

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4197 of 2024

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Manoj Kumar Srivastava S/o- Late Hazari Lal, Resident of Vill and P.O-
Hata. P.S.- Chainpur. District-Kaimur (Bhabhua), Bihar, Pin-821106

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Department of Registration, Government of Bihar, Patna.
2. The Inspector General of Registration, Government of Bihar, Patna.
3. The Inspector General of Registration, Government of Bihar, Patna Division, Ist Floor, Chhajjubagh, Patna
4. The District Magistrate Cum Collector, Kaimur (Bhabhua).
5. The District Sub-Registrar, Kaimur (Bhabhua)
6. The Circle Officer Chainpur, Kaimur (Bhabhua)

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Abhisek, Adv.

For the Respondent/s : Mr.Standing Counsel 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 5.9.2023, passed by the learned Court of Collector-cum-District Magistrate, Kaimur (Bhabhua), in Stamp Appeal Case No. 3 of 2023, whereby and whereunder the petitioner has been directed to pay deficit stamp duty to the tune of Rs. 5,91,280/- along with penalty of a sum of Rs. 59,128/-, totalling to a sum of Rs. 6,50,408/-.



2. The brief facts of the case, according to the petitioner, are that the petitioner purchased an agricultural land, situated at Mauza- Hata, Circle-Chainpur PS No.-169, District -Kaimur, appertaining to khata No. 597, bearing Plot No.-273 and Plot No. 277, from one Kumar Rakesh Sinha, S/o- Late Pradhan Vimlanand Sinha, vide a sale deed, which was presented and registered, vide Sale Deed No. 6584 dated 03.9.2021, before the District Registration officer Kaimur (Bhabhua). The petitioner had paid the registration charges and stamp duty according to the minimum valuation register and only then, sale deed dated 3.9.2021 was registered by the District Sub-Registrar, Kaimur at Bhabhua. Thereafter, the petitioner had applied for mutation of the land in question, before the Circle Officer, Chainpur, Kaimur (Bhabhua), vide Mutation Case No. 1353 of 2021-22, whereupon the Circle Officer, Chainpur, Kaimur (Bhabhua), after due enquiry, had allowed the mutation and fresh jamabandi was created in favour of the petitioner. The petitioner had then sold the aforesaid land in question, vide various sale deeds of various dates to different purchasers, by depicting the same to be falling under the residential category and the said sale deeds were registered by the office of the District Sub-Registrar, Kaimur at Bhabhua. Nonetheless, the petitioner got a notice



dated 23.1.2023, issued by the learned Court of Collector-cum-District Magistrate, Kaimur (Bhabhua), in Stamp Appeal Case No. 3 of 2023, whereupon the petitioner had appeared before the learned Court of Collector-cum-District Magistrate, Kaimur (Bhabhua) and filed his objection / reply, enclosing the copy of the minimum value register of the land in question as also enclosing the copies of the sale deeds executed in his favour and the sale deeds, pertaining to the said land in question, sold by the petitioner to various purchasers to demonstrate that the petitioner had paid the stamp duty on the basis of site inspection report of the District Registrar Office, Kaimur (Bhabhua). However, the learned Court of Collector-cum-District Magistrate, Kaimur (Bhabhua), without appreciating the facts and the evidences led by the petitioner and without giving proper opportunity of hearing to the petitioner, passed the impugned order dated 5.9.2023, in an arbitrary and mechanical manner, directing the petitioner to pay the deficit stamp duty to the tune to Rs. 6,50,408/-.

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 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 District Sub-Registrar, Kaimur (Bhabhua), vide letter dated 17.12.2022, had referred the matter to the learned Collector-cum-District Magistrate, Kaimur (Bhabhua), to initiate proceedings under the provisions of the Indian Stamp Act, 1899 (hereinafter referred to as “the Act, 1899”) for recovery of the deficit stamp duty i.e. after registration of the sale deed on 3.9.2021, hence, the said reference itself is bad in law. Reference has been made to Section 47A(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.”

4. In this connection, 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 find any reason to interfere in the order passed by the learned Single Judge in the present Letters Patent Appeal.”

5. 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."

