IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2506 of 2023

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Ram Veshar Devi Wife of Sri Ashok Kumar Yadav Resident of Plot No. 10A, K.H. No. 458, Gali No. 8 Bhagat Singh Park, Siraspur, North West Delhi, Delhi- 110042, Presently Residing at Village- Piparahi, Ward No. 13 (Old), P.S. and Anchal- Ladaniya, District- Madhubani (Bihar).

... ... Petitioner/s

Versus

1. The State of Bihar through the Inspector General, Registration, New Secretariat, Govt. of Bihar, Patna.
2. The Inspector General, Registration, New Secretariat, Govt. of Bihar, Patna.
3. The Assistant Inspector-General, Registration, Darbhanga Division, Darbhanga.
4. The Collector of the District Madhubani.
5. The District Registration Officer, Madhubani.
6. The Sub- Registrar (The Sub- Divisional Registration Office) Jainagar, Madhubani.
7. The Circle Officer, Ladaniya, Distt.- Madhubani.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Shashi Nath Jha, Adv.

For the State : Mr. SriRam Krisha, AC to SC-11

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 19-11-2024

The present writ petition has been filed for quashing the order dated 20.6.2022, passed by the Assistant Inspector General Registration, Darbhanga Division, Darbhanga, i.e. the Respondent No. 3, in Deficit Stamp Case No. 89 of 2022-23, whereby and whereunder the petitioner has been directed to pay a sum of Rs. 86,982/- on the head of deficit stamp duty plus a sum of Rs. 8,699/- on the head of penalty, totalling to a sum of Rs. 95,681/-.

2. The brief facts of the case, according to the petitioner, are that the petitioner had purchased land, situated at Mauza-Achalpur Piparahi, Thana No. 143, Anchal & P.S.-Ladania, Sub registry office-Jainagar, District-Madhubani, vide sale deed registered on 24.1.2022, after payment of requisite stamp duty and registration charges. The description of the land purchased by the petitioner are as follows:-

Sl. No.	Khata No.	Survey Plot No.	Area purchased
1.	411 (old) 1037 (new)	547 (old) 285(new)	06.54 dec.
2.	86 (old) 1039(new)	4399 (old) 2750 (new)	3.27 dec.
3.	1347 (new)	387(old) 201(new)	06.976 dec.

3. It is submitted by the learned counsel for the petitioner that the aforesaid land in question is a vacant land and no pucca structure is situated over it, hence, the petitioner had mentioned the said land to be falling under the residential category in the aforesaid sale deed registered on 24.1.2022, after payment of requisite stamp duty and registration charges. Subsequently, the District Sub-Registrar, Jainagar, Madhubani, i.e. the Respondent No. 6, appears to have referred the matter to the Respondent No. 3 on 01.02.2022 for determination of the category of the land

and calculation of the deficit stamp duty on the pretext that upon enquiry, the aforesaid land in question has been found to be falling under the developing residential category, over which pucca house is constructed, leading to increase in the MVR value. The Respondent No. 3 had then initiated Deficit Stamp Case No. 89 of 2022-23, whereafter notice was issued to the petitioner and then the impugned order dated 20.6.2022 has been passed by the Respondent No. 3, directing the petitioner to pay a sum of Rs. 95,681/- on the head of deficit stamp duty and penalty charges.

4. The learned 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. 6 has referred the matter to the Respondent No. 3, under Section 47(A)(1) of the Indian Stamp Act, 1899 (hereinafter referred to as "the Act, 1899"), on 01.02.2022, i.e. after registration of the sale deed on

24.1.2022, hence, the said reference itself is bad in law.

5. The learned counsel for the petitioner has referred to Section 47(A)(1) of 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."

6. In this connection, the Ld. Counsel for the petitioner has referred to a judgment rendered by the learned Division Bench of this Court, reported in **2018 (3) PLJR 136** ***(The State of Bihar and others v. Smt. Tetra Devi***), paragraphs no. 14 and 15 whereof, are reproduced hereinbelow :-

"14. In the present case, it is the Collector who has issued notice on the ground that the document registered is deficient in stamp duty. He might have issued notice on the report of the Sub-Registrar or the Commissioner. The fact remains that he is exercising his suo motu power. Such notice could be issued only within two years of the registration of the document. Even if it is to be examined that the notice was issued at the instance of the Sub-Registrar, then the Sub-Registrar was bound to act at the time of registration of the document in terms of Rules 9 and 10 reproduced above. He cannot make recommendation after long delay, particularly

> *when the officer registering the document has not made any reference at the time of registration of the document.*
> *15. Thus, we find that initiation of proceedings by the Collector suffers from patent illegality and has been rightly set aside by the learned Single Judge. We do not para 7 find any reason to interfere in the order passed by the learned Single Judge in the present Letters Patent Appeal."*

7. The Ld. Counsel for the petitioner has also 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.
>
> 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."

8. *Per contra*, the learned counsel for the Respondent-State has referred to the counter affidavit filed in the present case and has submitted that the Sub-Registrar, Jainagar, has referred the matter under Section 47(A)(1) of the Act, 1899, for recovery of the deficit stamp duty, vide reference form dated 01.02.2022, on the ground that the petitioner has paid deficit stamp duty, inasmuch as during the course of spot verification, it has been

found that pucca house has been constructed over the land in question, hence, the value of the land in question, as shown in the sale deed, for the purposes of determination of stamp duty, is less than the actual value of the land as per the MVR.

9. It is further stated by the Ld. Counsel for the petitioner that thereafter, the Respondent No. 3 had instituted a Stamp Case No. 89 of 2022-23 and passed the impugned order dated 20.6.2022, directing the petitioner to pay a sum of Rs. 95,681/- on the head of deficit stamp duty and penalty charges. Thus, it is submitted that there is no illegality in the order dated 20.6.2022, passed by the Respondent No. 3.

10. I have heard the leaned counsel for the parties and perused the materials on record from which it is apparent that reference has been made by the Respondent No. 6 only on 01.02.2022, i.e. after registration of the sale deed on 24.1.2022, hence, admittedly, the Respondent No. 6 had no authority / jurisdiction to refer the matter after registration of the sale deed 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 ***Shahnaz Begam*** (supra). Thus, this Court finds that the action of the Respondent No. 6 as also that of the Respondent No. 3 is not only arbitrary

and perverse, but also against the mandate of Section 47(A) of the Act, 1899, hence, the impugned order dated 20.6.2022, passed by the Respondent No. 3, in Stamp Case No. 89 of 2022-23, is quashed. Any consequential action taken by the Respondents, in pursuance to the aforesaid order dated 20.6.2022 shall stand annulled.

11. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	5.12.2024
Transmission Date	NA