IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 18085 of 2022

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Ajit Kumar S/o Late Singasan Prasad R/o Ward No.10, Village and P.O. and P.S. Nokha, District-Rohtas.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Prohibition Excise and Registration Department, Bihar, Patna.
2. The Additional Chief Secretary, Prohibition Excise and Registration Department, Bihar, Patna.
3. The Inspector General of Registration-Cum-Excise Commissioner, Bihar, Patna.
4. The Assistant Inspector General of Registration, Patna Division, Patna.
5. The District Magistrate-Cum-Collector, District- Rohtas at Sasaram
6. The District Panchayat Raj Officer-Cum-Certificate Officer, District-Rohtas at Sasaram.
7. The District Sub Registrar, Sasaram, District-Rohtas

... ... Respondent/s

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Appearance:

For the Petitioner/s	:	Mr. Siddharth Harsh, Advocate
For the Respondent/s	:	Mr. Vivek Prasad (GP 7)
	:	Ms. Roona (AC to GP 7)
	:	Ms. Supragya, Advocate

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 03-07-2023

1. The present writ petition has been filed for quashing the order dated 31.03.2016, passed by the Assistant Inspector General of Registration, Patna Division, Patna i.e the respondent No. 4, in Case no. 05 of 2015, whereby and whereunder the petitioner has been directed to deposit deficit stamp duty along

with fine totaling to a sum of Rs. 1,07,272/-, in connection with registration of a sale deed, which had taken place on 25.05.2015. The petitioner has also prayed for quashing the notice dated 28.01.2022, issued by the Certificate Officer, Rohtas in Case no. 01 of 2018-19.

2. The brief facts of the case, according to the petitioner, are that the petitioner and his brother had negotiated to purchase 03 *kathas* of agricultural land situated at Plot no. 1153, *Khata* no. 1092, *Mauza*-Nokha, Thana no. 441, Nagar *Panchayat* Nokha from its owner for a sale consideration of a sum of Rs. 2 lacs, whereafter a sale deed was prepared and presented before the District Sub Registrar, Sasaram, Rohtas i.e. the respondent no. 7 and after paying the stamp duty, the same was registered on 25.05.2015.

3. The learned counsel for the petitioner has submitted that the land purchased by the petitioner is an agricultural land situated at a distance of about 20 km from the District Headquarters and is not bounded by any road, nonetheless, on false pretext, the aforesaid Stamp case no. 05 of 2015 was instituted and a notice dated 05.03.2016 was sent to the petitioner for appearing in the matter, whereafter he had

appeared and submitted copies of sale deed pertaining to similar properties, wherein the valuation of the land was similar to that of the land of the petitioner, however, subsequently, the petitioner received a notice from the Certificate Officer, Rohtas in connection with Certificate case no. 01 of 2018-19 and upon inquiry, he came to know that an order dated 31.03.2016 has been passed by the respondent no. 4 in Stamp case no. 05 of 2015, directing the petitioner to deposit deficit stamp duty along with fine totaling to a sum of Rs. 1,07,272/-.

4. The learned counsel for the petitioner has submitted that as per the mandate of ***Section 47A (1) of the Indian Stamp Act, 1899 (hereinafter referred to as "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 respondent no. 7, only after registration of the sale deed on 25.05.2015, 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.***

5. *Per contra,* the learned counsel for the respondent has submitted by referring to the counter affidavit filed in the present case that the order passed by the respondent no. 4 in Stamp Case no. 05 of 2015 is legal, valid and has been passed as per the provisions contained in the Act, 1899. It is also submitted that the then District Sub-Registrar, Rohtas had authorized an Assistant of his office with regard to enquiring about the status of the land in question, who had then visited the land in question and submitted his inquiry report depicting the said land to be a fully developed one, whereafter reference was made to the respondent no. 4, who had then initiated Stamp case no. 05 of 2015 and then the impugned order dated 31.03.2016 has been passed, directing the petitioner to pay the deficit stamp duty along with fine totaling to a sum of Rs. 1,07,272/-, hence, there is no lapse in the procedure adopted by the respondents.

6. 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."*

7. 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, it is an admitted fact that the sale deed in question was registered on 25.05.2015 in the District Registrar Officer, Rohtas at Sasaram, however, reference was made by the respondent no. 7 to the respondent

no. 4, 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.

8. 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 Sub-Registrar, Rohtas at Sasaram has made a reference to the respondent no. 4 only after registration of the sale deed on 25.05.2015, 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."

9. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, this Court finds that the order dated 31.03.2016, passed by the Assistant Inspector

General of Registration, Patna Division, Patna in Case no. 05 of 2015 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.

10. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19.08.2023
Transmission Date	NA