IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14735 of 2023

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M/s Chavobiro Foods and Feeds Private Limited having its registered office at Vasundhara Complex, Mohalla Saraiyaganj, PS and PO Town, District - Muzaffarpur, through its authorised representative Suman Shekhar, son of Krishan Kumar, aged about 28 years, Gender Male, resident of the Ward No 5, Kolhanta Patori, PO Patori, District - Darbhanga - 846003.

... ... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Prohibition, Excise and Registration Department, Government of Bihar, Patna.
2. The Commissioner, Tirhut, Muzaffarpur, Bihar.
3. The Inspector General of Registration, Bihar, Patna.
4. The Assistant Inspector General of Registration, Tirhut Division, Muzaffarpur.
5. The District Magistrate, Muzaffarpur.
6. The District Sub-Registrar, Chakiya, East Champaran.
7. Md. Sohail Akhter, Sub-Registrar, Registry Office, Chakia, East Champaran.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Nikhil Kumar Agrawal, Advocate Ms. Aditi Hansaria, Advocate Mr. Yash Sahay, Advocate
For the Respondent/s	:	Mr.Vikash Kumar (Sc11)

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT

Date : 19-07-2024

1. The present writ petition has been filed by the petitioner for seeking the following reliefs:-

> **(i)** To issue an appropriate writ/order/direction in the nature of certiorari quashing and setting aside the entire proceeding initiated by the registering authority under Section 47-A(4) of the Stamp Act after registration of the sale deed dated 14.07.2016 with respect to the land in

question being Thana No. 131, Tauzi no. 482, Khata Nos. 144 etc, KhesraNo. 6668, 7086, 8895, 109, situated at Mauza - Semra and Mauza Chakbana, Village Semra, Thana Chakiya, District Champaran measuring 1450 decimal; East.

(ii) For setting aside the Order dated 31.01.2022 [Anx- P/3] passed by the Learned Commissioner, Tirhut Division, in Stamp Appeal Case No. 25/19 whereby and whereunder the order dated 07.12.2016 passed by the AIG Registration, Tirhut Division, was set aside and the matter was remanded back with direction to reassess the Stamp Duty

(iii) For setting aside the Order dated 02.08.2022 [Anx- P/4] passed by the Respondent No. 4 in Stamp Case No. 29/16-17 whereby and whereunder the value of the land in question was recalculated and the deficit stamp duty was assessed as Rs. 3,24,99,040/- and also quash the consequential demand notice dated 05.08.2022.

(iv) For setting aside the Order dated 08.05.2023 [Anx- P/7] passed by the Commissioner, Tirhut Division, Muzaffarpur in Stamp Appeal No. 237/2022.

2. The brief facts of the case is that the Petitioner had paid the deficit Stamp Duty to the tune of Rs. 2,28,560/- as assessed by the A.I.G. (Registration), *Tirhut* Division, *Muzaffarpur vide* Order dated 07.12.2016, whereafter the Sale Deed was registered on 23.12.2016. However, the Sub-Registrar, *Chakia* challenged the said Order dated 07.12.2016, passed by the A.I.G. by filing the Stamp Appeal No. 25 of 2019 (i.e. after a delay of more than two years), which was allowed by the Learned Commissioner, *Tirhut* Division, *Muzaffarpur* *vide* Order dated 31.01.2022 and the matter was remanded back to the A.I.G. leading to passing of the Order dated 02.08.2022, by the A.I.G. whereby deficit stamp duty to the tune of Rs. 3,57,48,944/- has been assessed, which was challenged by the Petitioner by filing Stamp Appeal No. 37 of 2022, however the same was dismissed *vide* Order dated 08.05.2023 passed by the Commissioner.

3. The issue pertains to the interpretation and proper implementation of Section 47-A of the Stamp Act.

Arguments advanced by the petitioner.

