IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7954 of 2020

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Shobhit Sharad Son of Nirmal Kumar Mahto, resident of Village Hasanpur Raniganj, Ward No. 12, P.S. Raniganj, District- Araria.

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Inspector General, Registration, Bihar, Patna.
3. The Assistant Inspector General, Registration, Purnia Division, Purnia.
4. The District Registrar cum Collector, Araria.
5. The District Under Registrar, Araria.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Bidhanesh Misra, Advocate
For the State	:	Mr.Manish Kumar, AC to Ex. AAG-6, In-Charge AAG-5

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date: 18-12-2024

The present writ petition has been filed for quashing the order dated 06.08.2020, passed by the Assistant Inspector General, Registration, Purnea Division, Purnea i.e. the respondent no. 3 in Stamp Case No. 25 of 2019, whereby and whereunder the petitioner has been directed to pay a sum of Rs. 10,23,020/- on the head of deficit stamp duty along with a sum of Rs. 1,02,302/- by way of penalty charges.

2. The brief facts of the case, according to the petitioner, are that the petitioner purchased a piece of land admeasuring 31 decimal situated at Mauza-Hasanpur, Thana No. 64, Tauzi No. 8/5, Pergana-Haveli, Circle-Araria, District-Araria,

appertaining to Khata Nos. 603, 305, 301, 292, 285 and 287, Khesra Nos. 1982, 1933, 2043, 2046, 2035 and 2050 respectively, by a sale deed which was registered on 03.10.2019, after payment of the requisite stamp duty and registration charges, by the District Registry office, Araria Sadar. Subsequently, the petitioner had received a notice dated 20.11.2019, directing him to appear in the case instituted by the respondent no. 3 bearing Stamp Case No. 25 of 2019, pursuant whereof the petitioner had appeared and filed his objection, nonetheless, the Respondent No. 3 has passed the impugned order dated 06.08.2020, directing the petitioner to pay a sum of Rs. 11,25,322/- on the head of deficit stamp duty and penalty charges.

3. The learned counsel for the petitioner has submitted that as per the provisions contained in Section 47-A(1) of the Indian Stamp Act, 1899 (hereinafter referred to as 'the Act, 1899'), the registering authority can make reference 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 reference has been made, admittedly after registration of the sale deed on 03.10.2019, hence the said reference itself is bad in law. The learned counsel for the petitioner has referred to ***Section 47-A(1) of the Indian Stamp Act, 1899***, (herein after referred to as 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 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*
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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 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 ofsuch 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."

6. *Per contra*, the learned counsel for the respondent-State has submitted, by referring to the counter affidavit filed in the present case, that after the sale deed was registered on 03.10.2019, a complaint was made by one Ashok Kumar that deficit stamp duty has been paid by the petitioner by concealing the actual value and category of the land in question, whereupon enquiry was made by the District Sub-Registrar, Araria and it

was found that though the petitioner had disclosed in the sale deed that the land in question falls under the residential category, however, the same was found to be falling under the commercial category, hence the Sub-Registrar, Araria had referred the matter to the respondent no. 3, whereafter Stamp Case No. 25 of 2019 was instituted, notices were issued to the petitioner and after seeking his objection, the impugned order dated 06.08.2020 has been passed by the respondent no. 3 in Stamp Case No. 25 of 2019, directing the petitioner to pay a sum of Rs. 11,25,322/- on the head of deficit stamp duty and penalty charges.

7. I have heard the learned counsel for the parties and perused the materials on record, from which it is apparent that admittedly reference has been made by the Sub-Registrar, Araria to the Respondent No. 3 after registration of the sale deed on 03.10.2019, hence undisputedly the Sub-Registrar, had no jurisdiction/authority to refer the matter to the respondent no. 3 under Section 47-A(1) of the Act, 1899 after registration of the sale deed on 03.10.2019. In fact, the present case is squarely covered by a judgment rendered by the learned Co-ordinate Bench of this Court in the case of ***Shahnaj Begam*** (supra). Thus, this Court finds that the action of the respondent no. 3 as also that of the Sub-Registrar, Araria is not only arbitrary and

perverse but also against the mandate of ***Section 47-A of the Act, 1899***, hence the impugned order dated 06.08.2020, passed by the respondent no. 3 in Stamp Case No. 25 of 2019, is quashed.

8. The writ petition stands allowed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	NAFR
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