IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10808 of 2023

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Dr. Bhagwan Das Son of Late Shewak Das Resident of Dam Road PO and PS Baunsi, District-Banka.

... ... Petitioner/s

Versus

1. The State of Bihar through the Inspector General Registration Government of Bihar, Patna.
2. The Collector Cum District Registrar, Banka.
3. The Additional District Registrar Banka.
4. The Accountant General, Bihar Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nand Gopal Mishra, Advocate

For the Respondent/s : Mr. Vikash Kumar (SC11)

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL JUDGMENT

Date : 02-12-2023

1. Heard the learned counsel for the petitioner Mr. Nand Gopal Mishra, learned counsel for the State Mr. Rewati Kant and learned counsel for the Accountant General Mr. Ram Yash Singh.

2. This application has been filed for quashing the demand notice dated 16.12.2021 issued by the Additional District Registrar, Banka by which he has asked the petitioner to deposit a sum of Rs. 19,95,120/- for short released stamp duty and registration fee in respect of Sale Deed No. 15370 dated

06.11.2017. The petitioner has also prayed for quashing the demand notice dated 13.03.2023 issued by the Collector, Banka in Registration Revenue Recovery Case No. 08/2022-23 by which acting on proposal of Additional District Registrar, Banka for deposit of Rs. 14,96,340/-.

3. Learned counsel for the petitioner submits that after his retirement, the petitioner with an objective to engage himself in an organic-cultivation, purchased a piece of land in the locality of his residence at Bounsi which is four kilometers away from Bounsi at Dumka, Bhagalpur. The land purchased by the petitioner is a Raiyati agricultural land of one *Manjho Singh* and his brothers. The said land was purchased by the petitioner through registered Sale Deed No. 15370 dated 06.11.2017 executed by said *Manjho Singh* and others at District Registry Office, Bounsi. The recital in the sale deed categorically mentioned that the land is a two crops producing agricultural land and it is also mentioned in the sale deed that the actual price of the land is 6,00,000/- (Six Lakhs Only) as per the governments valuation the price of land is Rs. 11,61,000/- (Eleven Lacs Sixty One Thousand Only).

4. Learned counsel for the petitioner further submits that the stamp fees and registration fees were paid by the petitioners as charged by the registrar's office in respect of agricultural land at the rate of government valuation which is evident from the sale deed itself. He further submits that subsequent to the execution of Sale-Deed No. 15370 dated 06-11-2017, the petitioner purchased another piece of land pertaining to same Mouja, Khata and Khesra except the boundary and area of the land vide sale deed no. 15978 dated 15.11.2017 and it is relevant to mention here that the boundary of this land shows that in the western side of the land is Dumka Bhagalpur road which is a state high-way. In other words, this land which is nine (decimal) in area is adjacent to state highway. Though, this land also pertains to the same *khata* and *khesra* as that of the land of sale deed no. 15370 dated 06.11.2017 (Annexure-1) and the nature of land is also agricultural two crops producing (Dofasla) land but the petitioner at the time of registration was asked to pay stamp duty as well as registration fee as applicable in respect of commercial land.

5. Learned counsel for the petitioner further submits that at the time of execution of sale deed, the petitioner was made to believe by the deed writer and some staffs of the District Registry Office that since this land is situated just beside the state high-way, the nature of land has become commercial and accordingly, he has to pay the stamp duty as well as registration fees as applicable in respect of commercial land. The petitioner being misled by above mentioned persons, agreed to pay the stamp fees and registration fee as payable in respect of commercial land and the deed writer cunningly incorporated in the recital of sale deed "Araji 2 fasli hai fees commercial ka dia gaya hai". He further submits that after some time, petitioner has come to know that there is a nexus of deed writers, some staff of District Registry Office with land mafia of the locality who operates in connivance with the staffs of Anchal office and this became evident when the petitioner applied for mutation of the said land before the Circle Officer, Bounsi and his application was rejected on the ground that some person had raised objection in respect of mutation of the land where as the said person did not have any concern with the land and he, in the matter is no one but a stranger.

