IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2126 of 2024

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Devesh Kumar Mishra S/o- Bipin Bihari Mishra, Resident of Village Silwatiya Bargo, P.S.- Ramnagar, District- West Champaran.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
2. The Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
3. The Inspector-General of Registration, Bihar, Patna.
4. The Divisional Commissioner, Tirhut Division, Muzaffarpur.
5. The Assistant Inspector-General of Registration, Tirhut Division, Muzaffarpur.
6. The District Registrar-cum-the Collector-cum-District Magistrate, East Champaran at Motihari.
7. The District Sub-Registrar, Motihari Registry Office, East Champaran at Motihari.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sanjeev Kumar, Advocate
		Mr. Manisha Khushi, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, SC-11

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 24-06-2024

The present writ petition has been filed for quashing the order dated 24.03.2023, passed by the Assistant Inspector General, Registration Tirhut Division, Muzaffarpur, i.e. the respondent no.5 in Case No.107 of 2022-2023, whereby and whereunder the petitioner has been asked to deposit deficit stamp duty to the tune of Rs.2,16,720/- along with penalty of a sum of Rs.21,672/-, totalling to a sum of Rs.2,38,392/-.

2. The brief facts of the case, according to the petitioner, are that on 16.12.2022, a registered sale deed was executed in favour of the petitioner and one Dewesh Kumar Tripathi in respect of a piece of land appertaining to Thana No.66, Khata No.149, Plot No.521, admeasuring 47 decimal, falling under Mauza Ramgarhwa under Ramgarhwa Anchal of East Champaran District. The sale deed was registered by the Sub-Registrar, Motihari on 16.12.2022, after payment of requisite registration fees and stamp duty, upon showing the value of the land to be a sum of Rs.6,49,000/-, falling under category of Sarehi *rasta*. It is further submitted by the learned counsel for the petitioner that all of a sudden, on 25.03.2023, the petitioner received a notice dated 17.03.2023, issued by the respondent no.5, directing the petitioner to appear before him in connection with Case No.107 of 2022-23. It is also contended that though the date of appearance of the petitioner was fixed as 24.03.2023, however, the petitioner received noticed on 24.03.2023 itself, hence the petitioner could not appear before the respondent no.5 and later on, he came to know that the impugned order dated 24.03.2023 has been passed against the petitioner in connection with Case No.107 of 2022-23, directing the petitioner to pay the deficit stamp duty and fine to the tune

of Rs.2,38,392/-. It is thus submitted that the aforesaid order dated 24.03.2023 has been passed *ex parte* without hearing the petitioner and/or granting him any opportunity to put forth his defence, hence the same is illegal. The learned counsel for the petitioner has further submitted that reference in the present case has been made by the Sub-Registrar, Motihari to the respondent no.5, only after registration of the sale deed on 16.12.2022, hence on this ground alone, the impugned order dated 24.03.2023 is illegal and fit to be set aside. In this connection, the learned counsel for the petitioner has referred to Section 47-A(1) of the Indian Stamp Act, 1899 (hereinafter referred to as the "Act, 1899"), which is reproduced hereinbelow:-

> *"**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."

3. It is thus submitted by the learned counsel for the petitioner 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.7 has referred the matter to the respondent no.5 only after registration of the sale deed on 16.12.2022, hence the said reference itself is bad in law.

4. The learned counsel for the petitioner has also relied on a judgment, rendered by a co-ordinate 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.

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."

5. *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 District Sub-Registrar, Motihari received complaint regarding revenue loss being caused to the State, an enquiry was made and it was found

that the land in question falls under the residential on road category, but in the sale deed dated 16.12.2022, the same was depicted as Sarehi road, hence the District Sub-Registrar, Motihari had referred the matter to the respondent no.5 under Section 47-A(1) of the Act, 1899, whereafter, the respondent no.5 had initiated deficit stamp case no.107 of 2022-23 and after issuing notice to the petitioner, the impugned order dated 24.03.2023 has been passed, directing the petitioner to deposit the deficit stamp duty along with the penalty amount, totalling to a sum of Rs.2,38,392/-. Thus it is submitted that there is no illegality in the action of respondent no.5, hence no interference is required with the impugned order dated 24.03.2023.

6. I have heard the learned counsel for the parties and perused the materials on record.

7. This Court finds that admittedly, reference has been made by the Sub-Registrar, Motihari to respondent no.5 only after registration of the sale deed on 16.12.2022, hence admittedly the Sub-registrar, Motihari had no jurisdiction/authority to refer the matter to the respondent no.5 under Section 47-A(1) of the Act, 1899. In fact, the present case is squarely covered by the judgment rendered by a co-ordinate Bench of this Court in the case of ***Shahnaz Begam*** (supra),

thus this Court find that the action of respondent no.7 as also that of the respondent no.5 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 24.03.2023, passed by the respondent no.5, being contrary to law, is quashed.

8. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.07.2024
Transmission Date	NA