I. Lack of jurisdiction

4. The power of registering authority to ascertain deficit stamp duty has been provided under Section 47A(1) of the Stamp Act. Reference can be made with regard to determination of classification of the property, only before registration of sale deed in question and not thereafter. Reliance is placed on the decision of ***Shahnaz Begam*** V/s ***The State of Bihar & Ors; CWJC No. 19517 of 2016.***

5. After registration of an instrument, the only proceeding that can be initiated is under Section 47A(3) of the Act which provides power to the Collector to initiate the said proceeding, *suo-moto*, within a period of two years from the date of the registration of such instrument. However, such *suo-moto* power can be exercised by the Collector with respect to only those instruments which have not been referred to by the Registering Authority under Section 47A(1) of the Act.

6. Once the deficit stamp duty has been ascertained by the Collector under reference from the Sub-Registrar under Section 47-A(1) of the Act and the same has been paid by the person liable to pay the duty, the said Registering Authority becomes *functuous officio* and ceases to have any power under the Act so far as the registered document is concerned.

7. After the sale deed was presented for registration, the same was referred by the Sub-Registrar to the A.I.G., Registration under Section 47-A(1) considering the nature of the land as commercial. The A.I.G., Registration, after conducting a spot inquiry as stipulated under Section 47-A(2) ascertained the deficit stamp duty payable by the Petitioner *vide* its Order dated 07.12.2016. After payment of such deficit stamp duty as ascertained by the A.I.G., Registration, the said Sale Deed was registered on 23.12.2016. Accordingly, once the document was registered after the payment of deficit stamp duty, there is no power vested in the Sub-Registrar as far as the said registered document is concerned.

II. Appeal filed by the Sub-Registrar against the Order passed by the A.I.G. (Registration) under Sub-section (2) of Section 47-A is not maintainable.

8. Section 47-A of the Act does not provide any provision whereby the Sub-Registrar can file an appeal against the order of the Collector (A.I.G., Registration herein) in exercise of the powers Section 47-A(2) with respect to the instruments referred to the Collector by the Sub-Registrar under Section 47-A(1).

9. Sub-section (4) of Section 47-A of the Act contains the provision of filing an appeal against the order passed by the Collector under Section 47-A(2) of the Act, however, the said section enables 'a person aggrieved' to file such an appeal. The Sub-Registrar cannot be considered to be a person aggrieved in order to enable him to file an appeal against the order of the Collector. This fact can be further substantiated from the conjoint reading of Sub-section (4) and Sub-section (6) of Section 47-A of the Act. Sub-section (6) provides that ***the aggrieved party*** shall deposit 50% amount of the payable deficit stamp duty before filing an appeal. The section does not provide that in the event an appeal is filed by the registering authority, such authority is not required to deposit the said amount of 50% of the deficit stamp duty. A harmonious reading the clauses makes it evident that the registering authority cannot be considered to be a person aggrieved in order to file an appeal against the order of the Collector/A.I.G., Registration.

10. The ‘person aggrieved’ means a person who is wrongfully deprived of his entitlement which he is legally entitled to receive, and it does not include any kind of disappointment or personal inconvenience. 'Person aggrieved' means a person who is injured or one who is adversely affected in a legal sense. Reliance is placed on the decision passed in ***S. Khushboo vs. Kanniammal & Anr. reported in (2010) 5 SCC 600.***

11. In the present case, the Sub-Registrar has filed an appeal against the Order dated 07.12.2016 passed by the A.I.G., Registration before the Commissioner which is not maintainable.

III. Appeal filed by the Sub-Registrar is barred by limitation.

12. In the event this Court is of the view that the Sub-Registrar would be considered to be a person aggrieved so as to enable him to file an appeal against the Order passed by the A.I.G., Registration under Section 47- A(4) of the Act. The Appeal filed by the Sub-Registrar having being filed on 04.02.2019 against the Order dated 07.12.2016 passed by the A.I.G., Registration in Stamp Case No. 27/2016, has been filed after a delay of more than 2 years after the expiry of the period to file the appeal i.e. beyond the statutory limitation of sixty days, and such appeal is barred by limitation and accordingly, was fit to be dismissed.

13. There is no provisions in the Stamp Act whereby the Commissioner can condone the delay in filing of the appeal and accordingly, the condonation of delay by the Commissioner is bad in law.

14. In case of quasi judicial authorities, the Limitation Act does not apply automatically unless the same has been made applicable by a specific provision in the act. Reliance is placed on ***M.P. Steel Corporation vs. Commissioner of Central Excise, 2015(7) SCC 58,*** where the Hon'ble Supreme Court held that the Limitation Act applies only to courts and not to the tribunals.

