : Mr.Vikash Kumar (Standing Counsel-11)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 28-03-2023

The present writ petition has been filed for quashing the order dated 30.11.2022, passed by the respondent no. 3 i.e. the Assistant Inspector General of Registration, Darbhanga Division, Darbhanga in Stamp Case No. 207 of 2022-23, whereby and whereunder the petitioner has been directed to deposit deficit stamp duty to the tune of Rs. 1,70,316/- along with penalty to the tune of Rs. 17,032/- i.e. totalling to a sum of Rs.

1,87,348/-.

2. The brief facts of the case are that the father-in-law of the petitioner gifted the land in question, details whereof has been furnished in paragraph no. 4 of the present writ petition as also in the registered gift deed, by means of a gift deed which was registered on 20.07.2020. It appears that after verification by the registering authority and payment of the due stamp duty, the gift deed was registered on 20.07.2020, nonetheless, upon a complaint made by the brother of the petitioner on 30.09.2022, the respondent no. 3 had issued a letter dated 07.10.2022 to the District Sub-Registrar, Kisanpur, District-Samastipur to enquire into the matter, whereupon it transpired that deficit stamp duty has been paid by the petitioner. Thereafter, the respondent no. 3 had initiated Stamp Case No. 207 of 2022-23 against the petitioner and then the impugned order dated 30.11.2022 was passed.

3. The learned counsel for the petitioner has raised a legal issue to the effect that

registering officer can refer a matter for determination of the proper market value of the property in question if he is satisfied that the classification of 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 case has been registered after registration of the gift deed on 20.07.2020. The learned counsel for the petitioner has further submitted that even as per Section 47-A(3) of the Indian Stamp Act, 1899 (hereinafter referred to as the "Act, 1899"), the Collector has the power to suo motu call for the records of such instrument which has been registered and examine the same for the purposes 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, the same can only be done within a period of two years, but in the present case though the gift deed has been registered on 20.07.2022, however, the respondent no. 3 has initiated the process, purportedly under Section 47-A(3) of the Act, 1899, by issuing letter to the Sub-Registrar, Kisanpur, District-Samastipur, only on 07.10.2022 i.e. after expiry of two years, hence on this ground as well the impugned order dated 30.11.2022 is bad in law and is fit to be set aside.

4. The learned counsel for the petitioner has referred to Section 47-A(1) & (3) of the Indian Stamp Act, 1899, which are reproduced herein below:-

> *"47-A (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.

47-A (3) 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.*
>
> *Provided that nothing in this sub-section shall apply to any instrument registered before the date of commencement of the Bihar Stamp (Bihar Amendment) Ordinance, 1986."*

5. In this connection, the petitioner has referred to a judgment rendered by the learned Division Bench of this Court, reported in ***2018 (3) PLJR 136 (The State of Bihar and others v. Smt. Tetra Devi)***, paragraphs no. 14 and 15 whereof, are reproduced herein below :-

> *"14. In the present case, it is the Collector who has issued notice on the ground that the document registered is deficient in stamp duty. He might have issued notice on the report of the Sub-Registrar or the Commissioner. The fact remains that he is exercising his suo motu power. Such notice could be issued only within two years of the registration of the document. Even if it is to be examined that the notice was issued*

at the instance of the Sub-Registrar, then the Sub-Registrar was bound to act at the time of registration of the document in terms of Rules 9 and 10 reproduced above. He cannot make recommendation after long delay, particularly when the officer registering the document has not made any reference at the time of registration of the document

15. Thus, we find that initiation of proceedings by the Collector suffers from patent illegality and has been rightly set aside by the learned Single Judge. We do not find any reason to interfere in the order passed by the learned Single Judge in the present Letters Patent Appeal."

6. The Ld. Counsel for the petitioner has also 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*** paragraphs no. 6 to 9 whereof are reproduced 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."

7. Per contra the learned counsel for the respondent-State has submitted by referring to the counter affidavit filed in the present case by the respondent no. 5 that the respondents have complied with the principles of natural justice inasmuch as three notices were given to the petitioner prior to passing of the impugned order dated 30.11.2022. It is also submitted that the impugned order dated 30.11.2022 is appealable and the petitioner should have filed an appeal under Section 47-A(4) of the Act, 1899.

8. At this juncture, upon a query made by this Court with regard to the power of the Collector/I.G. Registration, Bihar, Patna under Section 47-A(3) to suo motu review the matter pertaining to registration of the instrument in question for the purposes of determining the market value of such property and duty payable thereon, by initiating suo motu proceedings after expiry of two years, it has not been denied that the

authorities are denuded of such power.

9. The learned counsel for the respondent-State has referred to Section 47-A(3) of the Act, 1899 and submitted that the Collector/IG, Registration, Bihar, Patna has power to suo motu call for the records pertaining to registration of any instrument and examine the same for the purposes of determining the market value of the property in question and the duty payable thereon only within a period of two years from the date of registration of the instrument in question.

10. I have heard the learned counsel for the parties and gone through the materials on record from which it is clear that under Section 47-A(3) of the Indian Stamp Act, 1899, the Collector/IG, Registration, Bihar, Patna, could not have suo motu reviewed the matter for the purposes of determination of the market value of the property in question and the duty payable thereon, after expiry of two years from the date of registration i.e. 20.07.2020, as far as the present case is concerned, inasmuch the exercise, purportedly

under Section 47-A(3) has been initiated only on 07.10.2022, i.e. after expiry of two years, which is contrary to the mandate of Section 47-A(3) of the Act, 1899, hence this Court finds that the aforesaid Stamp Case No. 207/2022–23 has been initiated illegally and in teeth of the provisions contained under Section 47-A(3) of the Indian Stamp Act, 1899. Another aspect of the matter is that even otherwise, no reference could have been made by the respondent no. 5 after registration of the instrument on 20.07.2020 for determination of the proper market value and the proper duty paybale thereon. These aspects of the matter are squarely covered by the judgments rendered by the Ld. D.B. of this Court in the case of Smt. Tetra Devi (supra) and the one rendered by a coordinate Bench of this Court in the case of Shahnaz Begam (supra).

11. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, this Court finds that the action of the respondent no. 3 is not only arbitrary but also perverse and illegal and in teeth of the

mandate of Section 47-A(1) & (3) of the Act, 1899, hence the impugned order dated 30.11.2022, passed by the respondent no. 3, being contrary to law, is quashed and the respondents are debarred from proceeding any further in the matter.

12. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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