

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3903 of 2024

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Sri Vijay Prakash @ Vijay Prakash Son of Ram Prakash Resident of Mohalla-
S.K. Road, Forbesganj, Ward No.17, P.S.-Forbesganj, District-Araria.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, Registration Department, Government of Bihar, Patna.
3. The Inspector General of Registration, Registration Department, Government of Bihar, Patna.
4. The Assistant Inspector General of Registration, Registration Department, Government of Bihar, Patna.
5. The Assistant Inspector General of Registration, Koshi Division, Saharsa.
6. The Collector-cum-District Magistrate, Araria.
7. The Registrar, Araria.
8. The Sub-Registrar, Forbesganj, Araria.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shyam Kishore, Advocate
		Mr. Rishi Sinha, Advocate
For the Respondent/s	:	Mr. Sarvesh Kr. Singh, AAG-13

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 16-12-2024

The present writ petition has been filed for quashing the order dated 10.01.2024 passed by the learned Court of Collector, Araria in Deficit Stamp Recovery Case No. 14 of 2023, whereby and whereunder the petitioner has been directed to pay a sum of Rs. 10,94,800/- on the head of deficit stamp duty plus a sum of Rs. 1,09,480/- by way of penalty charges, totalling to a sum of Rs. 12,04,280/-.



2. The brief facts of the case, according to the petitioner, are that the petitioner purchased a piece of residential land situated at Mauza-Rampur Nagar Parishad, Thana-Forbesganj, Thana No. 142, appertaining to Khata No. 130, Khesra No. 263, admeasuring 34 decimals, from Priya Niwesh Pvt. Ltd. through its Director namely Mahendra Kumar Maroti, after paying sale consideration amount to the tune of Rs. 58,65,000/- (Rupees Fifty Eight Lakhs Sixty Five Thousand) and after payment of the requisite stamp duty and registration charges, the sale deed was registered by the office of the Sub-Registrar, Forbesganj, District-Araria i.e. the respondent no. 8, on 15.10.2018.

3. The learned counsel for the petitioner has submitted that at the time the aforesaid land was purchased by the petitioner, no construction had been made over the same, nonetheless, after lapse of about five years of registration of the sale deed in question, the respondent no. 7 had initiated an enquiry with regard to the category of the land and had then referred the matter to the Collector, Araria, by a letter dated 14.06.2023, for determining the market value of the land in question after correctly categorizing the same and recovering the deficit stamp duty, leading to registration of Deficit Stamp



Recovery Case No. 14 of 2023, whereafter notices were issued to the petitioner and then the impugned order dated 10.01.2024 has been passed by the learned Court of Collector, Araria, directing the petitioner to pay a sum of Rs. 12,04,280/- on the head of deficit stamp duty and penalty charges. The learned counsel for the petitioner has further submitted that the registering authority i.e. the respondent no.7/respondent no. 8 has got no authority to refer the matter to the higher officials for determination of the proper market value of such property, after correctly categorizing the same and for recovering the deficit stamp duty, after registration of the instrument in question. It is next submitted that as far as the Collector is concerned, he can *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 in question and assess the duty payable thereon, however, in the present case, first of all, reference has been made to the Collector and that too after lapse of about five years of registration of the sale deed and secondly, even the Collector under Section 47A(3) of the Indian Stamp Act, 1899 (hereinafter referred to as the 'Act, 1899'), is barred from proceeding to



determine the market value of the property in question and the duty payable thereon after lapse of two years, as is apparent from Section 47A(3) of the Act, 1899. At this juncture, the learned counsel for the petitioner has referred to Section 47A(1) and (3) of the Act, 1899, which are 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 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).”

4. It is thus submitted by the Ld. 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. 8 has referred the matter to his higher authority not only after registration of the sale deed on 15.10.2018, but after lapse of about five years, i.e. in the year 2023, hence the said reference itself is bad in law. It is also submitted by referring to Section 47-A (3) of the Act, 1899 that the higher authority of the registration department can also *suo motu* call for and examine the instrument in question for the purposes of satisfying itself regarding the correctness of the market value of the property, which is the subject matter of such instrument and the duty payable thereon, within a period of two years from the date of registration, however in the present case, the said period has also stood expired, hence the



respondents could not have initiated proceedings for determination and recovery of deficit stamp duty.

5. 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 vs. 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 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."

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 petitioner has purchased the land in question by means of a sale deed which was registered by the office of the respondent no. 8 on 15.10.2018, however, the petitioner had mentioned the category of the land in the sale deed as residential category instead of commercial category, hence upon objection being raised by the Accountant General (Audit), Bihar, Patna vide letter dated 17.02.2023, the respondent no. 8 had sought guidelines from the Assistant Inspector General of Registration, Bihar, Patna, who had then issued instructions vide letter dated 07.06.2023, to the respondent no. 8, whereafter, an enquiry was made and the matter was then referred to the Collector, Araria vide letter dated 14.06.2023 to initiate proceedings under Section 64 of the Act, 1899 for recovery of deficit stamp duty, whereupon the Collector, Araria had instituted the aforesaid Deficit Stamp



Recovery Case No. 14 of 2023 and had then passed the impugned order dated 10.01.2024, directing the petitioner to deposit a sum of Rs. 12,04,280/- on the head of deficit stamp duty and penalty charges. Thus, it is submitted that there is no illegality in the impugned order dated 10.01.2024.

8. I have heard the learned counsel for the parties and perused the materials on record. A bare perusal of the order dated 10.01.2024, passed by the learned Collector, Araria would show that the proceeding pertaining to Deficit Stamp Recovery Case No. 14 of 2023 has been initiated by the learned Collector, Araria under Section 47A(3) of the Act, 1899. This Court finds from a bare perusal of Section 47A(3) of the Act, 1899 that no proceeding could have been initiated by the Collector, Araria for determination of the correctness of the market value of the property in question and assessing the duty payable thereon after lapse of two years from the date of registration of such instrument, however, in the present case though the sale deed in question was registered on 15.10.2018, but the proceeding has been instituted only in the year 2023, i.e. after lapse of about five years. This Court further finds that Section 47-A(3) of the Act, 1899 stipulates that 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, however, in the present case the action taken by the Collector is not *suo motu* but on a reference made by the respondent no. 8 vide letter dated 14.06.2023, which will fall within the ambit of Section 47-A(1) of the Act, 1899, nonetheless, the fact remains that even under Section 47-A(1) of the Act, 1899, the respondent no. 8 could not have referred the matter to his higher authority after registration of the sale deed on 15.10.2018 and even otherwise the Collector, Araria could not have initiated any proceeding after lapse of two years of registration of the instrument in question, hence the action of the respondent no. 8 i.e. the Sub-Registrar, Forbesganj, District-Araria as also that of the learned Collector, Araria are without any authority/jurisdiction, hence the impugned order dated 10.01.2024 is liable to be quashed. In fact, the present case is squarely covered by the judgment rendered by the learned Division Bench of this Court in the case of Tetra Devi (*supra*) as also by the one rendered by a coordinate Bench of this Court in the case of Shahnaj Begam (*supra*).

9. Having regard to the facts and circumstances of the



case and for the foregoing reasons, I deem it fit and proper to quash the order dated 10.01.2024 passed by the learned Collector, Araria in Deficit Stamp Recovery Case No. 14/2023, being contrary to the provisions contained in Section 47-A of the Act, 1899.

10. The writ petition stands allowed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	07.01.2025
Transmission Date	N/A