IV. The classification or market value of the property is to be considered as on the date of registration and not on the basis of any subsequent date or development.

15. Merely because the property has potential of being used commercially may not be relevant criterion for assessing value for the purpose of stamp duty. In order to ascertain the stamp duty payable on a particular property, nature of the use is relatable to the date of purchase of the property and not the subsequent change. Reliance is placed on ***State of UP v. Ambrish Tandon*; AIR (2012) SC 1140.**

16. In the case of ***Northern India Iron Press Work (P) Ltd. v. State of UP*** [Misc. Single No. 3 of 1993 decided on 15.04.2015] the Allahabad High Court has held that in determining the market value, the potential of the land as on the date of sale alone can be taken into account and not what potential it may have in the distant future. Any subsequent improvement or change in the nature or user of the land, which may result into enhancement of the market value of the property, is not to be taken into account, and it is only the value of the property on the date of execution of the property that is to be considered for the purpose of determination of proper stamp duty payable on the instrument.

17. In the present case, the Commissioner in its Order dated 31.01.2022 passed in Stamp Appeal No. 25/2019 has remanded the matter to the A.I.G. for re-evaluation of the stamp duty on the ground that the land has commercial potential. Such finding of the Commissioner based on subsequent development is flawed. Moreover, even *vide* the Order of the Commissioner it does not transpire that as on the date of the Order the land in question was used for commercial purpose.

18. The Commissioner in his Order dated 31.01.2022 has erred in not considering the Report of the Circle Officer dated 14.02.2019 wherein the nature of the land even after registration has shown to be '*do fasla*', meaning thereby even after registration of the land, the land in question was not considered to be commercial in nature in the revenue records.

19. In any event, if the Petitioner intends to use the said agricultural land commercially, the Petitioner would have to comply with the provisions of Bihar Agriculture Land (Conversion for non-agriculture purposes) Act, 2010 and pay the requisite fee therein. Hence, there is no loss to the exchequer.

V. If the very initiation of the proceeding is bad in law, all the consequential orders are non est.

20. Since the appeal filed by the Sub-Registrar itself is not maintainable and the action of the Registering authority was without jurisdiction, all the consequential orders passed by the Commissioner and the A.I.G., Registration would be non est and accordingly liable to be set aside. Reliance is placed on the decision of ***Badrinath v. Govt. of T.N. [reported in (2000) 8 SCC 395: 2001 SCC (L&S) 13: AIR 2000 SC 3243] and State of Kerala v. Puthenkavu N.S.S. Karayogam [reported in (2001) 10 SCC 191]*** whereby the Hon'ble Supreme Court observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to judicial, quasi-judicial administrative proceedings equally.

21. Similarly, in the case of ***Mangal Prasad Tamoli V/s Narvadeshwar Mishra; (2005) 3 SCC 422,*** the Hon'ble Supreme Court has held that if an order at the initial stage is bad in law, then all further proceedings, consequent thereto, will be non est and have to be necessarily set aside.

22. It Is a settled legal position that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which is unlawful from its inception. Reliance is placed on the decision in ***Ritesh Tiwari v. State of UP; AIR (2010) SC 3823*.**

Arguments advanced by the State.

23. The State has filed the counter affidavit and has opposed this writ petition. They have repeated the factual aspects and have said that the writ petition is not maintainable, and it is liable to be dismissed.

Consideration

24. I have considered the submissions of the parties.

25. So far as the submission of the petitioner with regard to the lack of jurisdiction of the authority to ascertain the deficit stamp duty under Section 47(A)(i) of the Stamp Act is concerned, the same has been dealt in the case of *Shahnaz Begam (Supra)*.

26. This Court in the case of *Shahnaz Begam V/s The State of Bihar & Ors (Supra)* has held as follows:-

> *"Having heard learned counsel for the petitioner and learned counsel for the State, it would be relevant and in the interest of justice to refer to the different provisions of Indian Stamp Act particularly, Section 47A(1) is quoted hereunder for ready reference:-*
>
> > ***"47-A Instrument of Conveyance – 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 provisions 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".

