**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.11284 of 2014**

======================================================

Abdul Latif son of Late Doman Ansari resident of village - Lalmatia, P.S. Lalmatia, Distt. - Godda Jharkhand

... ... Petitioner/s

Versus

1. The State Of Bihar.
2. The Inspector General of Registration, Government of Bihar, Patna – 1.
3. The Asst. Inspector General, Registration, Bhagalpur Division, Bhagalpur.
4. The Collector, Bhagalpur.

... ... Respondent/s

======================================================

**Appearance :**

| | | |
|---|---|---|
| For the Petitioner/s | : | Mr.Vivekanand Vivek, Advocate |
| | : | Mr.Rangnath Pandey, Advocate |
| | : | Mr.Debash Kr. Poddar, Advocate |
| For the Respondent/s | : | Mr.Manish Kumar,AC to AAG6(In-charge AAG 5) |

======================================================

**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**
**ORAL JUDGMENT**
**Date : 02-03-2023**

1. The present writ petition has been filed for quashing the order dated 28.10.2013, passed by the Assistant Inspector General, Registration, Bhagalpur Division, Bhagalpur i.e. the respondent no. 3 as also the appellate order dated 24.02.2014, passed by the Commissioner, Bhagalpur Division, Bhagalpur in Bhagalpur Stamp Refund Appeal Case no. 10 of 2013-14.

2. The brief facts of the case, according to the petitioner, are that the petitioner had purchased a piece of land appertaining to Mauza-Kushalpur, Halka no.-6, Thana no.-133, Khata no.-117, Khesra no.-1554 situated at village-Kushalpur,

PS- Pirpainty, Dist-Bhagalpur, by a registered sale deed dated 07.03.2007 and the nature of land was stated in the sale deed in question as agricultural land, as per Survey Khatiyan. Accordingly, the Stamp Duty was paid and the registration of the sale deed was done on 07.03.2007. It is submitted that for the first time, after a lapse of about 06 years, the petitioner received a notice dated 30.03.2013, alleging therein that the Stamp Duty paid on the aforesaid sale deed is deficient, hence, a reference case no. 29/2013 has been initiated, whereafter the respondent no. 3 passed the impugned order dated 28.10.2013, holding that the petitioner has paid deficit court fees to the tune of Rs. 42, 240/-. The petitioner had then filed an appeal bearing Appeal case no. 10 of 2013-14, raising an issue that as per ***Section 47(A)(1) and (3) of the Indian Stamp Act, 1899,*** the prescribed time period for determination of appropriate market value of the property in question and proper duty payable thereon, had already expired, however, the said contention of the petitioner was not considered by the appellate authority and instead, the appeal in question was dismissed by an order dated 24.02.2014, passed by the Commissioner, Bhagalpur Division, Bhagalpur.

3. The learned counsel for the petitioner has

submitted that the notice dated 30.03.2013, the order passed by the respondent no. 3 dated 28.10.2013 and the Appellate order dated 24.02.2014 have been passed *de hors* the provisions contained under ***Section 47-A(1) and (3) of the Indian Stamp Act, 1899.***

4. The learned counsel for the petitioner has further submitted that as far as the present case is concerned, considering the fact that the sale deed was registered on 07.03.2007 and the reference is stated to have been made by the Sub-Registrar, Kahalgaon, District-Bhagalpur under ***Section 47-A(1) of the Indian Stamp Act, 1899*** on 15.03.2007, as per the mandate of the then prevailing provision of law, as contained in ***Section 47-A(1) of the Indian Stamp Act, 1899,*** reference could have been made by the Registering officer for determination of the proper market value of the property in question, only at the time of admitting the instrument in question, however, in the present case, reference has been made only after registration of the sale deed on 07.03.2007. It is also submitted by referring to ***Section 47-A(3) of the Act, 1899*** that the higher authority of the registration department can also *suo motu* call for and examine the instrument in question for the purpose of satisfying itself regarding the correctness of the market value of the property,

which is the subject matter of such instrument and the duty payable thereon, within a period of two years from the date of registration, however in the present case, the said period has also stood expired, hence the respondents could not have enhanced the stamp duty paid by the petitioner at the time of registration of the sale deed on 07.03.2007.

