IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10231 of 2023

Gayatri Devi Wife of Atmaram Prasad Resident of Village-Raxaul, Naga Road, Ward No. 23, P.S.-Raxaul, District-East Champaran at Motihari.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Registration, Excise and Prohibition Department, Govt. of Bihar, Patna.
2. The Additional Chief Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
3. The Inspector General of Registration, Excise and Prohibition Department, Government of Bihar, Patna.
4. The Commissioner, Tirhut Division, Muzaffarpur.
5. The Assistant Inspector General, Registration Excise and Prohibition Department, Tirhut Division, Muzaffarpur.
6. The District Magistrate, East Champaran, Motihari.
7. The Sub Registrar, District Sub Registry Office Raxaul, East Champaran, Motiahri.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Ranjeet Kumar, Advocate
		Mr.Ayush Kumar, Advocate
		Mr.Kanishk Kaustubh, Advocate
		Mr.Shikhar Mani, Advocate
		Mr. Rishabh Gupta, Advocate
For the Respondent/s	:	Mr.Vikash Kumar (Sc 11)
		Mr.Akash Chaturvedi, AC to SC-11

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 25-06-2024

1. At the outset, the learned counsel for the petitioner seeks permission to correct the nomenclature of the respondent no.5. Permission so sought is granted.

2. The needful be done during the course of the day.

3. The present writ petition has been filed for quashing the order dated 17.02.2023, passed by the Assistant

Inspector General, Registration, Tirhut Division, Muzaffarpur i.e. the respondent no.5 in Stamp Case No.47 of 2022-23, whereby and whereunder the petitioner has been directed to deposit deficit stamp duty to the tune of Rs.14,25,270/-, alongwith penalty of a sum of Rs.1,42,527/-, totalling to a sum of Rs.15,67,797. The petitioner has also challenged the appellate order dated 06.06.2023, passed by the Commissioner, Tirhut Division, Muzaffarpur i.e. the respondent no.4 in Stamp Appeal Case No.129 of 2023, whereby and whereunder the appeal, filed by the petitioner, has been rejected.

4. The brief facts of the case, according to the petitioner, are that the petitioner purchased a piece of land appertaining to Khata No.65, Plot No.1626, Area 12 Dhur 13 Dhurki, situated at village- Raxaul, Koiriya Tola, Nahri Road, Ward No.24, Rajaswa Thana No.07, P.S. Circle, Municipality- Raxaul, Distrcit-East Champaran (Tauzi No.951, Jamabandi No.2370), vide registered sale deed dated 24.03.2021.

5. It is stated that the land in question is residential land and accordingly the registration charges and stamp duty were paid and only then the sale deed was registered on 24.03.2021. Nonetheless, after nine months of the registration of the sale deed, the Sub-Registrar, Raxaul i.e. the respondent no.7 referred the matter to the respondent no.5 for recovering deficit

stamp duty, whereupon the respondent no.5 had registered a case, bearing Stamp Case No. 47 of 2022-23 and by the impugned order dated 17.02.2023, he has directed the petitioner to pay a sum of Rs.15,67,797/-, by way of deficit stamp duty. The petitioner had then filed an Appeal, before the respondent no.4, however, the same has stood rejected. This is how the petitioner is before this Court.

6. 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.7 has referred the matter to the respondent no.5, only after registration of the sale deed on 24.03.2021, hence the said reference itself is bad in law. Reference in this connection 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.*"

7. 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."

8. 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 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."

9. Per contra, the learned counsel for the respondents has submitted by referring to the counter affidavit, filed in the present case that the petitioner had got a sale deed, registered by mentioning incorrect category of the land as also undervaluing the land with the intention to evade payment of stamp duty inasmuch as upon spot verification of the land in question, it was found that the land in question falls under the commercial category, whereas the petitioner had declared, in the sale deed that the land in question falls under the residential category. In such view of the matter the respondent no.7 had referred the matter to the respondent no.5 under Section 47A(1) of the Indian Stamp Act, 1899 and after issuing notice to the

petitioner, the impugned order dated 17.02.2023, has been passed, whereafter the petitioner had filed an appeal, however, the same has also stood rejected, hence it is submitted that there is no illegality either in the impugned order dated 17.02.2023, or in the appellate order dated 06.06.2023.

10. I have heard the learned counsels for the parties and perused the materials on record, from which it is clear that admittedly in the present case reference has been made by the respondent no.7, after the sale deed was registered on 24.03.2021, hence the respondent no.7 had no authority/jurisdiction to refer the matter to the respondent no.5 under Section 47A(1) of the Indian Stamp Act, 1899, specially after nine months of the registration of the sale deed on 24.03.2021. In fact, the present case is squarely covered by the 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.7 as also that of the respondent no.5 is not only arbitrary and perverse but also against the mandate of Section 47A(1) of the Act, 1899, hence the impugned order dated 17.02.2023, passed by the respondent no.5 in Stamp Case No.47 of 2022-23, being not sustainable in the eyes of law, is quashed. Consequently, the appellate order dated 06.06.2023, passed by the respondent no.4, in Stamp Appeal Case No.129 of

2023, has got no legs to stand, hence is also set aside.

11. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Saurav/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.08.2024
Transmission Date	NA