6. Per contra, the learned counsel for the Respondents has, at the outset, referred to the reference made by the District Sub-Registrar, Kaimur (Bhabhua), dated 17.12.2022, to submit that upon audit objection, raised by the office of the Accountant



General, vide letter dated 13.9.2022, pointing out that part of the land in question was purchased by Manoj Kumar Srivastava i.e. the petitioner herein, vide sale deed dated 3.9.2021, showing the land to be falling under the irrigated category while part of this plot was sold by him, vide sale deed dated 26.10.2021, showing the land to be falling under the residential category, resulting in heavy loss of revenue to the State Government, the District Sub-Registrar, Kaimur at Bhabhua, had directed the head clerk to make an enquiry, who had conducted a spot verification and had found several houses within the radius of 200 meters of the said land, hence, he had accordingly submitted his report, pursuant whereof, the District Sub-Registrar, Kaimur (Bhabhua), had sought guidance from the Assistant Inspector General Registration, Patna Division, Patna, who had advised to refer the matter to the Collector-cum-District Magistrate, whereupon the matter was referred to the Collector-cum-District Magistrate, Kaimur (Bhabhua), under Section 47A(3) of the Act, 1899. Thus, it is submitted that under Section 47A(3) of the Act, 1899, the Collector has the power to suo motu, within two years from the date of registration of the instrument in question, call for and examine the instrument for satisfying himself as to the correctness of the market value of the property and the duty



payable thereon, whereafter, he can determine the market value of such property and duty, as aforesaid, in accordance with the procedure provided for in Sub-Section 2 and direct the deficit stamp duty to be paid. Thus, it is submitted by the learned counsel for the petitioner that the learned Collector has rightly initiated the proceedings under Section 47A(3) of the Act, 1899, inasmuch as the same has been initiated within two years of registration of the sale deed in question, hence, there is no infirmity in the impugned order dated 5.9.2023, passed by the learned Court of Collector-cum-District Magistrate, Kaimur (Bhabhua).

7. I have heard the learned counsel for the parties and perused the materials on record. This Court finds from paragraph no. 10 of the counter affidavit, filed in the present case that admittedly, the District Sub-Registrar, Kaimur (Bhabhua), vide letter dated 17.12.2022, has referred the matter to the learned Collector-cum-District Magistrate, Kaimur (Bhabhua), for realization of the deficit stamp duty, hence, admittedly, the learned Collector-cum-District Magistrate, Kaimur (Bhabhua), has not suo motu initiated the proceedings in question. At this juncture, it would be relevant to reproduce hereinbelow Section 47A(3) of the Act, 1899:-



“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.”

8. It is apparent from a bare reading of Section 47A(3) of the Act, 1899 that the Collector-cum-District Magistrate,



Kaimur (Bhabhua), can suo motu initiate proceeding for recovery of the deficit stamp duty only in case such instrument has not already been referred to him under Sub-Section 1 of Section 47A of the Act, 1899, however, in the present case, the reference has been made under Section 47A(1) by the District Sub-Registrar, Kaimur (Bhabhua), vide letter dated 17.12.2022, hence, the present case would definitely fall within the ambit of Section 47A(1) of the Act, 1899, thus this Court finds that reference could not have been made by the Sub-Registrar, Kaimur (Bhabhua), after registration of the sale deed on 3.9.2021, hence, admittedly, the District Sub-Registrar, Kaimur at Bhabhua, did not have any authority / jurisdiction to refer the matter to the learned Collector-cum-District Magistrate, Kaimur (Bhabhua), after registration of the sale deed on 3.9.2021, inasmuch as the same is barred under Section 47A(1) of the Act, 1899. From the forgoing discussions, it is also clear that the learned Collector-cum-District Magistrate, Kaimur (Bhabhua), has not suo motu registered the case in question i.e. the one bearing Stamp Appeal Case No. 3 of 2023 and the case has been registered only upon reference made by the Sub-Registrar, Kaimur at Bhabhua, thus, the very initiation of the said Stamp Appeal Case No. 3 of 2023 is in teeth of the provisions



contained under Section 47A(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). Consequently, this Court finds that the action of the District Sub-Registrar, Kaimur at Bhabhua, as also that of the learned Collector-cum-District Magistrate, Kaimur (Bhabhua), is not only arbitrary and perverse but also against the mandate of Section 47A(1) of the Act, 1899, hence, the impugned order dated 5.9.2023, passed by the learned Collector-cum-District Magistrate, Kaimur (Bhabhua), in Stamp Appeal Case No. 3 of 2023, being not sustainable in the eyes of law, is quashed. As a consequence of quashing of the impugned order dated 5.9.2023, any consequential action taken by the Respondent authorities shall be rendered null and void.

9. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	31.7.2024
Transmission Date	NA