5. The learned 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 ofduty, 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.*

6. *Per contra,* the learned counsel for the respondent- State has submitted by referring to the counter affidavit filed in the present case that the land in question is a homestead land but the petitioner deliberately mentioned the said land to be an agricultural land in order to pay less stamp

duty, thus after the said discrepancy came to the notice of Sub-Registrar, Kahalgaon, pursuant to the registration of the instrument in question, he prepared a report and referred the matter to the Inspector General, Registration, Bhagalpur Division, Bhagalpur vide letter dated 15.03.2007, whereupon a reference case no. 29 of 2007 was registered and notice was issued to the petitioner on 30.03.2013, whereafter the petitioner had appeared and subsequently, the impugned order dated 28.10.2013 was passed directing the petitioner to pay the deficit stamp duty to the tune of Rs. 42,240/-. The petitioner had challenged the said order dated 28.10.2013, before the Commissioner, Bhagalpur Division, Bhagalpur, which was numbered as Bhagalpur Stamp Appeal case no. 10 of 2013-14, however, the same has also stood dismissed by the impugned order dated 24.02.2014. The learned counsel for the petitioner has referred to the un-amended ***Section 47-A(1) of the Indian Stamp Act, 1899,*** annexed to the counter affidavit to submit that in case the Registering Officer has reasons to believe that the market value of the property, which is the subject matter of such instrument has not been rightly set forth or which is higher than the Estimated Minimum Value, he, after registering such instrument, shall refer it by assigning appropriate reasons to the

Collector for determination of appropriate market value of the property and the proper duty payable thereon. Thus, it is submitted that the action taken by the respondent- authorities is just and legal.

7. I have heard the learned counsel for the parties and perused the materials on record. At this juncture, it would be relevant to trace the history of ***Section 47-A of the Indian Stamp Act, 1899*** in terms of the Bihar Amendment. ***Section 47-A of the Indian Stamp Act, 1899*** was inserted by Bihar Act 15 of 1988 of the ***Indian Stamp (Amendment) Act, 1988,*** by a notification published in the Bihar Gazette on 27.12.1988, however, the same was brought into effect from 31.03.1990, by notification no. 50-196 dated 31.03.1990. The same reads as under :-

> *" 47A. Instrument of conveyance: (1) Where the registering officer appointed under the Indian Registration Act, 1908 (XVI of 1908) while registering any instrument of conveyance, exchange, gift, partition or settlement, has reason to believe that the market value of the property which is the subject-matter of such instrument has not been rightly set forth in the instrument, he may, after registering such instrument refer the matter to the Collector for determination*

*of the market value of such property and the proper duty payable thereon.*

*(2) On receipt of a reference under Sub-Section (1), the Collector shall, after giving one month's time to the parties for making their representation and after holding an enquiry, determine the market value of the property which is the subject-matter of such instrument and the duty as aforesaid. The difference, if any, in the amount of duty shall be payable by the person liable to pay the duty :*

*Provided that no such person shall be required to pay any amount to make up the difference if the difference between the consideration of the market value as set forth in the instrument and the market value determined by the Collector does not exceed 10 percent of the market value so determined.*

*(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, 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 the Indian Stamp (Bihar Amendment) Ordinance, 1986.*

*(4) Any person aggrieved by an order of the Collector under Sub-Section (2) or Sub-Section (3) may appeal to the Commissioner concerned of the administrative division, such appeal shall be preferred within sixty days of the order and shall be heard and disposed of by the Commissioner.*

