

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 2581 of 2024

Shankar Jha Son of Late Satya Narayan Jha, resident of Mohalla-Sipahi Tola,
Mahila College, Dollar House Chowk, Ward No.7, P.S. Kusheshwar Hat,
District-Purnea, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar.
2. The Divisional Commissioner, Purnea, Bihar.
3. The Assistant Inspector General Registration, Purnea Division, Purnea, Bihar.
4. The Collector, Araria District, Bihar.
5. The District Sub-Registrar, Araria, Bihar.

... .. Respondent/s

Appearance:

For the Petitioner/s : Mr. Prashant Kumar, Adv.
: Mr. Nelan Chauhan, Adv.
For the Respondent/s : Mr. Akash Chaturvedi, Adv.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date: 10-09-2024

The present writ petition has been filed for setting aside the order dated 17.11.2023, passed by the Divisional Commissioner, Purnea Division, Purnea in Stamp Appeal No.248 of 2022, whereby and whereunder, the Appeal has been disposed of in terms of the order dated 17.11.2023, passed in Stamp Appeal No.247 of 2022, by which though the order dt. 26.08.2022, passed by the Assistant Inspector General



Registration, Purnea Division, Purnea i.e. the respondent no.3 in Stamp Case No.32 of 2022, has been set aside but the matter has been remanded to the Collector, Araria, under Section 47-A (3) of the Indian Stamp Act, 1899 (herein after referred to as the “Act, 1899”) for passing a speaking order. The petitioner has further prayed for release of 50 % of the deficit stamp duty, deposited by the petitioner at the time of filing of Stamp Appeal No. 248 of 2022.

2. The brief facts of the case, according to the petitioner, are that the land appertaining to R.S. Khata No.2438, Plot No. 9546, situated at Mauza Basantpur, Thana No.206, Tauzi No. 8/1, Ward No. 9, Araria Nagar Parishad, admeasuring 2 Acres 75 decimals was transferred by one Rohit Mishra in favor of the petitioner by a registered sale deed dated 04.07.2022, after payment of the requisite registration charges and stamp duty. After registration of the sale deed on 04.07.2022, it appears that the District Sub-Registrar, Araria, i.e. the respondent no. 5, had referred the matter to the respondent no. 3, having found the land in question to have been undervalued, leading to deficient payment of stamp duty to the tune of Rs.65,99,900/-. The respondent No.3 had then issued notice to the petitioner and after receiving his objections had passed an order dated



26.08.2022, in Stamp Case No.32 of 2022, directing the petitioner to pay a sum of Rs.65,99,900/- on the head of deficit stamp duty. The petitioner had then challenged the said order dated 26.08.2022 by filing an appeal bearing Stamp Appeal No.248 of 2022, before the learned Court of Divisional Commissioner, Purnea Division, Purnea, who by an order dated 17.11.2023, has been pleased to remand the matter to the Collector, Araria, under Section 47-A(3) of the Act, 1899, holding that the Assistant Inspector General Registration, Purnea Division, Purnea has got no jurisdiction in the matter and it is the Collector, who is vested with the power to determine deficit stamp duty. This is how the petitioner is before this Court.

3. 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 satisfied that the classification of the property or the measurement of the structure contained in the property is wrong or 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 District Sub-Registrar, Araria



has referred the matter to the respondent no.3 only after registration of the sale deed on 04.07.2022, hence the said reference was/is itself bad in law, thus the order dated 26.08.2022, passed by the respondent No.3, in Stamp Case No.32 of 2022, directing the petitioner to pay a sum of Rs. 65,99,900/- on the head of deficit stamp duty, being perverse, illegal and contrary to law, ought to have been simply quashed by the learned Court of Divisional Commissioner, Purnea Division, Purnea and he should have refrained from referring the matter to the Collector, Araria, since there is no provision under the Act, 1899, which permits reference of a matter regarding determination of deficit stamp duty, after the sale deed has been registered, and the only remedy available to the respondents is under Section 47-A(3) of the Act, 1899, whereunder the Collector is empowered to *suo motu*, within two years from the date of registration of such instrument, not already referred to him under Section 47-A (1), examine the instrument as also determine the market value of such property and accordingly, determine the deficit stamp duty required to be paid by the person liable to pay the same. However, in the present case, the Collector has till date not invoked/exercised his *suo motu* powers, as provided for under Section 47-A (3) of the



Act, 1899. The provisions contained in the Act, 1899 do not provide for reference of the matter by the concerned Divisional Commissioner to the Collector, for determining the deficit stamp duty, hence reference/remand of the matter by the Divisional Commissioner, Purnea Division, Purnea to the Collector, Araria, vide order dated 17.11.2023 is illegal and fit to be set aside.

4. At this juncture, the learned counsel for the petitioner has referred to Section 47-A (1) and (3) of the Act, 1899. which is reproduced 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.

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 Indian Stamp (Bihar Amendment Ordinance, 1986)."

5. The learned 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 herein below:-

"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



find any reason to interfere in the order passed by the learned Single Judge in the present Letters Patent Appeal."