6. Learned counsel for the petitioner further submits that after the execution of the sale deed in the year 2017, petitioner came in peaceful possession of both the land and at present, as planned by him, he is engaged in agricultural work over both the plots. It is pertinent to mention here that at the time of purchase of the land, the land was agricultural land and it become evident from the fact that in respect of the land, *malgujari* rent was paid as payable for agricultural land. It is significant as well as relevant to mention that the government has not categorized the said land and whether the lands in its surroundings are residential or commercial land and there is no notification to that effect by the government till date. He further submits that after four years of the execution of said sale deed no 15370 dated 06.11.2017, the District Registry Office Banka issued a demand letter under the signature of Additional District Registrar Banka vide memo no. 550 dated 16.12.2021. By this, the petitioner was asked to pay a sum of Rs 19,95,120/- (Nineteen Lacs Ninety Five Thousand One Hundred Twenty Only) through challan along with the original documents in his office within a week otherwise for realization of the said amount, the matter will be sent to the Collector Cum District Registrar, Banka for further action under Section 47A (3). The aforesaid letter contained inspection report of the office of Accountant General, Bihar, Patna.

7. Learned counsel for the petitioner further submits that it is apparent that Additional District Registrar, Banka has issued the said letter dated 16-12-2021 consequent to the inspection report vide no 40/2021-22 prepared by the office of the

Accountant General Bihar in course of audit and forwarded to the Additional District Registrar Banka. The said demand of Rs 19,95,120/- as pointed out in the inspection report of the office of Accountant General Bihar in courses of audit based solely on the ground that though two pieces of land pertaining to same *Mouja, Khata, Khesra* have been purchased through two separate sale deeds wherein stamp in respect of subsequently executed sale deed has been paid for commercial land where as in the first sale deed the stamp duty has been paid for agriculture land thus due to misclassification of category of land Rs 19.95 lakh was short realized in the shape of stamp duty and office of Accountant General Bihar calculated the stamp duty in respect of the land in earlier sale deed no. 15370 as applicable for commercial land and asked the Additional District Registrar, Banka to state the reason for short realization of stamp duty to the audit.

8. The Additional District Registrar Banka instead of clarifying the correct fact that misclassification of category of land had been done earlier by his office where in for the land already established as agricultural land, in absence of any notification by the Government categorizing the land as commercial land, stamp duty of commercial land had been realized from the petitioner in sale deed no. 15978 dated 15.11.2017 and inadvertently he issued demand notice to the petitioner asking him to deposit the differential amount as calculated in audit ie Rs19,95,120/- within a week.

9. The stamp duty in both the sale deeds were paid by the petitioner as per the valuation of the land fixed by the government (circle rate). The Additional District Registrar Banka instead of rectifying the wrong, he treated the land as commercial land, ignoring the fact that the land was a *dofasli* agricultural land and issued demand notice in respect of the earlier Sale Deed No 15370 dated 06-11-17 and in response to the demand notice dated 16.12.2021, the petitioner submitted his reply/representation. The petitioner in his representation honestly admitted that taking future utility of the land in mind, since it was beside the state high way stamp duty for commercial land was paid by him. Petitioner further clarified that at the time of execution of both sale deeds, the category of land was agricultural and still it exists as such in the Governments records. Additional District Registrar Banka, did not take pain to look into the matter properly to determine as to whether the land in question was agricultural land or commercial land, at the time of execution of sale deed and further as to whether the stamp duty and registration fees were paid by the petitioner as per the Government valuation or not, without responding to the petitioner's representation, he sent proposal to the Collector cum District Registrar, Banka to initiate proceeding under section 47(A)(3) of the Indian Stamp Act 1899 for realization of the alleged amount as Government revenue.

10. Learned counsel for the petitioner further submits that after more than one year, the petitioner received a demand notice dated 13.03.2023 issued from the Court of Collector, Banka and registration Revenue Recovery Case No. 08/2022-23 has been instituted on proposal given by the Additional District Registrar, Banka in the light of the Audit report for realization of Rs. 14,96,340/- by which the petitioner has been asked to deposit the said amount and produce evidence in the Court. He further submits that petitioner filed his reply to the notice dated 13.03.2023 on 09.04.2023 by which he emphasized the fact that the land in question, was purely an agricultural land at the time of purchase as also even today it.

11. He further submits that the proposal sent by the Additional District Registrar, Bank to the Collector-cum-Registrar, Banka to initiate a proceeding under Section 47A(3) of Indian Stamp Act, 1899, is not applicable in this case as the demand notice dated 13.03.2023 sent from the court of Collector, Banka is time barred hence nonest in the eye of law.

12. Learned counsel for the petitioner has also relied upon the judgment of this Court in the case of ***Anjani Devi vs State of Bihar*** reported in ***2023 2 PLJR 12 (HC).***

13. Learned counsel for the State has appeared and file its counter affidavit. The Counter affidavit of the State has placed the fact of the case and has supported its demand. It has not said anything about the question of limitation raised by the petitioner in the writ petition.