*(5) 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 as the case may be, such property would have fetched or would fetch, if sold, in the open market on the date of execution of the instrument of conveyance, exchange, gift, partition or settlement."*

The aforesaid provision was further amended by the ***Indian Stamp (Bihar Amendment) Act, 1991,*** published in the Bihar Gazette on 25.11.1991 and was enforced vide notification no. 402-403 dated 22.11.1991. The same reads as follows :-

> *"3.(1) In Section 47A of the said Act as inserted by Bihar Act 15, 1988 after the words 'Set forth in the instrument' the words 'or is less than even the minimum value determined in accordance with any rules made under this Act' shall be inserted.*
> *(2) In Section 47A of the said Act as inserted by Bihar Act 15, 1988 the words 'after registering' shall be substituted by the words 'at the time of admitting'."*

The aforesaid provision of law was further amended by the ***Indian Stamp (Bihar Amendment) Act, 2013***, which was published in the gazette on 03.05.2013 and was also enforced at once in the following manner :-

***Section 47-A (1) of the Indian Stamp Act, 1899*** (as amended from time to time) shall be substituted by the following :-

> *" (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 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 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."*

8. Having considered the aforesaid amendments, which have taken place from time to time, this Court finds that the text of ***Section 47-A (1) of the Indian Stamp Act, 1899,*** annexed to the counter affidavit filed in the present case, is not the one which has come into force after promulgation of the ***Indian Stamp (Bihar Amendment) Act, 1991,*** hence, is not applicable in the present case. The said act of the respondents not only amounts to filing of an incorrect document on affidavit but also misleading this Court, hence such action of the respondents is deprecated and the Inspector General, Bihar, Patna is directed to ensure that such incident is not repeated in future.

9. Now coming back to the present case, this Court finds that the present case would be governed by ***Section 47-***

***A(1) of the Indian Stamp Act, 1899,*** as amended by the ***Indian Stamp (Bihar Amendment) Act, 1991,*** since the sale deed was registered on 07.03.2007 and the reference is stated to have been made on 15.03.2007, according to which the Registering Officer, if he has reasons to believe that the market value of the property, which is the subject matter of the instrument, has not been rightly set forth in the instrument, can refer the matter to the Collector for determination of the market value of such property and the proper duty payable thereon, only at the time of admitting the instrument in question. Thus in the present case, since the sale deed in question was admitted and registered on 07.03.2007 and only then reference was made on 15.03.2007, the reference itself is illegal and contrary to the provision contained in ***Section 47-A (1) of the Indian Stamp Act, 1899,*** hence is quashed, consequently, the impugned order dated 28.10.2013, passed by the respondent no. 3, has got no legs to stand thus, stands vitiated, hence, is also quashed. Inevitably, the appellate order dated 24.02.2014 has been rendered *otiose,* thus is set aside.

At this juncture, it may be mentioned that admittedly, the notice was issued to the petitioner on 30.03.2013, i.e. after a lapse of 06 years of the purported reference made by the Sub-Registrar, Kahalgaon, Bhagalpur on 15.03.2007 and moreover, the impugned order dated 28.10.2013, passed by the respondent no. 3, also does not depict any reason for determining the value of the property to be a sum of Rs. 10,71,680/-, hence, on this ground as well i.e. non-furnishing of cogent, clear and succinct reasons in support of the impugned order dated 28.10.2013, which is a indispensable component of a decision making process, the impugned order dated 28.10.2013 is fit to be set aside. Reference in this connection be had to the judgment rendered by the Hon'ble Apex Court in the case of ***Oryx Fisheries Private Ltd. vs Union Of India & Ors.*** reported in ***(2010) 3 SCC 427.***

10. The writ petition stands allowed.

**(Mohit Kumar Shah, J)**

rinkee/-

| | |
|---|---|
| **AFR/NAFR** | AFR |
| **CAV DATE** | NA |
| **Uploading Date** | 09.05.2023 |
| **Transmission Date** | NA |