IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13965 of 2023

==

Shakuntala Devi, wife of Nagendra Pandit, Resident of Vill and P.O.- Rikhar, P.S.-Lalganj, District- Vaishali.

... ... Petitioner/s

Versus

1. The State of Bihar.
2. The Collector, Vaishali.
3. The AIG, Registration, Tirhut division, Muzaffarpur.
4. The Registrar, Vaishali.
5. The Sub Registrar, Lalganj.

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr.Dhananjay Kumar Singh, Advocate
For the State	:	Mr.Vikash Kumar, SC Mr. Akash Chaturvedi, AC to SC-11

==

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 10-09-2024

The present writ petition has been filed for quashing the order dated 11.01.2022, passed by the Assistant Inspector General (Registration), Tirhut Division, Muzaffarpur, i.e. the respondent no.3 in Case No.73 of 2019-20, whereby and whereunder the petitioner has been directed to deposit deficit stamp duty to the tune of Rs.2,21,616/- along with a fine of Rs.22,162, totaling to a sum of Rs.2,43,778/-

2. The brief facts of the case, according to the petitioner, are that on 17.01.2020, one Rajendra Pandit and Nagendra Pandit, executed a sale deed in favour of the petitioner, pertaining to land situated at Mauza-Rikhar, Thana N.115, Khata No.94 & others, Khesra No.602 & others, admeasuring area 6.60

decimal, after paying the requisite registration charges and stamp duty, however, the boundary of the said land was wrongly mentioned in the said sale deed, hence a rectification deed dated 05.03.2020 was filed before the Sub-Registrar, Lalganj for correction of the boundary. In the meantime, the Sub-Registrar, Lalganj appears to have referred the matter pertaining to payment of deficit stamp duty qua registration of the aforesaid sale deed dated 17.01.2020, to the respondent no.3, whereupon the aforesaid Case No.73 of 2019-20 was initiated by the respondent no.3 and notices were issued to the petitioner, in response whereof the petitioner had submitted her reply before the respondent no.3 on 26.10.2021, however, without considering the same, the respondent no.3 has passed the aforesaid order dated 11.01.2022, directing the petitioner to pay a sum of Rs.2,43,778 on the head of deficit stamp duty and penalty charges.

3. The learned counsel for the petitioner has submitted that reference can be made by the registering office for determination of the proper market value of the property in question, if he is satisfied that classification of the property in question or measurement of the structure contained on the property is wrong or the market value of the property has been

set forth at lower rate than the guideline register of Estimated Minimum Value, only before registering the instrument in question, however, in the present case, the Sub-Registrar, Lalganj has referred the matter to the respondent no.3 only after registration of the sale deed dated 17.01.2020, i.e. on 20.02.2020, hence the said reference itself is bad in law.

4. The learned counsel for the petitioner has referred to Section 47-A(1) of the Indian Stamp Act, 1899 (hereinafter 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."

5. In this connection, the learned 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."

6. 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 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."

7. *Per contra*, the learned counsel for the respondent-State has submitted by referring to the counter affidavit and the supplementary counter affidavit filed in the present case that the Deficit Stamp Case No.73 of 2019-20 has been initiated by the respondent no.3 on the basis of reference made by the Sub-Registrar, Lalganj, on 20.02.2020 and only after giving notice to the petitioner and considering her objection, the impugned order dated 11.01.2022 has been passed, hence there is no illegality in the matter.

8. It is also submitted by the learned counsel for the respondents that on enquiry, it had transpired that a building was standing over the land in question, which was sold to the petitioner, vide registered sale deed dated 17.01.2020, hence the value of the property shown in the sale deed was under valued and the same should have been Rs.49,99,000/-, thus deficit stamp duty to the tune of Rs.2,70,351/- was found payable by the petitioner, in addition to the stamp duty already paid by her.

9. I have heard learned counsel for the parties and perused the materials on record from which it is apparent that admittedly, reference has been made by the Sub-Registrar, Lalganj, Vaishali on 20.02.2020 to the respondent no.3, i.e. after registration of the sale deed dated 17.01.2020, hence the Sub-Registrar, Lalganj, Vaishali had no jurisdiction/authority to refer the matter to the respondent no.3, after registration of the sale deed on 17.01.2020, under Section 47-A(1) of the Act, 1899, thus the reference itself is contrary to law. In fact, the present case is squarely covered by the judgment rendered by a co-ordinate Bench of this Court in the case of ***Shannaj 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 perverse but also against the mandate of Section 47-A of the Act 1899, hence the impugned order dated 11.01.2022, passed by the respondent no.3 in Deficit Stamp Case No.73 of 2019-20 is quashed.

10. The writ petition stands allowed.

(Mohit Kumar Shah, J)

kanchan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.09.2024
Transmission Date	NA