IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4315 of 2015

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Manorama Devi Wife of Late Mahadeo Prasad Resident of Village- Bangaon Bazar, P.O,. and p.s.Baj Patt, District- Sitamarhi.

... ... Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate Sitamarhi.
3. The Assistant Registry Inspector General Patna Division Patna.
4. The Assistant Registry, Inspector General Tirhut Division, Muzaffarpur, Muzaffarpur, Comp Sitamarhi
5. The District Sub. Registrar Sitamarhi.
6. The Sub- Registrar Pupri, Sub- Division, District- Sitamarhi.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Dhaneshwar Prasad Gupta, Adv.
For the Respondent/s	:	Mr.Sarvesh Kr. Singh, AAG-13

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 08-08-2024

1. The present writ petition has been filed for quashing the order dated 13.11.2014, passed by the Assistant Inspector General, Registration, Patna Division, Patna, in Stamp Case No.72 of 2009, whereby and whereunder the petitioner has been directed to deposit deficit stamp duty to the tune of Rs.12,240/- along with penalty of Rs.1,500/- totalling to a sum of Rs.13,740/-.

2. The brief facts of the case according to the petitioner are that the petitioner had purchased a piece of land situated at Mauza-Bangaon, Thana No.108, Khata No.3535, Plot

No.2390, from one Poonam Kumari, vide registered sale deed dated 11.08.2009, after paying the registration charges and the stamp duty calculated by the respondents, however, subsequently the Sub-Registrar, Pupri, District-Sitamarhi, i.e. the respondent no.6 had submitted a report dated 14.08.2009, regarding the land falling under the commercial category, whereupon the Assistant Inspector General, Registration, Patna Division, Patna had instituted a case, bearing Stamp Case No.72 of 2009 and notice was issued to the petitioner on 22.08.2009. The petitioner had then submitted his reply, however, the Assistant Inspector General, Registration, Patna Division, Patna, by an order dated 22.02.2011, had directed the petitioner to pay a sum of Rs.12,240/- on the head of deficit stamp duty along with a fine of Rs.5,000/-, which was challenged by the petitioner by filing a writ petition, bearing C.W.J.C. No.8827 of 2011, before this Court and a co-ordinate Bench of this Court, by an order dated 08.12.2011 had granted liberty to the petitioner to explain her case before the respondent no.3, whereafter she had filed a representation dated 01.09.2012, before the Assistant Inspector General, Registration, Patna Division, Patna. The Assistant Inspector General, Registration, Patna Division, Patna has then passed the impugned order dated

13.11.2014 in the aforesaid Stamp Case No.72 of 2019, directing the petitioner to pay deficit stamp duty along with penalty, amounting to a sum of Rs.13,740/-. 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 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. 6 had referred the matter to the respondent no. 3 on 14.08.2009 i.e. only after registration of the sale deed on 11.08.2009, hence the said reference itself is bad in law.

4. In this connection, reference has been made to **Section 47-A (1) of the Indian Stamp Act, 1899** (hereinafter 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.*

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 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."

6. The learned 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 hereinbelow:-

"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 and the supplementary counter affidavit filed on behalf of the respondents that the petitioner has purchased the land in question by concealing the actual nature of the land, inasmuch as she had disclosed the nature of the land to be “Dhanhar”, however, upon inquiry the same was found to be commercial in nature, hence the aforesaid Case No. 72 of 2009 was initiated and the petitioner has been directed to pay deficit stamp duty along with penalty. It is also submitted that the sale deed was registered on 11.08.2019 and then spot verification of the land was made, whereafter it transpired that the land in question, falls under the commercial category, hence the respondent no.6 had referred the matter to the Assistant Inspector General, Registration, Patna Division, Patna, on 14.08.2009 or thereafter. The Assistant Inspector General, Registration, Patna Division, Patna had then instituted Case No.72 of 2009 and notice was issued to the petitioner on 22.08.2009, whereafter the Assistant Inspector General, Registration, Patna Division, Patna had passed an order dated 22.02.2011, however, the same was assailed before this Court by the petitioner, by filing a writ petition bearing C.W.J.C. No.8827 of 2011 and the petitioner

was granted liberty to approach the respondent no.3 and file her representation, whereupon the petitioner had filed her representation and after considering the same, the Assistant Inspector General, Registration, Patna Division, Patna has passed the impugned order dated 13.11.2014, directing the petitioner to pay a sum of Rs.13,740/- on the head of deficit stamp duty and penalty, thus, it is submitted that there is no illegality in the action of the respondents.

8. 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 respondent no.6 to the Assistant Inspector General, Registration, Patna Division, Patna, on 14.08.2009 or thereafter, i.e. after registration of the sale deed on 11.08.2009, which is contrary to the provisions contained under Section 47-A(1) of the Act, 1899, hence, undeniably, the respondent no.6 had no authority/jurisdiction to refer the matter to the Assistant Inspector General, Registration, Patna Division, Patna, after registration of the sale deed on 11.08.2009. 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 Begam*** (supra). Thus, this Court finds that the action of the respondent no.6, as also that of the Assistant

Inspector General, Registration, Patna Division, Patna, is not only arbitrary and perverse but also against the mandate of Section 47-A(1) of the Act, 1899, hence the impugned order dated 13.11.2014, passed by the Assistant Inspector General, Registration, Patna Division, Patna, as also the one dated 22.02.2011, passed by the Assistant Inspector General, Registration, Patna Division, Patna are quashed, being contrary to law.

9. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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CAV DATE	NA
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