

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 20019 of 2016

Manju Dwivedi Wife of Late Udayanand Dwivedi, resident of village -
Bhitaha, P.S. Bairiya, District - West Champaran

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Registration, Prohibition and Excise, Government of Bihar, Patna.
2. The Divisional Commissioner, Tirhut Division, Muzaffarpur.
3. The Collector Cum District Registrar, West Champaran, Bettiah.
4. The Assistant Inspector General of Registration, Tirhut Division, Muzaffarpur.
5. The District Sub Registrar, Bettiah.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shakti Suman Kumar, Advocate
For the Respondent/s : Mr. Vivek Prasad- GP 7

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 08-05-2023

1. The present writ petition has been filed for quashing the order dated 18.04.2016, passed by the Assistant Inspector General of Registration, Tirhut Division, Muzaffarpur i.e. the respondent no. 4 in Case no. 129 of 2013-14, whereby and whereunder the petitioner has been directed to pay deficit stamp duty to the tune of Rs. 93,360/- along with fine of Rs. 9,336/-.



The petitioner has also prayed for quashing the appellate order dated 06.09.2016, passed by the Divisional Commissioner, Tirhut Division, Muzaffarpur i.e. the respondent no. 2 in Stamp Appeal no. 169 of 2016, whereby and whereunder the appeal filed by the petitioner has been dismissed.

2. The brief facts of the case according to the petitioner are that the petitioner purchased a plot of land belonging to one Urmila Devi appertaining to *Khata* no. 127, *Khesra* no. 2023 admeasuring 15 decimal, situated at village- Bhitaha, PS-Bairia, District- West Champaran for a sum of Rs. 3,03,000/-, whereafter, the sale deed was executed by the vendor and the same was registered on 06.12.2013, after depositing a sum of Rs. 24,440/- as stamp duty and a sum of Rs. 6,785/- under the head of registration fee and other charges. Subsequently, the District Sub-Registrar, Bettiah i.e. the respondent no. 5 had referred the matter pertaining to registration of the instrument of the property in question, purportedly under Section 47-A(1) of the Indian Stamp Act, 1899, considering the land in question to be falling under the residential category and assessing its market value to the tune of Rs. 14,70,000/-. The reference was made by the respondent no. 5 to the respondent no. 4 vide letter dated 14.12.2013, whereafter the respondent no. 4 had issued a notice



dated 05.03.2016 to the petitioner informing him that Deficit Stamp Case no. 129 of 2013-14 has been instituted, whereupon the petitioner had authorized her son to appear before the respondent no. 4. The son of the petitioner had then appeared before the respondent no. 4 and had apprised the respondent no. 4 that the plot in question is situated between two canals having no approach road at all. Nonetheless, without considering the submissions made by the son of the petitioner, the respondent no. 4, by the impugned order dated 18.04.2016 has determined the deficit stamp duty to the tune of Rs. 93,360/- along with penalty of a sum of Rs. 9,336/-. The petitioner had then challenged the said order dated 18.04.2016 by filing an appeal before the respondent no. 2, *inter alia* stating therein that the nature of the land has been determined without any spot inspection and moreover, the land in question is situated between two canals having no approach road within a radius of 500 meter, hence, the order dated 18.04.2016, passed by the respondent no. 4 be set aside, however the respondent no. 2 has dismissed the appeal of the petitioner by the impugned order dt. 16.9.2016, merely on the ground that small piece of land having an area of 02 kathas cannot be used for agricultural purposes & has also erroneously held that the land in question is recorded as



a developed residential category in the *Khesrawar Panji*.

3. The learned counsel for the petitioner has further submitted that a sale deed bearing no. 6909 dated 10.04.2014 was executed with regard to a portion of the same land admeasuring 02 *kathas*, wherein also, stamp duty and registration charges were paid by showing the land to be belonging to non-residential category, having value to the tune of Rs. 3,03,000/-, however, no objection has been made with regard to the same by the respondent authorities. The learned counsel for the petitioner has further submitted that the so called *Khesrawar Panji* has been prepared without any spot inspection and moreover, the reliance placed upon the *Khesrawar Panji* is wholly misplaced, as neither the Indian Stamp Act, 1899 nor the Bihar Stamp (Prevention of Under Valuation of Instruments) Rules, 1995 (hereinafter referred to as the “Rules, 1995”) provides for taking cognizance of any such panji and in fact, as per Section 47-A(1) of Indian Stamp Act, 1899 (hereinafter referred to as the “Act, 1899”), there is provision for maintaining guideline register for estimated minimum value as per the rules framed under the Act. Rule 5 of the Rules specifically provides for preparation of a guideline register of minimum value while Rule 6 provides for procedure for fixation



of estimated minimum value. It is also submitted that the registering officer can only consider the guideline register of estimated minimum value for determining the market value of the land, however the said *Khesrawar Panji* is prepared without any authority of law and estimation of market value on the said basis is wholly without jurisdiction.

