IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11431 of 2021

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Nutan Educational and Welfare Trust address-Vasant Vihar, P.S.-Zeromile, District-Bhagalpur through its Chairman Ram Prakash Mahto aged about 57 years (male), son of Late Raamroop Mahto.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Prohibition, Excise and Registration Department, Government of Bihar, Patna.
2. The District Magistrate/Collector, Bhagalpur.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Kumar Shanu, Advocate
Mr.Amrit Kumar, Advocate
Mr.Surya Narayan Kumar, Advocate

For the State : Mr.Vikash Kumar, SC-11

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 18-04-2023

Though the present writ petition has been filed for quashing the order dated 06.06.2020, passed by the Collector, Bhagalpur, in connection with Miscellaneous Case No.96 of 2016-17, initiated under Section 38(2) of the Indian Stamp Act, 1899, (hereinafter referred to as “the Act, 1899”) whereby and whereunder deficit stamp duty to the tune of Rs.36,45,624/- has been levied on the petitioner alongwith penalty to the tune of Rs.72,51,241/-, however, the short point raised for consideration by the learned counsel for the petitioner is that as per the provisions contained in Section 33 and Section 40 of the Act, 1899, in case it appears to the authority that an instrument is not duly stamped, such instrument is first required to be impounded and only then the Collector can assess as to whether the instrument in question is chargeable with duty or is not duly stamped and consequently can require payment of appropriate duty as also levy penalty.

2. The learned counsel for the respondent-State, Shri Vikash Kumar, Standing Counsel-11 has fairly admitted that as per Sections 33, 38 and 40 of the Act, 1899, the instrument in question is required to be first impounded and only then the Collector can assess the amount of deficit stamp duty and the penalty to be levied, thereupon.

3. At this juncture, it would be relevant to refer to Sections 33, 38 and 40 of the Act, 1899, which are reproduced herein below:-

> *"**33. Examination and impounding of instruments**.– (1) Every person having by law or consent of parties authority to receive evidence, and, every person incharge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instruments is not duly stamped, impound the same.*
>
> *(2) For that purpose every such person*

shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in India when such instrument was executed or first executed:

Provided that;–

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (V of 1898)];

(b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this Section may be delegated to such officer as the Court appoints in this behalf.

(3) For the purposes of this Section, in cases of doubt;-

(a) the State Government may determine what offices shall be deemed to be public officers; and

(b) the State Government may determine who shall be deemed to be persons in-charge of public offices.

***38. Instruments impounded, how dealt with**.—(1) When the person impounding an instrument under Sec. 33 has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by Sec. 35 or of duty as provided by Sec. 37, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.*

(2) In every other case, the person so impounding an instrument shall send it in original to the Collector.

***40. Collector's power to stamp instruments impounded.** — (1) When the Collector impounds any instrument under Section 33, or receives any instrument sent to him under Section 38, sub-section (2), not being a instrument chargeable with a duty not exceeding ten naye paise only or a bill of exchange or promissory note, he shall adopt the following procedure :-*

(a) If he is of opinion that such instrument is duly stamped or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped or that it is not so chargeable, as

the case may be;

(b) If he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same together with a penalty of the five rupees or if he thinks fit, an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls, short of five rupees:

Provided that, when such instrument has been impounded only because it has been written in contravention of Section 13 or Section 14, the Collector, may, if he thinks fit, remit the whole penalty prescribed by this Section.

(2) Every certificate under clause(a) of sub-section (1) shall, for the purposes of this Act, be conclusive evidence of the matter, stated therein.

(3) Where an instrument has been sent to the Collector under Section 38, sub-section (2), the Collector shall, when he has dealt with it as provided by this Section, return it to the impounding officer."

4. Admittedly, in the present case, the instrument in

question, i.e. the lease deed dated 13.02.2016, which was registered on 19.02.2016, has never been impounded, hence, there was no occasion to initiate any proceedings under Section 38 of the Act, 1899 and assess the deficit stamp duty or for that matter levy any penalty, hence, the impugned order dated 06.06.2020, passed by the Collector, Bhagalpur stands vitiated in the eyes of law, thus is quashed, however, liberty is reserved to the Collector, Bhagalpur to proceed afresh in the matter, in accordance with law.

5. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	17.05.2023
Transmission Date	NA