14. I have considered the submission of the parties.

15. The main issue raised by the petitioner is the issue of limitation. This Court in the case of ***Anjani Devi vs State of Bihar*** (Supra) in paragraph 7, 8 and 9 held as follows:-

> *"7. 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 Indian Stamp Act, 1899 (as amended by the Indian Stamp (Bihar Amendment) Act, 2013, published in the gazette on 03.05.2013, herein below:-*
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> > *"(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."

8. It is apparent from a bare perusal of Section 47A(1) of the Indian Stamp 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, it is an admitted fact that the sale deed in question was registered on 27.01.2014, in the office of the Sub-Registrar, Bikram, however, reference was made by the Sub-Registrar, Bikram to the respondent No. 4 underSection 47A(1) of the Indian Stamp Act, 1899 only, thereafter, which in any view of the matter is illegal & contrary to the provisions contained in the Act, 1899.

9. 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 / Inspector General Registration, who can suo motu, within two years from the date of such registration, under Section 47A(3) of the Indian Stamp 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 Sub-Registrar, Bikram has made a reference to the Assistant Inspector General, Registration, Patna, after the registration of the sale deed on 27.01.2014, thus there is a clear contravention of Section 47A(1) of the Indian Stamp Act, 1899. This Court is of the view that the present case is squarely covered by the law laid down *by a coordinate Bench of this Court in the case of Shahnaz Begam (supra), which the Ld. State counsel has not been able to controvert. It would be apt to reproduce paragraphs no. 6 to 9 of the said judgment 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:-*
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> *"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."

16. Section 47 A of the Indian Stamp Act reads as follows:-

*"**[47-A. Instruments of conveyance.***

(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.]

(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:

Provide that no such person shall be required to pay any amount to make up the difference, if the differences between the consideration or the market value as set forth in the instruments 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 [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 hall apply to any instrument registered before the date of commencement of the Bihar 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.]

[(6) Before filing an appeal under sub-section (4), the aggrieved party shall deposit 50% (fifty percent) amount of the payable deficient stamp duty chargeable on the market value of the property as determined by the Collector.

(7) If after determination of the proper market value, it

is established that the parties have deliberately concealed the actual description of property or the market value of the property or any other facts and circumstances affecting the chargeability of the duty as required under Section 27 of the Indian Stamp Act, 1899 [as amended by Indian Stamp (Bihar Amendment) Act, 1988], the Collector, or in cases where appeal has been filed, the Appellate Authority, may impose a fine equal to 10% (ten per cent) amount of the deficient stamp duty.

(8) If an appeal is not filed under sub-section (4) of Section 47A, an interest at the rate of 5% (five per cent) per month shall be leviable on the deficient amount of stamp duty if it is not deposited within sixty days from the date of order passed by Collector.

(9) If an appeal is filed as prescribed in sub-section (4) of Section 47A, interest at the rate of 5% (five per cent) per month shall be payable from the date of the order of the Appellate Authority for deposit of deficient stamp duty if it is not paid within sixty days of such order.

(10) If the amount of deficient stamp duty is not paid within sixty days from the date of the order of the Collector in case an appeal is not filed against the said order, or within sixty days from the date of the order of the Appellate Authority as the case may be, the amount of deficient stamp duty alongwith the amount of interest shall be recovered by the Collector as prescribed under Section 48 of the Act.]

17. It has been contended by the learned counsel for the petitioner that as per the Section 47 A (1) of the Indian Stamp Act, 1899, reference can be made by the Registering Authority for determining the proper market value of the property in question and after being satisfied with the classification of the property or the measurement of the property including the superstructure and coming to the finding that the valuation of the property was wrongly done that is the property was under valued than the guidance register of estimated minimum value.

18. The present land was registered on 06.11.2017. The

Registering Authority could have referred the matter to the Collector/ Assistance Inspector General for determination of the proper market value of such property and the duty payable thereon. The reference has been made on 16.12.2021.

19. The limitation for making reference as provided under Section 47 A (3) is to be made within two years from the date of registration of such instrument. In the case of the petitioner, the reference has been made much after the expiry of the limitation of two years.

20. In these circumstances, both the notices dated 16.12.2021 issued by the Additional District Registrar, Banka and dated 13.03.2023 issued by the Collector, Banka are barred by limitation and therefore both the notices are hereby quashed.

21. This Court has not gone into the other submissions made by the learned counsel for the petitioner since the notices have been held to be barred by limitation.

22. This application is allowed with cost.

(Sandeep Kumar, J)

Shishir/-

AFR/NAFR	N.A.F.R.
Uploading Date	21.12.2023
Transmission Date	N/A