

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6813 of 2023

=====

Anita Devi W/o Late Keshwav Kumar Giri, R/o Vill. and P.O.- Rampur
Khajuria, P.S.- Dumariaghat, Distt.- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Revenue and Land Reforms.
2. Inspector General, Registration, Tirhut Pramandal, Muzaffarpur.
3. Assistant Inspector General, Registration, Tirhut Pramandal, Muzaffarpur.
4. District Magistrate-cum-Collector, East Champaran.
5. Sub-Registrar, Kesaria, East Champaran.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Parth Gaurav, Adv.
For the Respondent/s	:	Mr.Vikash Kumar, SC-11
		Mr.R.K.Raman, AC to SC-11

=====

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 06-11-2023

1. This writ petition has been filed for quashing the order dated 06.3.2023, passed by the respondent no. 3 i.e the Assistant Inspector General, Registration, Tirhut Pramandal, Mazzafarpur, whereby and whereunder the respondent no. 3 has directed the petitioner to deposit additional stamp duty to the tune of Rs. 2,97,924/- in connection with registration of sale deed dated 03.05.2019.

2. The brief facts of the case, according to the petitioner are that the husband of the petitioner had purchased land appertaining to Khata No. 80, Plot No. 2126, Area 23.2



decimals, situated at Mauza-Rampur Khajuria, P.S.- Dumariaghat, Anchal-Kesaria, District-East Champaran by a registered sale deed dated 03.05.2019, however, thereafter the husband of the petitioner died on 28.06.2021. It is only then that a purported reference was made by the Sub-Registrar, Kesaria, sometimes in the year 2022, under Section 47A (1) of the Indian Stamp Act, 1899 (hereinafter referred to as the 'Act, 1899), leading to institution of Case No. 68 of 2022-23 and upon notice the petitioner had appeared and contested the case. It is stated that the land in question was purchased by the husband of the petitioner from one, Sitambar Giri and the nature of the said land is agricultural. Subsequently, the respondent no. 3, had passed the impugned order dated 06.03.2023, in Case No. 68 of 2022-23, directing the petitioner to pay deficit stamp duty to the tune of Rs 2,97,924/- and this is how the petitioner is before this Court.

3. The learned counsel for the petitioner has at the outset referred to Section 47 A (1) and (3) of the Act, 1899 which is reproduced herein below:-

“47-A (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.

Provided that where the market value of the property of the instruments described above has been fixed at an amount which is not less than the value prescribed in the Guide Line Register of estimated minimum value prepared under the rules framed under the provisions of this Act, but 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 it is higher than the estimated minimum value, he after registering such instrument, shall refer it by assigning proper reasons to the Collector for determination of proper market value of the property and the proper duty payable thereon.

47-A (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 (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 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 Bihar Stamp (Bihar Amendment) Ordinance, 1986.”

4. It is thus submitted by the learned counsel for the petitioner that reference can be made by the Registering Officer 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 guidelines registered of Estimated Minimum Value, only before registering the instrument in question, however, in the present case, the respondent no. 5, has referred the matter to the respondent no. 3, not only after registration of



the sale deed on 03.05.2019, but also after about three years, hence the said reference itself is bad in law. 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 duly paid by the petitioner at the time of registration of the sale deed on 03.05.2019.

5. In this connection, the Ld. Counsel for the petitioner has referred to a judgment rendered by the Ld. Division Bench of this Court, reported in **2018 (3) PLJR 136 (The State of Bihar and others v. Smt. Tetra Devi)**, paragraphs no. 14 and 15 whereof, are reproduced herein below:-

“14. In the present case, it is the Collector who has issued notice on the ground that the document registered is deficient in stamp duty. He might have issued notice on the report of the Sub-Registrar or the Commissioner. The fact remains that he is exercising his suo motu power. Such notice could be issued only within two years of the



registration of the document. Even if it is to be examined that the notice was issued at the instance of the Sub-Registrar, then the Sub-Registrar was bound to act at the time of registration of the document in terms of Rules 9 and 10 reproduced above. He cannot make recommendation after long delay, particularly when the officer registering the document has not made any reference at the time of registration of the document

15. Thus, we find that initiation of proceedings by the Collector suffers from patent illegality and has been rightly set aside by the learned Single Judge. We do not find any reason to interfere in the order passed by the learned Single Judge in the present Letters Patent Appeal.”

6. The Ld. 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 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."

7. Per contra, the learned counsel for the respondent-State has though vehemently opposed the present writ petition, however, he has not disputed the fact that reference has been made in the year, 2022, after the registration of the instrument in question on 03.05.2019, which is not permissible under the provisions contained in Section 47A (1) of the Act, 1899.

8. I have heard the learned counsel for the parties and perused the materials on record. Upon a query being put to the learned counsel for the respondents as to whether reference under **Section 47-A (1) of the Act, 1899** can be made for determination of the classification of the property, after the instrument has been registered, as has been done in the present case, the answer is in the negative. Admittedly, in the present case, a reference has been made by the respondent no. 5 in the



year 2022, whereas the deed in question had stood registered on 03.05.2019, hence, undeniably, the respondent no. 5 had no authority/jurisdiction to refer the matter after lapse of about 03 years to the respondent no. 3 under **Section 47-A (1) of the Act, 1899**. In any view of the matter, even the respondent no. 3 has got no power to *suo motu* review the amount of stamp duty paid at the time of registration, after a lapse of 02 years. In fact, the present case is squarely covered by a judgment rendered by the learned Division Bench of this Court in the case of **Tetra Devi (supra)** as also by a judgment rendered by a coordinate Bench of this Court in the case of Shahnaj Begam (supra). Thus, this Court finds that the action of the respondent no. 5 as also that of the respondent no. 3 is not only arbitrary and perverse but also against the mandate of **Section 47-A of the Act, 1899**, hence the impugned order dated 06.03.2023, passed by the respondent no. 3 is quashed and the respondents are debarred from proceeding any further in the matter.

9. The writ petition stands allowed.

(Mohit Kumar Shah, J)

sonal/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	18.11.2023
Transmission Date	NA

