

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 10389 of 2023

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Rita Devi, Wife of Nand Kishore Sah Resident of 222/2 1st Bye Lane Gauri,
Near Metro E Gate, Dum Dum, Rabindra Nagar, Kolkata, West Bengal, At
present resident of Village- Bahuari, Police Station- Ramnagar, District- West
Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue,
Government of Bihar, Patna.
2. The Assistant Inspector General of Registration, Tirhut Division,
Muzaffarpur.
3. The Assistant District Registrar, Bettiah, West Champaran.
4. The District Certificate Officer, Bettiah, West Champaran.

... .. Respondent/s

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Appearance:

For the Petitioner/s : Mr. Abhitabh Kumar, Advocate
For the Respondent/s : Mr. Vikash Kumar (SC- 11)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 21-08-2023

1. The present writ petition has been filed for quashing the order dt. 11.01.2022 passed by the Assistant Inspector General of Registration, Tirhut Division, Muzaffarpur i.e. the respondent no. 2 in Case No. 4 of 2019-20, whereby and whereunder the petitioner has been directed to deposit deficit stamp duty along with fine totaling to a sum of Rs. 5,14,553/- in connection with registration of a sale



deed which had taken place on 08.03.2019. The petitioner has also prayed for quashing of Memo dated 08.02.2022, issued by the Assistant District Registrar, West Champaran at Bettiah, whereby and whereunder the petitioner has been directed to deposit a sum of Rs. 6,29,978/-.

2. The brief facts of the case, according to the petitioner, are that she had purchased a land appertaining to Mauza-Bahuari, Thana No. 618, Khata No. 34, Khesra/Plot No. 366 admeasuring an area of 45 decimal, falling under the developing category, for a sale consideration of a sum of Rs. 20,25,000/- on 08.03.2019, whereafter, a sale deed was executed and registered on the same day. Thereafter, the Assistant District Magistrate had inquired into the matter and in his report dated 15.03.2019, he had come to the conclusion that the aforesaid land in question falls under the residential category, hence he had referred the matter for recovery of deficit stamp duty, under Section 47 A (1) of the Indian Stamp Act, 1899 (hereinafter referred to as the 'Act, 1899'). It is also submitted



that a proceeding was then initiated under Section 47A (1) of the Act, 1899 on 11.01.2022, whereafter the petitioner was given time to file her objection and finally by the impugned order dated 11.1.2022, the respondent no. 2 had assessed the deficit stamp duty to the tune of Rs. 4,67,775/- and had further levied penalty amounting to a sum of Rs. 46,778/-. It is also submitted that the land in question is purely an agricultural land and there is no approach road to the plot in question from the main road apart from the plot in question being land locked, hence the order dated 11.01.2022 is illegal & fit to be set aside.

3. The Ld. counsel for the petitioner has further submitted that as per the mandate of Section 47A(1) of the 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 reference has been made by the District Sub-Registrar, West Champaran at Bettiah, only after registration of the sale deed on 08.03.2019, 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 co-ordinate Bench of this Court in the case of ***Shahnaz Begum vs The State of Bihar & others***, reported in **2018 (2) PLJR 293**.

4. *Per contra*, the leaned counsel for the respondent-State has submitted, by referring to the counter affidavit filed in the present case that after the sale deed in question was executed before the District Sub-Registrar, West Champaran on 08.03.2019, an inquiry was made with regard to the category of the land in question, whereupon it was reported that the land in question is in the nature of a residential land, whereupon the District Sub Registrar, West Champaran at Bettiah, being



satisfied with the report of the Sub-Registrar, Bagaha to the effect that the present case is a case of evasion of stamp duty, had referred the matter vide his letter dated 30.04.2019 to the respondent no. 2 under Section 47A(1) of the Act, 1899 for recovery of the deficit stamp duty from the petitioner, whereafter the respondent no. 2 had initiated a case bearing Case No. 4/2019-20 & after granting opportunity to the petitioner had passed the impugned order dated 11.01.2022, as aforesaid. Thus, it is submitted that there is no infirmity or illegality as far as the impugned order dated 11.01.2022 passed by the respondent no. 2 is concerned.

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 Act, 1899 (as amended by the Indian Stamp (Bihar Amendment) Act, 2013, published in the gazette on 03.05.2013, herein below:-

"47A(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 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, admittedly, the sale



deed in question was registered on 08.3.2019, in the office of the District Sub-Registrar, West Champaran, however, reference was made by the District Sub-Registrar, West Champaran at Bettiah to the respondent no. 2, under Section 47-A (1) of the Act, 1899, only thereafter, which in any view of the matter, is illegal and 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 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 District Sub-Registrar, West Champaran at Bettiah has made a reference to the respondent no. 2 only after



registration of the sale deed on 08.03.2019, thus there is a clear-cut contravention of Section 47-A(1) of the Act, 1899. In fact the present case is squarely covered by a Judgment rendered by a co-ordinate Bench of this Court in the case of Shahnaz Begam (Supra), which has not been refuted by the learned State counsel. It would be apt to reproduce paragraphs no. 6 to 9, thereof, 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 & arbitrary & 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 herein above, this Court finds that the order dated 11.01.2022, passed by the Assistant Inspector General of Registration, Tirhut Division, Muzaffarpur in Case No. 4 of 2019-20 is illegal & contrary to the



provisions contained in Section 47-A (1) of the Indian Stamp Act, 1899, hence, is quashed and the respondents are debarred from proceeding any further in the matter. Accordingly, all the consequential action taken by the respondent authorities are also declared to be null and void.

9. The writ petition stands allowed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	12.09.2023
Transmission Date	N/A

