IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 11297 of 2018

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Chinta Devi Wife of Dhananjay Kishor Singh Resident of Village- Bir Chhota Bariyarpur Bir Chapra, Police Station- Pipra Kothi, District- East Champaran.

... ... Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
2. The Commissioner, Tirhut Division, Muzaffarpur, Bihar.
3. The Assistant Inspector General, Registration Tirhut Range, Muzaffarpur, Bihar.
4. The District Magistrate Cum-District Registrar, East Champaran at Motihari.
5. The District Sub Registrar, Motihari Registry Office, East Champaran at Motihari.

... ... Respondent/s

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Appearance:

For the Petitioner/s	:	Mr. Sanjay Kumar No.-7
For the Respondent/s	:	Mr. Raj Kishore Roy- GP-18

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 14-11-2024

1. The present writ petition has been filed for quashing the order dated 14.01.2016, passed by the Assistant Inspector General, Registration, Tirhut Division, Muzaffarpur, i.e the respondent No. 3, in Stamp Case No. 29 of 2014-15, directing the petitioner to pay a sum of Rs.1,94,520/- on the head of deficit stamp duty and a sum of Rs.19,452/- by way of penalty charges totaling to a sum of Rs. 2,13,972. The petitioner has

also prayed for quashing the appellate order dated 17.04.2018, passed by the learned Commissioner, Tirhut Division, Muzaffarpur, i.e the respondent No. 2, in Stamp Appeal Case No.150 of 2017, whereby and whereunder the Appeal filed by the petitioner has been dismissed.

2. The brief facts of the case, according to the petitioner, are that the petitioner had purchased a land situated at Mauza Chandsaraiya, Circle-Pipra Kothi, Thana No.187, appertaining to Khata No.56, Khesra No.79 and 84, admeasuring 13.96 decimals, by a registered sale deed dated 07.06.2014, from one Hangi Das, after payment of the requisite stamp duty and registration charges, however, subsequently, after the registration of the sale deed, the District Sub-Registrar, Motihari, East Champaran i.e. the respondent no.5 had referred the matter to the Assistant Inspector General Registration, Tirhut Division, Muzaffarpur i.e. the respondent no.3 for determination of the deficit stamp duty and recovery thereof from the petitioner, whereafter the respondent no.3 had instituted Stamp Case No.29 of 2014-15 and passed the impugned order 14.01.2016, directing the petitioner to pay a sum of Rs.2,13,972 on the head of deficit stamp duty and penalty charges. The petitioner had then approached this Court however, he was

relegated to the remedy of filing an appeal, whereafter the petitioner had filed an appeal before the learned Court of Commissioner, Tirhut Division, Muzaffarpur i.e. the respondent no.2, however, the appeal has also been dismissed by an order dated 17.04.2018.

3. The learned counsel for the petitioner has submitted that though the District Sub Registrar, Motihari Registry Office, East Champaran at Motihari, i.e the respondent No. 5 had called for a report from the Circle Officer, Pipra Kothi, regarding the category of the land in question, however the Circle Officer, Pipra Kothi had inquired into the matter and vide letters dated 23.09.2014 and 21.11.2015 had intimated the respondent No. 5 that the land in question is “Agriculture irrigated category land”, nonetheless the respondent No. 5 had referred the matter to the respondent No. 3 for determination of the proper market value of the property in question and calculation of the deficit stamp duty and that too after registration of the sale deed on 07.06.2014. It is further 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. 5 has referred the matter to the respondent no. 3 only after registration of the sale deed on 07.06.2014, hence the said reference itself is bad in law. In this connection, the learned counsel for the petitioner has referred 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.*
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> *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.*
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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).*
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> *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.*
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> *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 upon inquiry, though the Circle Officer, Pipra Kothi had found the land in question to be falling under the agricultural category, however the respondent No. 5 had found it to be falling under the commercial category, hence the respondent no.5 had referred the matter to the respondent no.3 for determination of the deficit stamp duty and recovery thereof from the petitioner, leading to registration of Stamp Case No.29

of 2014-15 and passing of the impugned order dated 14.01.2016, by the respondent no.3, directing the petitioner to pay a sum of Rs.2,13,972/-, whereafter the petitioner had filed an appeal bearing Stamp Appeal Case No.150 of 2017, however, the same has also stood dismissed by an order dated 17.04.2018, hence it is submitted that there is no infirmity in the aforesaid orders, passed either by the respondent no.3 or the respondent no.2.

7. I have heard the learned counsels for the parties and perused the materials on record from which it is an admitted position that the reference has been made by the respondent no.5 to the respondent no.3 only after execution of the sale deed on 07.06.2014, under Section 47A(1) of the Act, 1899, which is contrary to the said provision inasmuch as the respondent no.5 had no authority/jurisdiction to refer the matter to the respondent no.3 after registration of the sale deed on 07.06.2014. 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 and respondent no.2 is not only arbitrary and perverse but also in teeth of the provisions, contained under Section 47A(1) of the Act, 1899,

hence the impugned order dated 14.01.2016, passed by the respondent no.3 in Stamp Case No.29 of 2014-15 as also the one dated 17.04.2018, passed by the learned Divisional Commissioner, Tirhut Division, Muzaffarpur in Stamp Appeal Case No.150 of 2017 are quashed, being contrary to law.

8. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Saurav/-

AFR/NAFR	NAFR
CAV DATE	NA
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