4. The learned counsel for the petitioner has also submitted that Section 47A (5) of the Act, 1899 provides that for the purpose of this Act market value of any property shall be estimated to be the price, which in the opinion of the collector or the appellate authority, such property would have fetched, if sold in the open market on the date of execution of the instrument concerned. In the present case the respondents have acted in complete violation of the aforesaid provision and relied upon the so-called *khesrawar panji* to determine the estimated market value without considering the price of the land in question in open market.

5. *Per contra*, the learned counsel for the respondent- State has submitted that the *Khesra Panji* available in the District Registry Office, West Champaran at Bettiah shows that the plot in question i.e the one appertaining to Plot No. 2013, Mauna



Bhitaha, Thana No. 135, Circle Bairiya, is entered as *Vikasit Awasiya*. On the basis of *Khesra Panji*, the Respondent No. 5 considered the plot in question to be residential in nature and thus, referred the matter to the Respondent No- 4 on 14.12.2013, under Section 47A (1) of the Act 1899, after estimating the market value of the land to be a sum of Rs. 14,70,000, whereafter stamp case no. 129/13-14 was initiated by the Respondent No. 4. It is contended that since the petitioner failed to prove that the property in question is a non-residential category property, the Respondent No. 4 passed the impugned order dated 18.04.2016, directing the petitioner to deposit deficit stamp duty to the tune of Rs. 93360/- along with penalty of a sum of Rs. 9336/-. The petitioner had then filed an Appeal which has also stood rejected by an order dated 06.09.2016, passed by the Respondent No. 2.

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 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 06.12.2013, in the office of the Sub-Registrar, Betiah, West Champaran, however, the same was referred by the Sub-Registrar, Betiah, West Champaran to the respondent No. 4 under Section 47A(1) of the Act, 1899, only on 14.12.2013 i.e. after registration of the sale deed in question, which in any view of the matter is illegal



and 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, 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, U/s. 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 Sub-Registrar, Betiah, West Champaran has made a reference to the Assistant Inspector General, Registration, Patna vide letter dt. 14.12.2013, after the registration of the sale deed on 6.12.2013, thus there is a clear-cut contravention of Section 47A (1) of the Act, 1899. This Court finds 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**, which the learned State counsel has not been able to refute. 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:-

“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. Though the impugned order dated 18.04.2016, passed by the respondent No. 4 is fit to be quashed on the aforesaid ground alone, however, this Court finds that yet another illegality has



been committed by the respondents inasmuch as the Assistant Inspector General, Registration, Tirhut Division, Muzaffarpur has passed the impugned order dated 18.04.2016 in haste i.e. without either calling for a report from the concerned Circle Officer with regard to the nature / category of the land in question or without complying with the provisions contained in Rule 5 and Rule 6 of the Rules, 1995, hence, the order dated 18.04.2016, passed by the Assistant Inspector General, Registration, Tirhut Division, Muzaffarpur is fit to be set aside on this ground as well. This aspect of the matter is squarely covered by a judgment rendered by this Court in the case of ***Prashant Kumar Mahensaria vs. The State of Bihar & Ors., reported in 2019 (3) PLJR 1094.***

10. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, this Court finds that the action of the respondent no. 4 as also that of the respondent no. 2 is not only arbitrary, perverse and illegal but also against the mandate of Section 47-A (1) of the Act, 1899, hence the impugned order dated 18.04.2016, passed by the Assistant Inspector General of Registration, Tirhut Division, Muzaffarpur as also the Appellate order dated 06.09.2016, passed by the respondent no. 2 are quashed and the respondents are debarred



from proceeding any further in the matter.

11. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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CAV DATE	NA
Uploading Date	19.08.2023
Transmission Date	NA

