

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12266 of 2023

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Waseem Kausar Son of late Serajul Haque, Resident at Malighat Faiz Colony,
P.O- Head Post Office, Muzaffarpur, P.S- Abhiyapur, District- Muzaffarpur
(Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Prohibition Excise and Registration, Government of Bihar, Patna.
2. The Divisional Commissioner, Tirhut Range, Muzaffarpur.
3. Assistant Inspector General of Registration, Registration Office, Muzaffarpur.
4. The District Sub-Registrar, Registration Office, District- Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Raju Giri. Adv.
For the Respondent/s	:	Mr.Vivek Prasad, GP-7
		Mrs.Manishka Singh, AC to GP-7

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 23-07-2024

1. At the outset, the learned counsel for the petitioner seeks to file a rejoinder affidavit, copy whereof has already been filed online. Let the same be kept on record.

2. The present writ petition has been filed assailing the appellate order 08.05.2023, passed by the Commissioner, Tirhut Division, Muzaffarpur in Stamp Appeal Case No.55 of 2022.

3. The brief facts of the case are that the petitioner had purchased a piece of land ad measuring 28 decimal with 12 trees, both mango and litchi, in village Nawada, Thana No. 419,



Khata No. 149, Khesra No. 884, Thana and Anchal and Block Mushahri, District- Muzaffarpur, Bihar from vendor namely Shri Santosh Kumar, son of Baidyanath Prasad Singh, Resident of south of Mohalla P & T Colony, under Mithanpura P.S, District- Muzaffarpur and accordingly absolute sale deed was executed on 17.09.2019 declaring the property as Bheet and fully agricultural at a price of Rs.8,40,000/- @ Rs.30,000/- per decimal, plus Rs.12,000/- for 12 mango and litchi trees, totalling to a sum of Rs.8,52,000/-. The petitioner paid a sum of Rs.51,120/- as stamp duty. The valuation of the property by the petitioner was in accordance with the Notification No. 125 dated 31.01.2016, issued by the District Sub Valuation Registrar-cum-Secretary, Committee, District Muzaffarpur on the recommendation of the District Valuation Committee in exercise of powers under Rule 2 (g) of the Bihar Stamp (Prevention of Under Valuation of Instruments) (Amendment) Rules, 2013.

4. The Office of the District Sub Registrar, Muzaffarpur, had treated the said property as residential and determined the market value of the property to be a sum of Rs.25,52,000/- at the rate of Rs.90,000/- per decimal and accordingly, deficit stamp duty to the tune of Rs.1,02,000/- was demanded from the petitioner after spot verification was made,



by the Office of the District Sub-Registrar, Muzaffarpur. The petitioner had objected to the same, whereafter the District Sub-Registrar, Muzaffarpur, had referred the matter to the Collector, (Assistant Inspector General, Registration), Tirhut Division, Muzaffarpur, under Section 47-A(1) of the Indian Stamp Act, 1899 (hereinafter referred to as 'the Act, 1899'), for determination of the market rate of the said property, whereupon a case was registered as Case No.81 of 2019-20, with regard to which a notice was issued to the petitioner and then the Assistant Inspector General, Registration, Tirhut Division, Muzaffarpur, had passed an order dated 19.01.2022, directing the petitioner to deposit a sum of Rs.60,000/- on the head of Deficit Stamp Duty and a sum of Rs.6,000/- as penalty, totalling to a sum of Rs.66,000/-. The petitioner had assailed the said order dated 19.01.2022, by filing an appeal, before the Commissioner, Tirhut Division, Muzaffarpur, which was registered as Stamp Appeal Case No.55 of 2022, however, the same has been dismissed by an order dated 08.05.2023, on the ground of the petitioner having not deposited 50 % of the deficit stamp duty, as assessed by the Assistant Inspector General, Registration, Tirhut Division, Muzaffarpur, vide order dated 19.01.2022. The petitioner has assailed the aforesaid order dated



08.05.2023, passed by the Commissioner, Tirhut Division, Muzaffarpur, on the ground that pre-deposit of 50 % amount of the stamp duty is only required in cases where the original order is passed by the Collector in exercise of suo moto power vested under Section 47-A(3) of the Act, 1899 and not in an appeal filed against an order passed by the competent authority under Section 47-A(1) or 47-A(2) of the Act, 1899.

