IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1612 of 2017

==

Manoj Kumar Singh S/o Birendra Prasad Singh resident of village Chandaur, P.S. Bhagwanpur, District - Begusarai.

... ... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Registration, Government of Bihar.
2. Inspector General of Registration, Bihar, Patna.
3. Assistant Inspector General of Registration, Munger Division, Munger.
4. Sub-Registrar, Bakhari Bazar, Bakhari, P.S. Bakhari, District - Begusarai.
5. Anchal Adhikari, Garhpura, P.S. Garhpura, District - Begusarai.
6. Satya Narain Singh S/o late Prayag Singh resident of village Korai, P.S. Garhpura, P.S. Garhpura, Dist. Begusarai.

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr.Bhupendra Narain Sinha, Adv. Mr.Shailendra Kumar, Adv. Mr.Saket Kumar, Adv.
For the Respondent/s	:	Mr.Vivek Prasad, GP-7

==

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 19-12-2024

1. The present writ petition has been filed for quashing the order dated 14.03.2016, passed by the Assistant Inspector General of Registration, Munger Division, i.e. the respondent no. 3, in connection with Deficit Stamp Case No.1 of 2016, whereby and whereunder the petitioner has been directed to pay a sum of Rs.1,08,720/- on the head of deficit stamp duty, apart from a sum of Rs.10,872/-, by way of penalty charges.

2. The brief facts of the case according to the petitioner are that the petitioner had purchased a piece of land appertaining to

Khata No.114, Khesra No.1292, Khata No.38, Khesra No.1711 and Khata No.179 and 38, Khesra No.1031, 1302 and 1033, admeasuring 1 bigha 11 katha, situated at Mauza-Sujanpur, Circle-Garhpura, District-Munger, by a sale deed which was registered by the office of the Sub-Registrar, Bakhari on 20.09.2013, after payment of the requisite stamp duty and registration charges. Nonetheless, a complain appears to have been made with regard to payment of deficit stamp duty, whereupon the Sub-Registrar, Bakhari i.e. the respondent no.4 had referred the matter to the respondent no.3 for proper classification of the land in question and determination of the deficit stamp duty, whereafter the respondent no.3 had instituted Deficit Stamp Case No.1 of 2016 and after issuing notice to the petitioner, he had passed the impugned order dated 14.03.2016, directing the petitioner to pay a sum of Rs.1,19,592.

3. The learned counsel for the petitioner has submitted that the classification of the land, as disclosed in the aforesaid sale deed, was made on the basis of the report submitted by the Circle Officer to the Additional Collector, Begusarai, in which the land in question was classified as a Ist Class/Bhit land. It is further submitted that the respondent no.4 could not have referred the matter to the respondent no.3, for determination of

the proper market value of the property in question and the proper duty payable thereon, after registration of the sale deed, hence the reference itself is bad in law. It is also submitted that even under ***Section 47(A)(3) of the Indian Stamp Act, 1899*** (hereinafter referred to as the "Act, 1899"), the Collector has the power to *suo moto* initiate proceedings, within two years of registration of such instrument, call for the records and examine the instrument for satisfying himself, regarding the correctness of the market value of the property in question, however, in the present case though the sale deed was registered in the year, 2013, the deficit stamp case has been instituted only in the year, 2016 i.e. after about 3 years, hence the said proceeding initiated by the respondent no.3 is barred under the law. At this juncture, the learned counsel for the petitioner has referred to ***Section 47(A)(1) and (3) of Act, 1899***, which are 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.

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 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 Bihar Stamp (Bihar Amendment) Ordinance, 1986."

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

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*** paragraph nos. 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.

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 the respondent no.3 has the power to initiate

proceedings and adjudicate the matter under Section 47 A of the Act, 1899, in case the matter has been referred by the Sub-Registrar. It is also submitted that upon a complaint made before the Chief Minister regarding inappropriate valuation having been made pertaining to the said land in question, at the time of registration of the sale deed, inquiry was made by the respondent no.4 and then the respondent no.4 had referred the matter under Section 47 A of the Act, 1899 to the respondent no.3, whereafter the respondent no.3 had initiated Deficit Stamp Case No.1 of 2016 and after issuing notice to the petitioner, he has passed the impugned order dated 14.03.2016, hence there is no illegality in conduct of the said proceedings, thus the present writ petition is fit to be dismissed.

7. I have heard the learned counsel for the parties and perused the materials on record, from which this Court finds that under Section 47 A(3) of the Act, 1899, the Collector has the power to *suo motu,* within 02 years of registration of the instrument in question and in case the matter has not already been referred to him, call for and examine the instrument for satisfying himself as to the correctness of the market value of the property which is the subject matter of such instruments and the duty payable thereon, however, in the present case, it is not

the Collector but the respondent no.3 i.e. the Assistant Inspector General of Registration, Munger Division, Munger, who has initiated Deficit Stamp Case No.1 of 2016, thus the initiation of the said proceedings under Section 47 A(3) of the Act, 1899 is illegal, moreso, since under Section 47 A(3) of the Act, 1899, proceedings are to be initiated within two years of the date of registration of the instrument in question, whereas in the present case, the proceedings have been initiated after lapse of two years. Now, coming to the other aspect of the matter, as to whether the reference made by the respondent no.4 to the respondent no.3, under Section 47 A(1) of the Act, 1899 is valid or not, this Court finds that as per the mandate of Section 47 A(1) of the Act, 1899, the registering authority can refer the matter to the Assistant Inspector General of Registration, for determination of the category and correct valuation of the property, for the purposes of determining the correct stamp duty payable thereon, only before registering the instrument in question, however, in the present case, the reference has been made only after registration of the sale deed on 20.09.2013, leading to registration of Deficit Stamp Case No.1 of 2016 by the respondent no.3, hence the same is void, thus the respondent no.4 had no authority/jurisdiction to refer the matter to the respondent no.3, 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 ***Shahnaj Begam*** (supra). Thus, this Court finds that the action of the respondent no.4, as also that of the respondent no.3 is not only arbitrary and perverse but also against the mandate of Section 47 A of the Act, 1899, hence the impugned order dated 14.03.2016, passed by the respondent no.3 in Deficit Stamp Case No.01 of 2016, being contrary to law, is quashed.

8. The writ petition stands allowed.

(Mohit Kumar Shah, J)

sonal/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.01.2025
Transmission Date	NA