IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 4217 of 2022

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Pintu Mishra Son of Sri Ganesh Mishra, permanently resident of Village- Dahibhat Dih, Tole- Sohrai, P.S.- Sakri, Dist.- Madhubani. Resident of RZ-B-16A, Arjun Park, Najafgarh Nangli Sakrawati, South-West Delhi, Delhi- 110043.

... ... 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 Sub- Registrar, District Sub- Registration Office, Madhubani.
6. The District Certificate Officer, Madhubani, District- Madhubani.
7. The Circle Officer, Pandaul, Madhubani.

... ... Respondent/s

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Appearance:

For the Petitioner/s	:	Mr. Mrigank Mauli, Sr. Advocate
		Mr. Shashi Nath Jha, Advocate
For the Respondent/s	:	Mr. Pawan Kumar (A.C. To A.G.)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 29-10-2024

1. The present writ petition has been filed for quashing the order dated 13.2.2021, passed by the Assistant Inspector General, Registration, Darbhanga Division, Darbhanga, i.e. the respondent no.3 in Stamp Case No.38 of 2019-20, whereby the petitioner has been directed to pay a sum of Rs.12,90,800/-, on the head of deficit stamp duty, alongwith penalty to the tune of Rs.1,29,080/, totaling to a sum of Rs.14,19,880/-. The petitioner has also prayed for quashing of the order dt. 29.07.2021, issued by the respondent no.5, i.e. the District Sub-Registrar, District Sub-

Registration Office, Madhubani, directing the District Certificate Officer, Madhubani to initiate certificate proceedings against the petitioner for realization of the deficit stamp duty.

2. The brief facts of the case, according to the petitioner, are that the petitioner had purchased land, situated at Mauza, Pandaul, Tauzi No.6424, Thana No.108, P.S.-Pandaul, District-Madhubani, appertaining to Khata No.1963 (old), Survey Plot No.815(old), Khata No. 2510 (New) and 2511 (New), Survey Plot no. 1485 (New), 1486 (New), 1487 (New), admeasuring 2 Bighas, 11 Kathas and 10 Dhurs, by a sale deed dated 07.03.2019, which was registered by the District Sub-Registrar, Madhubani, after payment of the requisite stamp duty and the registration charges on 07.03.2019. Subsequently, the District Sub-Registrar, Madhubani had referred the entire matter to the respondent no.3 vide letter dated 12.07.2019, for initiating proceeding under Section 47A-1 of the Indian Stamp Act, 1899 (hereinafter referred to as the 'Act, 1899'), holding that the plots in questions are residential in nature and not agricultural in nature, hence deficit stamp duty is required to be determined, calculated and recovered from the petitioner. Thereafter, the respondent no.3 had instituted a Stamp Case No.38 of 2019-20 and issued notices to the petitioner, who had then appeared before the respondent no.3 and produced evidence regarding the

land in question being agricultural in nature. Nonetheless, the respondent no.3 had passed the impugned order dt. 13.02.2021, directing for recovery of a sum of Rs.14,19,880/- from the petitioner, by way of deficit stamp duty and penalty amount from the petitioner.

3. The learned senior counsel for the petitioner has at the outset raised a legal issue to the effect 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. 3 on 12.07.2019, i.e. after registration of the sale deed on 07.03.2019, hence the said reference itself is bad in law.

4. The Ld. Sr. counsel for the petitioner has referred to *Section 47(A)-(1) of 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 & the proper duty payable thereon.

5. In this connection, the Ld. Sr. 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*
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> *15. Thus, we find that initiation of proceedings by the Collector suffers from patent illegality and has been rightly set aside by the Ld. Single Judge. We do not find any reason to interfere in the order passed by the Ld Single Judge in the present Letters Patent Appeal."*

6. The learned Senior 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.*
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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.

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 is recorded as “Gair Mazarua Aam” Navaiyat Kamala Nadi, according to the report submitted by Circle Officer, Pandaul vide Letter No.940, dated 22.06.2022. Hence, the District Magistrate, Madhubani, in light of the aforesaid report submitted by the Circle Officer, Pandaul dated 22.06.2022 as also in view of the opinion of the Government Pleader, Madhubani, had directed the Circle Officer, Pandaul to get the aforesaid sale deed cancelled by approaching

the learned Civil Court at Madhubani and filing a Civil Suit. It is further submitted by the learned counsel for the respondent-State that the land in question does not fall under the agricultural category inasmuch as house and Sahan are situated over the land in question, thus the nature of land has changed with the efflux of time and in fact the District Sub-Registrar, Madhubani, after getting the matter inquired, has found that the land in question falls under the residential category and not under the agricultural category. In such view of the matter, the matter was referred by the District Sub-Registrar, Madhubani to the respondent no.3, vide letter dated 12.07.2019, for initiating proceedings U/s. 47A-(1) of the Act, 1899, whereafter the respondent no.3 had instituted a case bearing Stamp Case No.38 of 2019 and after issuing notice to the petitioner, he has passed the impugned order dated 13.2.2021, directing the petitioner to pay deficit stamp duty, alongwith penalty charges, totaling to a sum of Rs.14,19,880/-. It is thus submitted that there is no illegality in the said order dt. 13.2.2021, hence in case the petitioner is so aggrieved, he may file an appeal.

8. At this juncture, the learned senior counsel for the petitioner has clarified that the vendor of the petitioner had filed a Title Suit bearing Title Suit No.43 of 2001 (Ram Pratap

Mukhiya & Ors. Vs. The State of Bihar, through the Collector, Madhubani and Anr.) alongwith other co-sharers, before the Ld. Court of Sub-Judge-I, Madhubani & the same has stood decreed, upon contest, against the defendents, vide judgment and decree dt. 30.06.2004, which was then challenged by the defendents & the State of Bihar, by filing Title Appeal no.19 of 2004, before the Ld. Court of District Judge, Madhubani, however, the same has stood dismissed for default on 08.12.2005. Thus, it is submitted that the right title and interest of the petitioner has stood perfected and there is no dispute with regard to the same.

9. I have heard the learned counsel for the parties and perused the materials on record from which this Court finds that as per the provisions contained under Section 47-A(1) of the Act, 1899, reference can be made for determination of the classification of the property and for determination of the proper market value thereof as also the proper duty payable thereon, only prior to registration of the sale deed, however, in the present case, admittedly, reference has been made by the Sub-Registrar, Madhubani to the respondent no.3 vide letter dated 12.07.2019, i.e. only after registration of the sale deed on 07.03.2019, thus, undeniably the Sub-Registrar, Madhubani, i.e. the respondent no.5 had no authority/jurisdiction to refer the matter, after

registration of the sale deed in question, to the respondent no.3, under Section 47A-(1) of the Act, 1899, thus the very initiation/institution of Stamp Case No. 38 of 2019-20 is contrary to the provision contained under Section 47A-(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 Begum*** (Supra). Thus, this Court finds that the action of the respondent No. 5 as also that of the respondent no.3 is not only arbitrary and perverse but also against the mandate of Section 47A of the Act, 1899, hence the impugned order dated 13.02.2021, passed by the respondent no.3, being contrary to law, is quashed. Consequentially, the order/ letter dated 29.07.2021, issued by the respondent no.5, directing the respondent no.6 to initiate certificate proceedings against the petitioners has also got no legs to stand, hence is also set-aside.

10. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Saurav/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.12.2024
Transmission Date	NA