IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6714 of 2021

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Mohammad Asim Rahman S/o Ashfaque Rahman R/o Pent house, Federal Plaza Apartment, Federal Colony, P.O. and P.S. - Phulwarisharif, Distt. - Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner Patna Division, Patna.
2. The Assistant Registration Inspector General, Patna Division-Patna, District Registration Office, 1st Floor, Chajjubag, Patna.
3. Sub Registrar Phulwarisharif, Patna, P.O. and P.S. Phulwarisharif, District - Patna.

... ... Respondent/s

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Appearance :

For the Petitioner	:	Mr.Pawan Kumar Singh, Adv.
		Mr. Md. Ibrar Hussain, Adv.
For the State	:	Mr. Rishi Raj Sinha, SC-19
		Mr. Atul Shankar, AC to SC-19

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 23-02-2023

The present writ petition has been filed for quashing the order dated 22.4.2019, passed by the Assistant Inspector General Registration, Patna Division, Patna (Respondent No. 2) in Case No. 404 of 2017, whereby and whereunder the petitioner has been directed to pay deficit stamp duty to the tune of Rs. 14,99,930/- along with a fine of Rs.

1,49,993/-. The petitioner has also prayed for quashing the Appellate order dated 22.1.2021, passed by the learned Divisional Commissioner, Patna, in Stamp Appeal Case No. 143 of 2019.

2. The brief facts of the case, according to the petitioner, are that the petitioner purchased a land, appertaining to Thana No. 40, Tauzi No. 5127, Thana Code No. 092, Khata No. 250, Survey Plot No. 425(Part), situated at Bhusaula Danapur, P.S.-Phulwarisharif, District-Patna, vide a sale deed dated 7.9.2017, which was registered on the same day i.e. 7.9.2017. Thereafter, the Sub-Registrar had found that the stamp duty had been paid by treating the land in question to be that of residential category, instead of commercial category, since upon enquiry it had transpired that the land in question is situated on the main road, hence, he had referred the matter to the Respondent No. 2 for calculating the deficit stamp duty purportedly under Section 47(A)(1) of the Indian Stamp Act, 1899, whereafter the Respondent No. 2 had issued notice to the

petitioner and had registered a case bearing Stamp Case No. 404 of 2017 and ultimately, had passed the impugned order dated 22.4.2019, directing the petitioner to pay the deficit stamp fee along with fine to the tune of Rs. 16,49,923/- (after deducting the amount already paid earlier).

3. The learned counsel for the petitioner has submitted that as per the mandate of Section 47A(1) of the Indian Stamp Act, 1899, reference can be made by the Registering authority 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. 3 has referred the matter to the respondent no. 2 after registration of the sale deed on 7.9.2017, hence the said reference itself is bad in law. In this regard, the learned

counsel for the petitioner has 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.

4. Per contra, the learned counsel for the State has submitted that since the land in question falls under the commercial category, the Respondent No. 2, vide order dated 22.4.2019, has rightly calculated the deficit stamp duty to the tune of Rs. 14, 99, 930/-, hence, there is no illegality in the said order dated 22.4.2019. It is also submitted that the appellate order dated 22.1.2021 also does not suffer from any infirmity.

5. 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."

6. It is apparent from a bare perusal of Section 47A(1) of the Indian Stamp Act, 1899 that the registering authority can only refer the matter, 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 7.9.2017, in the office of the Sub-Registrar,

Phulwarisharif, Patna, however, the same was referred by the Sub-Registrar, Phulwarisharif, to the respondent No. 2 under Section 47A(1) of the Indian Stamp Act, 1899 only on 31.7.2018 i.e. after lapse of about 10 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.

7. 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 Sub-Registrar, Phulwarisharif, Patna, has made a reference to the Assistant Inspector General, Registration, Patna Division, Patna, vide letter dated

31.07.2018, after the registration of the sale deed on 7.9.2017, thus there is a clear 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 (supra), which the Ld. State counsel has not been able to controvert. It would be apt to reproduce paragraphs no. 6 to 9 of the said judgment rendered in the case of Shahnaz Begam (supra) 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).”

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."

8. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, this Court finds that the order dated 22.4.2019, passed by the Respondent No. 2, is illegal and contrary to law, hence, the same is quashed. Consequently, the appellate order dated

22.1.2021 has got no legs to stand, hence, is also set aside.

9. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	10.04.2023
Transmission Date	NA