6. 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."

7. *Per contra*, the learned counsel for the respondent-State has submitted by referring to the counter affidavit filed in the present case that the land in question was inspected by making a spot enquiry and it was found that the said land falls under "commercial" category and not "residential" category, hence the District Sub-Registrar, Araria had asked the petitioner to deposit deficit stamp duty to the tune of Rs.65,99,900/-, however, the petitioner had refused to pay the same, whereafter the respondent no.5 had referred the matter to the respondent no.3, after registration of the sale deed on 04.07.2022, leading to registration of Stamp Case No.32 of 2022, by the respondent no.3, whereafter notices were issued to the petitioner and he had passed an order dt. 26.8.2022, directing the petitioner to deposit deficit stamp duty to the tune of Rs. 65,99,900/-. The said order dated 26.08.2022 was challenged by the petitioner by filing an Appeal before the Divisional Commissioner, Purnea Division, Purnea, which was numbered as Stamp Appeal No.248 of 2022.

8. It is further submitted that the Divisional Commission,



Purnea Division, Purnea had then heard the aforesaid appeal and remanded the matter to the Collector, Araria for passing a speaking order, by an order dated 17.11.2023. Thus, it is submitted that there is no illegality in the order dated 17.11.2023 passed by the Divisional Commissioner, Purnea Division, Purnea inasmuch as the Collector has ample powers under Section 47-A (3) of Act, 1899 to determine the issue regarding payment of deficit stamp duty, in cases pertaining to registration of instruments.

9. Having heard the learned counsels for the parties and having perused the materials on record, this Court finds that admittedly, in the present case, a reference has been made by the respondent no.5 to the respondent no.3, after registration of the sale deed on 04.07.2022, hence, undeniably the respondent no.5 had no jurisdiction/authority to refer the matter under Section 47-A(1) of the Act, 1899. In any view of the matter, the Collector, Araria has also got no power to determine the amount of deficit stamp duty, in connection with an instrument which has been registered by the registering officer, upon reference made to him, by exercising powers under Section 47-A(3) of the Act, 1899, since Section 47-A(3) of the Act, 1899 does not provide for adjudication/determination by the Collector upon



reference made by any Registering Officer/authority, whereas the same empowers the Collector to *suo motu* call for and examine the instrument in question, within two years from the date of registration of such instrument, for the purposes of satisfying himself as to the correctness of the market value of the property in question and the duty payable thereon as also for determining the deficit stamp duty, however, in the present case, the Collector has till date not invoked/exercised his *suo motu* powers, as provided for under Section 47-A(3) of the Act, 1899. Moreover, the provisions contained in the Act, 1899 do not provide for reference of the matter by the concerned Divisional Commissioner to the Collector, for determining the deficit stamp duty, hence reference/remand of the matter by the Divisional Commissioner, Purnea Division, Purnea to the Collector, Araria, vide order dated 17.11.2023 is illegal and contrary to law, hence fit to be set aside.

10. This Court further finds that in the present case, neither reference has been made to the Collector, by the District Sub-Registrar, Araria nor the Collector has *suo motu* initiated any proceedings under Section 47-A(3) of the Act, 1899, hence he is barred under the law from proceeding any further in the present case. Moreover, admittedly, in the present case, though a



reference was made by the respondent no.5 to the respondent no.3, but the same was made after registration of the sale deed on 04.07.2022, hence, undeniably the respondent no.5 had no jurisdiction/authority to refer the matter under Section 47-(A) (1) of the Act, 1899, after registration of the sale deed, thus the order dated 26.08.2022, passed by the respondent No.3, in Stamp Case No.32 of 2022, directing the petitioner to pay a sum of Rs.65,99,900/- on the head of deficit stamp duty, is perverse, illegal and contrary to law, hence the learned Court of Divisional Commissioner, Purnea Division, Purnea, while passing the impugned order dated 17.11.2023, ought to have simply quashed the aforesaid order dated 26.08.2022, passed by the respondent no.3 and should have refrained from referring the matter to the Collector, Araria, since there is no such provision under the Act, 1899. Moreover, the present case is squarely covered by a judgment rendered by the learned Division Bench of this Court in the case of **Tera Devi** (supra) as also by a judgment rendered by a co-ordinate Bench of this Court in the case of **Shahnaj Begam** (supra). Therefore, this court finds that the action of the respondent no.5 as also that of the respondent no.3 and that of the Divisional Commissioner, Purnea Division, Purnea is not only arbitrary and perverse but also against the



mandate of Section 47-A of the Act, 1899, hence the order dated 17.11.2023, passed by the Divisional Commissioner, Purnea Division, Purnea, in Stamp Appeal No.248 of 2022 is set aside and the respondents are debarred from proceeding any further in the matter.

11. Consequently, the respondents are directed to refund 50% of the amount of deficit stamp duty, deposited by the petitioner at the time of filing of Stamp Appeal No.248 of 2022, before the Divisional Commissioner, Purnea Division, Purnea, within a period of two weeks from today.

12. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	10.10.2024
Transmission Date	NA

