

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13172 of 2018

Abhay Kumar Singh Son of Sri Ramashankar Singh, Resident of Village-
Bihari Mill Ekta Nagar, Anaith, Arrah, P.O. Anaith, P.S. Nawada Ara, District
Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Inspector General of Registration, Patna Commissionery Patna Bihar.
3. The Assistant I.G. of Registration, Patna Bihar.
4. The District Registrar, Ara Bhojpur.
5. The District Sub Registrar, Ara Bhojpur.
6. Baliram Kumar Singh, son of Sri Upendra Singh, Resident of Village and
P.O. Sarathua, P.S. Udwantnagar, District- Bhojpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Gopal Krishna, Adv.
For the Respondent/s	:	Mr.P.N. Shahi, AAG6
		Mr.Manish Kumar, AC to AAG-6 (Ex)

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 21-11-2024

1. The present writ petition has been filed for quashing the order dated 17.04.2018, passed by the Assistant Inspector General, Registration, Patna Division, Patna i.e. the respondent no.3, in Stamp Case No.183 of 2017, whereby and whereunder, he has directed the petitioner to pay a sum of Rs.1,24,680/- on the head of deficit stamp duty along with penalty charges amounting to a sum of Rs.12,468/-, totalling to a sum of Rs.1,37,148/-.

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.56, Khesra No.488, situated at Mauza-Tetaria, Thana No.353, P.S. Udwanthnagar, Circle-Udwanthnagar, District-Ara and the sale deed thereof was registered by the Office of the District Sub-Registrar, Ara at Bhojpur i.e. the respondent no.5 on 09.03.2017, after payment of the requisite stamp duty and the registration charges, wherein the category of land has been shown as 'Dhanhar' (agricultural land). Subsequently, it appears that an inspection was conducted by the staff of the respondent no.5, whereupon it was found that the land in question falls under the developing category, hence matter was referred to the respondent no.3 by the respondent no.5, vide letter dated 02.04.2018, showing the land to be falling under the developing category. The respondent no.3 had then instituted Case No.183 of 2017, whereafter notice was issued to the petitioner and then the impugned order dated 17.04.2018 has been passed directing the petitioner to deposit a sum of Rs.1,37,148 on the head of deficit stamp duty and penalty charges.

3. The learned counsel for the petitioner has submitted that a bare perusal of the inquiry report submitted by the Upper Division Clerk, Office of the District Sub-Registrar, Bhojpur at Ara would show that wheat crops are existing in the land in



question, apart from the fact that the adjacent land has also been found to be agricultural land, however, since one of the adjacent land had been found to be 400 metres from the Ara-Sasaram road, the land in question has illegally been labelled to be falling under the developing land category. Thus, it is submitted that even the inquiry made by the Office of the respondent no.5 shows the land in question is an agricultural land, hence labelling the same as a developing land is fallacious. The Ld. 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, vide letter dated 02.04.2018, i.e. only after registration of the sale deed on 09.03.2017, hence the said reference itself is bad in law. The learned counsel for the petitioner has referred to Section 47(A)(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.

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)**, paragraph nos. 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 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."

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.5 had referred the matter under Section 47A (1) of the Act, 1899 to the respondent no.3 for determination of deficit stamp duty and recovery thereof, inasmuch as upon site verification, it was found that the land in question is situated near a branch road, leading to the respondent no.3 initiating Case No.183 of 2017 and after issuing notice to the petitioner, the respondent no.3 had passed the impugned order dated 17.04.2018, directing the petitioner to pay a sum of Rs.1,37,148/- on the head of deficit stamp duty and penalty charges. Thus, it is submitted that there is no illegality in



the said order dated 17.04.2018 and in case the petitioner is so aggrieved, he may file an appeal before the Ld. Commissioner, Patna Division, Patna.

7. I have heard the learned counsel for the parties and perused the materials available on record, from which it is apparent that even in the inquiry conducted by the Office of the respondent no.5, the land in question has been found to be agricultural in nature, apart from the fact that the respondent no.5 has referred the matter in question under Section 47A (1) of the Act, 1899 to the respondent no.3, only after registration of the sale deed on 09.03.2017, hence admittedly, the respondent no.5 had no authority/jurisdiction to refer the matter under Section 47A (1) of the Act, 1899, after registration of the sale deed. 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 is not only arbitrary and perverse but also against the mandate of Section 47A of the Act, 1899, hence the impugned order dated 17.04.2018, passed by the respondent no.3, being contrary to law is set aside. Consequently, any amount deposited by the petitioner in pursuance to the said order dated 17.04.2018 is



directed to be refunded back within a period of eight weeks
from today.

8. The writ petition stands allowed.

(Mohit Kumar Shah, J)

sonal/-

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CAV DATE	NA
Uploading Date	05.12.2024
Transmission Date	NA

