IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20298 of 2016

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Vivek Kumar son of Vinay Kumar resident of Mohalla- Purani Gudari, Ward No. 11 P.O.+ P.S.-Bettiah, District-West Champaran at Bettiah , Bihar.

... ... Petitioner/s

Versus

1. The State Of Bihar
2. The Inspector General Registration, Bihar, Patna.
3. The Assistant Inspector General Registration, Tirhut Division, Muzaffarpur.
4. The Registration Officer, Bettiah.
5. The Additional District Registrar, Bettiah.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sunil Kumar Singh, Adv.

For the Respondent/s : Mr.Kumar Pankaj, AC to SC-5

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 10-04-2023

The present writ petition has been filed for quashing the order dated 26.5.2016, passed by the Assistant Inspector General Registration, Tirhut Division, Muzaffarpur i.e. the Respondent No. 3 in Case No. 196/2015-16, whereby and whereunder the reference made by the registering authority regarding valuation and deficit stamp duty has been allowed and the petitioner has been directed to pay deficit stamp duty to the tune of Rs. 50,880/- along with fine of Rs. 5,088/-. The petitioner has also prayed for quashing of the notice dated

30.6.2016, issued by the District Sub-Registrar, West Champaran at Bettiah, demanding a sum of Rs. 68,688/- from the petitioner.

2. The brief facts of the case, according to the petitioner, are that the petitioner had purchased land, appertaining to Thana No. 128, Ward No. 11, Holding No. 353, Mauza-Kalibagh, Circle-Bettiah, admeasuring 3.5 decimal from one Dayanand Prasad Kushwaha on 4.11.2015, whereupon the sale deed was registered on 4.11.2015 by the registering officer, Bettiah, upon payment of the requisite stamp duty.

3. It is the further case of the petitioner that suddenly, by a notice dated 03.02.2016, the petitioner was directed by the Respondent No. 3 to appear in connection with Stamp Case No. 196 of 2015-16 on 9.2.2016 and demonstrate that the correct value of the land in question has been disclosed at the time of registration of the instrument in question. Thereafter, the Respondent No. 3 has passed the impugned order dated 26.5.2016, asking the petitioner to pay additional stamp duty to the tune of Rs. 50,880/- along with fine of Rs. 5,088/-.

4. The learned counsel for the petitioner has submitted that as per the mandate of Section 47A(1) of the Indian Stamp Act, 1899, the Registering authority can make reference, for

determination of the proper market value of the property in question, if he is satisfied that the classification of the property or the measurement of the structure contained in 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 respondent no. 4 has referred the matter to the respondent no. 3, after registration of the sale deed on 4.11.2015, hence the said reference itself is bad in law. In this regard, the learned counsel for the petitioner has relied upon 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.

5. Per contra, the learned counsel for the Respondent-State has submitted, by referring to the counter affidavit filed in the present case that after the sale deed in question was registered on 4.11.2015, the authorities made a detailed enquiry and found that the petitioner had shown the value of the land to be Rs. 16,71,000/- in place of 23,27,000/-, with the intention of evading payment of Government revenue, hence, the Registering Officer, Bettiah, had referred the matter, vide letter dated 19.01.2016, to the Respondent No. 3 for initiating

proceeding under Section 47-A(1) of the Indian Stamp Act, 1899, for recovery of the deficit stamp duty. Thereafter, the Respondent No. 3 had initiated Stamp Case No. 196 of 2015-16 and issued notice to the petitioner to file his objections, if any and had then proceeded to pass the impugned order dated 26.5.2016 and when the petitioner did not comply with the same, a notice dated 30.6.2016 was issued to the petitioner, directing him to deposit a sum of Rs. 68,688/-. Thus, it is submitted that there is no irregularity in the procedure adopted by the Respondents.

6. I have heard the learned counsel for the parties and gone through the materials on record. At the outset, it would be relevant to reproduce 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."

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 sale deed in question was registered on 4.11.2015, in the office of the Sub-Registrar, Bettiah, however, reference was made by the Registering authority, Bettiah, to the respondent No. 3 under Section 47A(1) of the Indian Stamp Act, 1899 only on 19.1.2016 i.e. after lapse of about two and a half months of registration of the sale deed in question, which in any view of the matter is illegal & contrary to the provisions contained in the Act, 1899.

8. This Court further finds that if at all any proceeding is required to be initiated after registration of the instrument in question, 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 Registering Officer, Bettiah has made a reference to the Assistant Inspector General, Registration, Tirhut Division, Muzaffarpur, vide letter dated 19.1.2016, after registration of the sale deed on 4.11.2015, thus there is a clear contravention of Section 47A(1) of the Indian Stamp Act, 1899.

9. In view of the aforesaid, 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*** (supra), which the Ld. State counsel has not been able to controvert. It would thus 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.
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> 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)."
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> 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).
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> 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.
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> 9. Accordingly, the impugned order dated 16.05.2016 as contained in Annexure-4 stands quashed. The writ application is allowed. No costs."

10. Having regard to the facts and circumstances of the case and having perused the materials on record, this Court finds that admittedly, no reference could have been made by the Sub-Registrar / Registering authority, Bettiah, after registration of the sale deed in question on 4.11.2015, hence, the present case is squarely covered by the 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. Consequently, this Court finds that the action of the Respondent No. 3 is not only illegal and arbitrary but also against the mandate of Section 47-A(1) of the Indian Stamp Act, 1899, hence, the impugned order dated 26.5.2016, passed by the Assistant Inspector General Registration, Tirhut Division, Muzaffarpur i.e. the Respondent No. 3, is quashed. Resultantly, the impugned notice dated 30.6.2016, issued by the District Sub-Registrar, West Champaran at Bettiah, has got no legs to stand, hence, is also set aside.

11. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19.06.2023
Transmission Date	NA