5. In this connection, the learned counsel for the petitioner has referred to a judgment rendered by a co-ordinate Bench of this Court dated 08.01.2015, passed in C.W.J.C. No.10002 of 2013 (*Anand Bhushan vs. State of Bihar and Ors.*) to submit that in an appeal filed against the order passed under Section 47-A(1) and 47-A(2) of the Act, 1899 on a reference made by the District Sub-Registrar concerned, there is no requirement of pre-deposit of 50 % of the deficit stamp duty. It would be apt to reproduce the relevant paragraphs of the said judgment dated 08.01.2015, hereinbelow:-

“Considering the statutory provisions underlying 'the Act' and 'the Rules' framed thereunder it would manifest that the legislature has been conscious in mandating a pre-deposit of appellate fee, limited to appeals preferred against an order passed in exercise of suo motu powers vested under section 47-A (3) of 'the Act' and has



consciously exempted the appeals preferred against an order passed under section 47-A (2) of 'the Act' on a reference, from any such liability. 'The Rules' framed for carrying out the purpose of section 47-A of 'the Act' in its rule 13 again while listing the documents to accompany an appeal, does not make any mention regarding deposit of any appellate fee. The circumstances thus which manifests from the plain reading of the statutory provisions is that whereas in case of an appeal preferred against an order passed by the Collector in exercise of powers vested under section 47A(3) of 'the Act', the appellant is required to deposit 50% of the determined deficit stamp duty amount but in cases where the document is yet to be registered and has been referred to the Collector for determination of market value of such property as well as the duty payable thereon under section 47A(1) and (2) of 'the Act', there is no statutory requirement of pre-deposit of 50% of the deficit stamp duty and such appeals have been exempted from payment of any appellate fee.

The statutory authorities being creatures of the statute under which they function, they are bound to act within the parameters of the statute and cannot impose any condition or create any liability which is foreign to the enactment.

In view of the statutory provisions of 'the Act' and 'the Rules' framed thereunder it is manifest that the order impugned passed by the appellate



authority i.e. the Commissioner, Magadh Division, Gaya dated 14.2.2013 in Appeal No.309 of 2012 is upon misappreciation of the legal provisions and cannot be upheld and is accordingly set aside. The matter is remitted back to the appellate authority for consideration and disposal of the matter afresh in accordance with law and without insisting upon pre- deposit of appellate fee amount.”

6. It is pointed out that the aforesaid judgment dated 08.01.2015 has also been upheld by the Ld. Division Bench of the Court, by a judgment dated 16.08.2016, passed in L.P.A. No.815 of 2015 (***The State of Bihar & Ors. vs. Anand Bhushan & Anr.***)

7. Per contra the learned counsel for the respondent-State has though opposed the present writ petition, however, has not been able to controvert the proposition of law settled by the judgment rendered by a co-ordinate Bench of this Court in case of ***Anand Bhushan*** (supra).

8. Having regard to the facts and circumstances of the case, this Court finds that since the original order dated 19.01.2022, has been passed by the Assistant Inspector General, Registration, Tirhut Division, Muzaffarpur, in Case No.81 of 2019-20, upon a reference having been made under Section 47-A(1) of the Act, 1899, by the District Sub-Registrar,



Muzaffarpur and not in exercise of suo motto powers vested under Section 47-A(3) of the Act, 1899, the appeal filed by the petitioner against an order passed under Section 47-A(1) and 47-A(2) of the Act, 1899, upon a reference made by the District Sub-Registrar, Muzaffarpur, is exempted from the liability of pre-deposit of 50% amount of the deficit stamp duty. Consequently, in view of the statutory provisions of the Indian Stamp Act, 1899 and the Bihar Stamp (Prevention of Undervaluation of Instruments) Rules, 1995 as also for the foregoing reasons, it is manifest that the impugned order dated 08.05.2023, passed by the Commissioner, Tirhut Division, Muzaffarpur, in Stamp Appeal Case No.55 of 2022, is contrary to law, hence is set aside. The matter is remitted back to the Appellate Authority for consideration and disposal of the matter afresh, in accordance with law and without insisting upon pre-deposit of the 50% amount of the deficit stamp duty.

9. The writ petition stands allowed to the aforesaid extent.

(Mohit Kumar Shah, J)

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

