## IN THE HIGH COURT OF JUDICATURE AT PATNA

**Civil Writ Jurisdiction Case No. 8325 of 2023**

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Renu Kumari Wife of Naresh Kumar Prasad, resident of village Mukhiyapatti, P.S. Saharghat, District - Madhubani.

... ... Petitioner/s

Versus

1. The State of Bihar.
2. The Inspector General, Registration, Bihar, Patna.
3. The Assistant Inspector General, Registration, Darbhanga Division, Darbhanga.
4. The District Registrar cum Collector, Madhubani.
5. The Sub Registrar, Benipatti, District Madhubani.
6. The Circle Officer, Madhwapur, District Madhubani.

... ... Respondent/s

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**Appearance:**

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| For the Petitioner/s | : | Mr. Manoj Kumar Jha, Advocate |
| For the Respondent/s | : | Mr. Vikash Kumar, SC-11 |

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**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**

**ORAL JUDGMENT**

**Date: 25-06-2024**

The present writ petition has been filed for quashing the order dated 20.02.2023, passed by the Assistant Inspector General, Registration Darbhanga Division, Darbhanga in Stamp Case No. 279 of 2022-2023, whereby and whereunder the petitioner has been directed to pay deficit stamp duty to the tune of Rs.2,17,794/- along with penalty of a sum of Rs.21,780/- totaling to a sum of Rs. 2,39,574/-.

2. The brief facts of the case, according to the petitioner,

are that the petitioner had purchased residential land appertaining to Khata no.171 (old) / 1237 (new), Khesra no. 2430 (old)/3149 (new), situated at Mauza Mukhiyapatti, Thana no. 68, Tauzi No. 16420, Halka Mukhiyapatti, Anchal Madhawapur, admeasuring 2 katha 9 dhur 8 kanma equal to 10.791 decimal, from Naresh Kumar Prasad vide Sale Deed no. 6052 dated 23.11.2021. It is submitted that initially, the sale deed was presented before the office of the Sub-Registrar, Benipatti on 24.03.2021 and on 06.04.2021, the Sub-Registrar, Benipatti had called for a report vide Letter No.174 from the Circle Officer, Madhwapur, with regard to the land in question, in response whereof, the Circle Officer, Madhwapur, vide letter dated 06.10.2021, had submitted his enquiry report showing the land in question to be residential in nature, whereafter the sale deed was finally registered on 23.11.2021, after the petitioner had paid the registration charges and the requisite stamp duty. Nonetheless, the petitioner received a notice issued by the Assistant Inspector General, Registration, Darbhanga Division, Darbhanga, i.e. the respondent no.3 vide Memo dated 21.01.2023, whereafter the petitioner had appeared before the respondent no.3 and had filed her objections stating therein that the property has been correctly valued and accordingly, the requisite registration charges/stamp duty had been paid. However, the respondent no.3, by the impugned order dated 20.02.2023, passed in Stamp Case No. 279 of 2022-23, has directed the petitioner to deposit a sum of Rs.2,39,574/-. The learned counsel for the petitioner has further 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. 5 has referred the matter to the respondent no. 3, only after registration of the sale deed on 23.11.2021, hence the said reference itself is bad in law. In this connection, the learned counsel for the petitioner has referred to Section 47-A (1) of the Indian Stamp Act, 1899 (hereinafter referred to as the “Act, 1899”), which is 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."*

3. 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 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 Ld. Single Judge in the present Letters Patent Appeal."*

4. The learned counsel for the petitioner has also relied on a judgment, rendered by a co-ordinate 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 dt. 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."*

5. Per contra, the learned counsel for the respondent-State has submitted by referring to the counter affidavit filed in the present case that one Suresh Prasad, co-sharer of the husband of the petitioner had filed an application before the Sub-registrar, Benipatti to take legal action against the petitioner for suppressing the fact that a building had been constructed over the land in question before the registration of the sale deed, whereafter an inspection was made and it was found that the category of the land in question is different from the category mentioned in the sale deed, inasmuch as though the category mentioned in the sale deed is residential category, however, the land in question was found to be commercial in nature,

whereafter the Sub-Registrar, Benipatti had referred the matter to the respondent no.3, vide letter dated 16.01.2023 and 19.01.2023 respectively. Accordingly, the respondent no.3 had registered a Stamp Case No. 279 of 2022-23 and notice was issued to the petitioner and after hearing her, the impugned order dated 20.02.2023 has been passed by the respondent No. 3, hence there is no illegality in the action of the respondent no.3, nonetheless, it has not been refuted by the respondents that before registration of the sale deed in question, the Circle Officer, Madhwapur had submitted an enquiry report vide letter dated 06.10.2021, before the Sub-Registrar, Benipatti, stating therein that the land in question falls under the residential category.

6. I have heard the learned counsel for the parties and perused the materials on record from which it is clear that firstly, the Sub-Registrar, Benipatti had got the matter enquired from the Circle Officer, Madhwapur and had found that the land in question falls under the residential category and only upon being satisfied, he had registered the sale deed in question on 23.11.2021. Secondly, this Court finds that admittedly, in the present case, a reference has been made by the respondent no.5 to the respondent no.3 only on 16.01.2023/19.01.2023 i.e. after

registration of the sale deed on 23.11.2021, hence admittedly, the respondent no.5 had no authority/jurisdiction to refer the matter to the respondent no.3, after registration of the sale deed, under Section 47-A(1) of the Act, 1899. 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.5 as also that of the respondent no.3 is not only arbitrary, but also against the mandate of Section 47-A (1) of the Act, 1899, hence the impugned order dated 20.02.2023, passed by the respondent no.3 is quashed. As a consequence of quashing of the order dated 20.02.2023, passed by the respondent no.3, all the consequential orders passed by the respondents are rendered null and void.

7. The writ petition stands allowed.

**(Mohit Kumar Shah, J)**

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| **AFR/NAFR** | NAFR |
| **CAV DATE** | NA |
| **Uploading Date** | 02.07.2024 |
| **Transmission Date** | NA |