IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12989 of 2023

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Jannat Ansari Son of Late Amaruddin Ansari, Resident of Village Post Office- Marojhian, Police Station- Nasriganj, District- Rohtas.

... ... Petitioner

Versus

1. The State of Bihar Through Inspector General Registration, Government of Bihar, Patna.
2. The Collector-cum-District Magistrate-cum-Registrar, Rohtas at Sasaram.
3. The Sub Registrar, Bikramganj, Rohtas.
4. The Circle Officer, Nasriganj, Rohtas.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr.Sanjay Kumar Tiwary, Adv.
For the Respondent/s	:	Mr.Vikash Kumar, SC-11

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 16-07-2024

The present writ petition has been filed for quashing the order dated 18.7.2023, passed by the learned Court of Collector-cum-District Magistrate, Rohtas (Sasaram), in Deficit Stamp Case No. 27 of 2022, whereby and whereunder the petitioner has been directed to deposit a sum of Rs. 1,15,351/- on the head of deficit stamp duty along with penalty to the tune of Rs. 11,535/-, totalling to a sum of Rs. 1,26,886/-.

2. The brief facts of the case, according to the petitioner, are that the petitioner had presented the sale deed for registration

before the Sub-Registrar, Bikramganj, Rohtas i.e. the Respondent No. 3, on 30.5.2020, pertaining to land situated at khata no. 506, plot no. 125, circle-Nasriganj, Mauza-Nasriganj, P.S.No. 63, District-Rohtas and after the Respondent No. 3 had made an enquiry and was satisfied with the registration charges and stamp duty to be paid by the petitioner, the sale deed was registered on 20.8.2020, nonetheless, after a lapse of more than two years, the petitioner had received a notice dated 24.12.2022 from the District Magistrate, Rohtas at Sasaram, intimating him about initiation of Deficit Stamp Case No. 27 of 2022, whereafter the petitioner had appeared before the District Magistrate, Rohtas at Sasaram and denied the fact that he had not paid the requisite stamp duty. The District Magistrate, Rohtas at Sasaram, had, by the impugned order dated 18.7.2023, directed the petitioner to pay deficit stamp duty along with the penalty charges to the tune of Rs. 1,26,886/-.

3. The learned counsel for the petitioner has submitted that the action of the learned District Magistrate, Rohtas at Sasaram, is contrary to law, inasmuch as under Section 47A(1) of the Indian Stamp Act, 1899 (hereinafter referred to as “the Act, 1899”), reference can be made by the Sub-Registrar to the Collector-cum-District Magistrate concerned only before

registration of the sale deed, however, in the present case, though the sale deed was registered as far back as on 20.8.2020, reference has been made by the Respondent No. 3 only vide letter dated 22.11.2022, hence, it is contrary to the provisions contained under Section 47A(1) of the Act, 1899. It is next contended that even if it is considered that Section 47A(3) of the Act, 1899, empowers the Collector to suo motu call for & examine the instrument for the purposes 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, however in the present case, the said period of two years had stood lapsed before the Ld. Collector, Rohtas at Sasaram had initiated the Deficit Stamp Case proceedings, inasmuch as the sale deed was registered on 20.8.2020, whereas the deficit stamp case was instituted only in the month of December, 2022 i.e. after lapse of two years, hence, such action of the learned Collector-cum-District Magistrate, Rohtas at Sasaram, is even contrary to the provisions contained under Section 47A(3) of the Act, 1899.

4. At this juncture, the learned counsel for the petitioner has referred to Section 47A(1) and (3) 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.*

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."

5. 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*
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> *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 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 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:-*
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> > *"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, filed in the present case that audit objection was received by the Respondent No. 3, regarding deficit stamp duty having been realized from the petitioner and others, whereupon enquiry was made and it was found that the land in question is commercial in nature, however, deficit stamp duty had been paid, hence, the Respondent No. 3, vide letter dated 22.11.2022, had written to the District Magistrate, Rohtas at Sasaram, to initiate proceedings under Section 47A(3) of the Act, 1899, for the purposes of realizing deficit stamp duty, whereafter the Deficit Stamp Case No. 27 of 2022 was initiated and after giving opportunity to the petitioner, the impugned order dated 18.7.2023 has been passed, directing the petitioner to pay a sum of Rs. 1,26,886/- by way of deficit stamp duty and penalty charges, hence, it is submitted that there is no illegality in the impugned order dated 18.7.2023.

8. I have heard the learned counsel for the parties and perused the materials on record from which it is clear that the

sale deed was registered on 20.8.2020, however, the so-called reference has been made only on 22.11.2022 i.e. after registration of the sale deed, hence, admittedly, the Respondent No. 3 had no authority / jurisdiction to refer the matter to the learned Collector, Rohtas at Sasaram, under Section 47A(1) of the Act, 1899, or for that matter under Section 47A(3) of the Act, 1899. Even if it is to be considered that the learned Collector, Rohtas at Sasaram, had initiated the aforesaid Deficit Stamp Case No. 27 of 2022 under Section 47A(3) of the Act, 1899, then also the time period prescribed to do so i.e. two years from registration of the sale deed had expired prior to institution of the said case & the same has been instituted only after lapse of two years, hence, such action of the learned Collector-cum-District Magistrate, Rohtas at Sasaram, is in teeth of the provisions contained under Section 47A(3) of the Act, 1899, as well. In fact, the present case is squarely covered by a judgment, rendered by the learned Division Bench of this Court in the case of ***Smt. Tetra Devi*** (supra) as also by the Judgment rendered by a Coordinate Bench of this Court in the case of ***Shahnaz Begam*** (supra).

9. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, this Court finds that

the impugned order dated 18.7.2023, passed by the Collector-cum-District Magistrate, Rohtas at Sasaram, in Deficit Stamp Case No. 27 of 2022, is not only illegal, perverse and arbitrary but also contrary to the provisions contained in Section 47A of the Indian Stamp Act, 1899, hence, is quashed.

10. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.08.2024
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