IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 17335 of 2022

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Rakesh Kumar Singh son of Jaleshwar Singh, Resident of Mohalla- Bichla Telpa, P.S.- Chapra Muffasil, 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 Commissioner Saran Division, Chapra.
4. The Assistant Inspector General of Registration, Saran Division, Chapra.
5. The District Assistant Registrar, Saran (Chapra).
6. The District Magistrate, Saran (Chapra).
7. The District Certificate Officer, Sadar, Chapra.

... ... Respondent/s

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Appearance:

For the Petitioner/s	:	Mr. Anand Kumar Ojha, Advocate
		Mr. Ram Kishore Singh, Advocate
		Mr. Ashok Kumar Karn, Advocate
		Mr. Abhishek Raj, Advocate
For the State	:	Mr. Vikash Kumar (Standing Counsel-11)
		Mr. Rewti Kant Raman, AC to SC-11

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 07-04-2023

The present writ petition has been filed seeking quashing of the order dated 27.04.2018, passed by the Assistant Inspector General, Saran Division at Chapra i.e. respondent no.4, whereby &

whereunder by an *ex-parte* order, the petitioner has been directed to deposit deficit stamp duty to the tune of Rs.71,760/- along with penalty of Rs.7,176/-, totaling to a sum of Rs.78,936/-, in connection with registration of sale deed dated 27.07.2017. The petitioner has also prayed for quashing of the appellate order dated 18.08.2022, passed by the Commissioner, Saran Division, Chapra in Stamp Appeal No. 09 of 2021, whereby and whereunder the appeal filed by the petitioner has been dismissed.

2. The brief facts of the case, according to the petitioner are that the petitioner had purchased the land in question, as has been described in paragraph no.4 of the present writ petition, vide sale deed dated 27.07.2017, and the nature of the land being residential and a developing land, the market value was determined to the tune of Rs.9,86,000/-, whereupon the petitioner had paid the requisite stamp duty amounting to a sum of Rs.78,880/-. It is the case of the petitioner that the petitioner, after being put in peaceful possession of

the aforesaid land in question, had applied for opening of jamabandi in his name, whereupon the jamabandi has also been created in the name of the petitioner and he has started paying revenue to the State Government, however, suddenly after two years of registration of the sale deed in question, the petitioner received a notice from the office of the District Registration Office, Saran at Chapra dated 17.08.2019, whereupon the petitioner enquired into the matter and came to know about passing of an *ex-parte* order dated 27.04.2018, whereby and whereunder the petitioner had been directed to pay deficit stamp duty. The petitioner had then filed an appeal before the learned court of Commissioner, Saran Division, Chapra bearing Appeal No. 09 of 2021, upon the petitioner having been directed to do so after he had approached this Court, by filing a writ petition bearing C.W.J.C. No. 19652 of 2019, however, the same has also stood dismissed by the impugned order dated 18.08.2022.

3. The Ld. Counsel for the petitioner has

submitted 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 Guideline 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. 4, only after registration of the sale deed on 27.07.2017, 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 provision of law has not been invoked.

4. In this connection, the Ld. Counsel for the petitioner has 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.*
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> *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.*
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> *9. Accordingly, the impugned order dated 16.05.2016 as contained in Annexure-4 stands quashed. The writ application is allowed. No costs.*"

5. At this juncture, it would be relevant to reproduce Section 47-A (1) of the Indian Stamp Act, 1899 (hereinafter referred to as the "Act, 1899"), 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."*

6. Per contra, the learned 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 in favor of the petitioner on 27.07.2017, it was found that the petitioner had concealed the nature of the land in question and had mentioned that the same was a '*Vikas-sheel Awasiya*' land with a view to deposit less stamp fee than the actual, hence the Sub-Registrar had enquired into the matter and valued the land, whereupon the actual worth of the land was found to be a sum of Rs. 18,83,000/-, hence he referred the matter under Section 47-A (1) of the Act, 1899, to the respondent no. 4 for recovery of deficit stamp fee, who had then initiated a case bearing Stamp Case No. 08 of 2018 and had then passed the impugned order dated 27.04.2018, directing the petitioner to pay deficit Court fee to the tune of Rs.78,936/-, including the penalty amount. It is, thus, submitted that there is no discrepancy either in the impugned order dated

27.04.2018, or the Appellate order dated 18.08.2022.

7. 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 proper market value of the property in question, 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 2018, whereas the sale deed in question had stood registered on 27.07.2017, hence, admittedly, the respondent no. 5 had no authority/jurisdiction to refer the matter after registration of the sale deed to the respondent no. 4 under ***Section 47-A (1) of the Act, 1899***. In fact, the present case is squarely covered 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. 4 is not only arbitrary and perverse but also against the mandate of ***Section 47-A (1) of the Act, 1899***, hence, the impugned order dated 27.04.2018, passed by the respondent no. 4 is quashed. Consequently, the appellate order dated 18.08.2022, passed by the learned Commissioner, Saran Division, Chapra, in Stamp Appeal No. 09 of 2021, has got no legs to stand, hence is also set aside and the respondents are debarred from proceeding any further in the matter.

8. It is needless to state that any pre-deposit made by the petitioner prior to filing of the appeal in question, shall be refunded to the petitioner, within a period of six weeks from today, failing which the Commissioner, Saran Division, Chapra, shall not draw his salary.

9. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	18.08.2023
Transmission Date	N/A