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/A.I.G. 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 subsection (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 subsection shall apply to any instrument registered before the date of commencement of the Indian Stamp (Bihar Amendment Ordinance, 1986).”

27. Section 47(A) (I), (ii) and (iii) of the stamp act reads as follows:-

(I) *"If the market value of any property, which is the subject of any instrument on which duty is chargeable on market value as set forth in such instrument, is less than even the minimum value as determined in accordance with the rules made under this Act, the Registering Officer appointed under the Registration Act, 1908, shall, after registering the instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon.*

(ii) *On receipt of reference under sub-section (1), the Collector shall, after giving the parties reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules under this Act, determine the value or consideration and the duty as aforesaid, and the deficient amount of duty, if any, alongwith interest at the rate of twelve per cent per annum on such deficient amount, shall be payable by the person liable to pay* *the duty from the date of registration of the instrument relating to such property to the date of payment of deficient amount of the duty;*

(iii). "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."

28. Once the documents which were referred to the Collector by the Registering Authority under Section 47(A)(I) of the Act was referred, and the collector has acted upon the reference and has ascertained the stamp duty and the same has been paid by the person liable to pay the stamp duty, the Registering authority become *functuous officio* and therefore ceases to have any power to act further so far as the document in question is concerned. In the present case also the document in question was referred by the sub-registrar to the A.I.G. considering the nature of the land as commercial. An inquiry was conducted by the A.I.G. Registration under Section 47(A)(ii) and the same was ordered to be paid by the A.I.G. as per his order dated 07.12.2016 as ascertained by the A.I.G. Registration and the sale deed was registered on 23.12.2016 and therefore after the payment of the stamp duty, the Sub-Registrar had become *functuous officio*, and he has no power to proceed any further with regard to the document in question.

29. With regard to the second argument of the petitioner, the Sub-registrar has no power to file an appeal against the order of the Collector (A.I.G., Registration herein) under Section 47(A)(ii) with respect to the instrument referred to by the Sub-Registrar under Section 47-A(1). It has to be considered from the reading of the provision in question which provides for appeal by a person aggrieved under Section 47(A)(ii) of the Act. The provision further talks about deposit of 50 % amount of the deficit stamp duty to be paid by the aggrieved party before filing of an appeal. The authority concerned i.e. the Sub-Registrar is not required to deposit 50% of the deficit stamp duty.

30. From reading the provisions of the Act, I am of the view that a Sub-registrar is a person aggrieved who can be allowed to prefer an appeal against the order of the Collector (A.I.G. Registration herein). The Sub-registrar, on behalf of the State can maintain the appeal even though the pre-requisites deposit for filing an appeal is not applicable to the State.

31. From reading of the provisions of the Act and law laid down by the Hon’ble Supreme Court in the case of ***S. Khushboo V/s Kanniammal & Anr (Supra)***, I am of the view that a sub-registrar can be treated as a person aggrieved who can be allowed to prefer an appeal against the order of the Collector (A.I.G., Registration herein).

32. The Hon’ble Supreme Court in the case of ***M.P. Steel Corporation V/s Commissioner of Central Excise***(Supra) has held as follows:-

> *“25……In appeal, this Court held that (1) if the legislature in a special statute prescribes a certain period of limitation, then the Tribunal concerned has no jurisdiction to treat within limitation, an application, by excluding the time spent in prosecuting in good faith, on the analogy of* Section 14(2) *of the Limitation Act, and (2) the appellate authority and the revisional authority were not “courts” but were merely administrative tribunals and, therefore,* Section 14 *of the Limitation Act did not, in terms, apply to the proceedings before such tribunals.*

33. In view of the law laid down by the Hon’ble

Supreme Court in the case of ***M.P. Steel Corporation***(supra), I am of the view that there is no provision in the Stamp Act which provides for condonation of delay by the Commissioner in filing the appeal and, therefore, in the present case, though the appeal was maintainable, the limitation could not have been condoned by the Commissioner as there is no provision of condonation of delay in the Stamp Act.

