

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 7018 of 2023

Amal Devi W/o Sri Rabindra Kumar Singh, R/o Village- Mashrak Barahiya
Tola, P.O. Mashrak, Police Station- Mashrak, District- Saran (Chapra).

... .. Petitioner/s

Versus

1. The State of Bihar through the Inspector General of Registration, Bihar, Patna.
2. The Inspector General of Registration, Bihar, Patna.
3. The Assistant Inspector General of Registration, Saran Division, Saran.
4. The District Registrar-cum-Collector-cum-District Magistrate, Saran.
5. The District Sub-Registrar, Chapra Registry Office, Saran.

... .. Respondent/s

Appearance:

For the Petitioner/s : Mr. Gyan Prakash, Advocate
For the Respondent/s : Mr. Vikash Kumar (Sc 11)
Mr. Rewti Kant Raman, AC to SC-11

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 07-11-2023

1. This writ petition has been filed for quashing the order dated 16.07.2022, passed by the respondent no.3, i.e. the Assistant Inspector General of Registration, Saran Division at Chapra, in Case No. 44 of 2022, whereby and where under the petitioner has been directed to deposit additional stamp duty to the tune of Rs.1,30,162/-, in connection with registration of sale deed dated 05.03.2019.

2. The brief facts of the case, according to the petitioner, are that the petitioner had purchased a piece of land, having an



area of 3.122 decimal, appertaining to Khata No.589, Survey Plot No.1399, situated at Dahiyanwan Tola, Town Thana, District-Chapra for a sale consideration of Rs. 25 lacs by a registered sale deed dated 05.03.2019, for which the petitioner had paid a sum of Rs. 1,92,500/- as Stamp Duty and a sum of Rs. 48,300/- as the registration charges. The sale deed, after registration, was delivered to the petitioner on 05.03.2019 itself, once the registering authority i.e. the District Sub-Registrar, District Registration Office, Saran at Chapra was satisfied that the classification of the property and its market value, set forth in the sale deed are correct. Nonetheless, subsequently, suspicion was raised regarding wrong classification as also non-disclosure of the correct market value of the aforesaid property in question, whereupon reference was made by the respondent no. 05 on 12.05.2022, whereafter the respondent no.3 had instituted a Stamp Case No. 44 of 2022 and passed the impugned order dated 16.07.2022, directing the petitioner to pay the deficit stamp duty to the tune of Rs.1,30,162/-.

3. The Ld. counsel for the petitioner has referred to Section 47 (A) (1) and (3) of the Indian Stamp Act, 1899 (hereinafter referred to as 'The Act, 1899'), which are 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. The learned counsel for the petitioner has next contended 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 on the property is wrong or the market value of the property has been set forth at a lower rate than the guidelines register 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 05.03.2019 but after more than three years i.e. on 12.05.2022. 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 05.03.2019.

5. In this connection, the petitioner has referred to a judgment rendered by the learned 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 Ld. 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 47 A (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 submitted that there is no procedural irregularity in the procedure adopted by the respondent no.3 to assess the deficit stamp duty, nonetheless, it is not disputed that the sale deed was registered on 05.03.2019, however, reference was made by the respondent no.5 to the respondent no.3 only on 12.05.2022.

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 on 12.05.2022, whereas the deed in question had stood registered on 05.03.2019, hence, undeniably, the respondent no. 5 had no authority/jurisdiction to refer the matter after lapse of more than 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 16.07.2022, passed by the respondent no. 3 as also the consequential letter dated 21.07.2022, issued by the respondent no. 5 are quashed and the respondents are debarred from proceeding any further in the matter.

9. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Saurav/-

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