34. The appeal is time-barred as an appeal can be filed within the statutory limitation of sixty days and the present appeal has been filed by the Sub-Registrar after a delay of more than two years and the same is barred by limitation.

35. The last argument of the petitioner is with regard to classification or market value of the property which is to be considered on the date of registration and not due to any subsequent development on any other date.

36. The Hon'ble Supreme Court in the case of ***State of UP V/s Ambrish Tandon*** (supra) has held as follows:-

> *"8) We have already held that it is the grievance of the respondents that the orders were passed by the Additional Collector on a public holiday. Regarding the merits though the Collector, Lucknow made a surprise site inspection, there is no record to show that all the details such as measurement, extent, boundaries were noted in the presence of the respondents who purchased the property. It*

is also explained that the plot in question is not a corner plot as stated in the impugned order as boundaries of the plot mentioned in the freehold deed executed by Nazool Officer and in the sale deed dated 16.04.2003 only on one side there is a road. It is also demonstrated that at the time of execution of the sale deed, the house in question was used for residential purpose and it is asserted that the stamp duty was paid based on the position and user of the building on the date of the purchase. The impugned order of the High Court shows that it was not seriously disputed about the nature and user of the building, namely, residential purpose on the date of the purchase.

Merely because the property is being used for commercial purpose at the later point of time may not be a relevant criterion for assessing the value for the purpose of stamp duty.

The nature of user is relatable to the date of purchase and it is relevant for the purpose of calculation of stamp duty. Though the matter could have been considered by the Appellate Authority in view of our reasoning that there was no serious objection and in fact the said alternative remedy was not agitated seriously and in view of the factual details based on which the High Court has quashed the order dated 27.09.2004 passed by the Additional District Collector, we are not inclined to interfere at this juncture."

37. In the case of ***Northern India Iron Press Work***

(P) Ltd V/s State of UP *(supra)*, the Allahabad High Court has held as follows:-

> *"Thus, the legal position is that the market value of the land cannot be determined with reference to the use of the land to which buyer intends to put it. The market value is what a general buyer may offer and what the officer may reasonably expect. In determining the market value, the potential of the land as on the date of sale alone can be taken into account and not what potential it may have in the distant future. Any subsequent improvement or change in the nature or user of the land, which may result into enhancement of the market value of the property, is not to be taken into account and it is only the value of the property on the date of execution of the document that is to be considered for the purpose of determination of proper stamp duty payable on the instrument."*

38. The order dated 31.01.2022 passed by the Commissioner in Stamp Appeal No. 25/2019 has directed for re-valuation of the stamp duty by the A.I.G. as the land has commercial potential. The Stamp duty can be calculated on the basis of the nature of the land on the date of registration and not any subsequent development.

39. There is the report of the Circle Officer, dated 14.02.2019 where the nature of the land after registration has been shown to be *Do-fasla* that is the land was not considered to be commercial in the revenue records therefore the calculation done by the authorities cannot be sustained.

40. So far as the argument with regard to the very initiation of the proceeding is bad in law and therefore all the consequential orders are non est as it has been repeatedly held by Hon'ble Supreme Court that once the basis of a proceeding goes, all the consequential acts, actions, orders would fall on the ground automatically and in my opinion when the very initiation of the proceeding once after the petitioner had paid the stamp duty after reassessment as per the order of the A.I.G. is bad then the subsequent order passed by the authorities which are against the petitioner cannot be sustained.

41. The entire proceeding initiated by the registering authority under Section 47-A(4) of the Stamp Act after registration of sale deed dated 14.07.2016 with respect to the land in question and the ***order dated 31.01.2022 (Anx-P/3) passed by the learned Commissioner, Tirhut Division in Stamp Appeal Case No. 25/19**, **the order dated 02.08.2022 (Anx-P/4) passed by respondent no. 04 in Stamp Case No. 29/2016-17*** and ***the order dated 08.05.2023 (Anx-p/7) passed by the Commissioner, Tirhut Division, Muzaffarpur*** *in Stamp Appeal No. 237/2022* are hereby quashed.

42. This application stands allowed.

(Sandeep Kumar, J)

Shishir/-

AFR/NAFR	NAFR
Uploading Date	23.07.2024
Transmission Date	N.A.