IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14539 of 2023

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Shaikh Afroz, Proprietor/Partner Sikrahana Polymer Industries S/o-Shaikh Razzaq, Village-Islampur Tola Dhaka, Post and P.S.-Dhaka, District-East Champaran.

... ... Petitioner/s

Versus

1. The State of Bihar through Secretary, Inspector General of Registration-Cum-Excise Commissioner.
2. The Commissioner, Tirhut, Division, Muzaffarpur.
3. The Assistant Inspector General of Registration, Tirhut Division, Muzaffarpur.
4. The Registrar, East Champaran.
5. The Sub-Registrar, Dhaka, East Champaran.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Syed Hussain Majeed
		Mr. Azhar Hussain
For the Respondent/s	:	Mr.Vikash Kumar (Sc11)

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT
Date : 19-02-2024

Heard learned counsel for the petitioner and learned counsel appearing on behalf of the State.

2. The following reliefs have been prayed for by the petitioner:

> *"(i) For quashing the order dated 06.03.2023 passed by learned Assistant Inspector General, Registration, Tirhut Division, Muzaffarpur (hereinafter referred to as AIG, Registration) in Stamp Case No. 56 of 2022-23, whereby and whereunder the AIG Registration has directed the petitioner to pay a sum of Rs.4,27, 680/- as deficit stamp fee along with a fine of Rs. 42,768/- thus a total sum of Rs.4,70,448/-. On failure to pay the said*

total amount within sixty days of passing the said order, an interest @ 5% per month will also be realised from the petitioner.

(ii) For direction to refund the 50% of the alleged deficit Stamp Duty deposited by the petitioner under protest in Stamp Appeal No.229 of 2023 pursuant to the order dated 24.07.2023 passed by the learned Commissioner in the said Stamp Appeal."

3. The facts of the case in brief are as follows :-

(a) The petitioner purchased 77.5 decimal of land vide Sale Deed dated 27.09.2018 bearing Deed No. 6187 situated in Village Raksarahimpur, Anchal+Sub Registry Dhaka, District- East Champaran, Thana No. 110, Tauzi No.299.

(b) The land purchased by the petitioner is biennial and the same lies in Chaul which remains full of water in the rainy season and it is of no use.

(c) The petitioner paid stamp duty more than the circle rate fixed in the locality by the appropriate authorities. It is stated that the petitioner valued the land at Rs. 17,52,000/- which is more than the fixed circle rate and paid stamp duty of Rs. 1,05,120/- along with registration fees which would be evident from the aforesaid Sale Deed.

(d) It is pertinent to mention here that the Sub-Divisional Officer, Dhaka by order dated 11.10.2022 allowed the conversion of the said land from agricultural land to non-agricultural land after payment of Rs. 1,78,002/-.

(e) Pursuant to the aforesaid order dated 11.10.2022 the petitioner for getting the said land converted from agricultural land to non- agricultural land deposited a sum of Rs. 1,78,002/- to Sub-Divisional Magistrate, Dhaka vide receipt dated 13.10.2022 bearing challan no. 20.

(f) Thereafter, the petitioner has been running his industry on the said land in the name of Sikrahana Polymer Industries in which the wife of the petitioner is also one of the partners.

(g) After passage of more than four years the Sub-Registrar, Dhaka (Respondent No.5) on 20.12.2022 sent a reference under Section 47- A(3) of the Indian Stamp Act, 1899, whereby Rs.4,27,680/- has been claimed as deficit stamp duty.

(h) Pursuant to the aforesaid reference made by Respondent No.5, the AIG, Registration, Tirhut Division took cognizance of the matter and Stamp Case No.56 of 2022-23 was initiated against the Sikrahana Polymer Industries. Without issuing notice nor giving any information to the petitioner in any manner the AIG, Registration proceeded in the said Stamp Case and an ex parte order against the petitioner was passed on 06.03.2022, whereby and whereunder the learned AIG Registration has directed the petitioner to pay a sum of Rs.4,27,680/- as deficit stamp fee along with a fine of Rs. 42,768/- thus a total sum of Rs.4,70,448/-. On failure to pay the said total amount within sixty days of passing the said order, an interest @ 5% per month will also be realised from the petitioner.

(j) Thereafter, the Sub-Registrar, Banka issued a notice dated 11.03.2023 bearing Gyapank No.69 to the petitioner informing him about the aforesaid order dated 06.03.2023.

k) After receipt of the aforesaid notice dated 11.03.2023, the petitioner gave a representation before the AIG, Registration stating therein that the petitioner has already deposited the requisite fee for conversion of land from agricultural land to non-agricultural land vide receipt dated 13.10.2022 bearing challan no. 20.

(l) The petitioner on the advice of his lawyer

preferred Stamp Appeal No. 229 of 2023 before the learned Commissioner, Tirhut Division, Muzaffarpur challenging the order dated 06.03.2023.

(m) In the afore-mentioned Stamp Appeal the Commissioner, Tirhut Division, Muzaffarpur passed an order dated 24.07.2023 requiring him to deposit 50% of the payable deficit Stamp Duty as per Section 47A(4) and (6) of the Indian Stamp Act, 1899 otherwise the appeal would be dismissed.

(n) The petitioner under protest and reserving all his rights deposited the requisite 50% of the alleged deficit Stamp Duty along with a petition dated 28.07.2023 stating therein that the said deposit is being made under protest.

(o) Thereafter the said Stamp Appeal is pending before the learned Commissioner, Tirhut Division, Muzaffarpur.

4. Learned counsel appearing on behalf of the petitioner submits that the order dated 06.03.2023 passed by the AIG, Registration is bad in the eye of law as the same is against the statutory provisions as enunciated under Section 47A(1) and (3) of the Indian Stamp Act, 1899.

5. It is further submitted that the registering officer as per the mandate of Section 47A(1) of the Indian Stamp Act, 1899 can refer a matter for determination of its proper market value only before registering the instrument in question. In the present case, the Sale Deed was registered on 27.09.2018 and the reference has been made after four years of registration of the said Sale Deed.

6. It is next submitted that even as per Section 47A(3) of the Indian Stamp Act, 1899 the Collector has the power to *suo motu* call for the records of such instrument which has been registered and examine the same 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, the same can only be done within a period of two years, but in the present case the Sale Deed was registered on 27.09.2018 and the Sub-Registrar, Dhaka (Respondent No.5) initiated the process by issuing letter on 20.12.2022 i.e., after expiry of more than four years.

7. Learned counsel for the petitioner also submits that the entire proceeding initiated against the petitioner is fit to be set aside for being patently illegal as the Respondent No.3 after the registration of the Sale Deed cannot make a reference for determination of the proper market value of the property which is the subject matter of such instrument.

8. It is argued that even the Collector as per the provisions of Section 47A(3) is denuded of the power of *suo motu* calling the record of such instrument after expiry of two years and in the present case the order has been passed after expiry of four years which is manifestly in contravention to the

mandate of law.

9. The petitioner has relied upon a Division Bench judgment in the case of ***State of Bihar Vs. Smt. Tetra Devi*** reported in ***2018 (3) PLJR 136*** and also a judgment passed in the case of ***Shahnaz Begum Vs. The State of Bihar & Ors.*** reported in **2018(2) PLJR 293**.

10. The State though has tried to oppose the case of the petitioner, but in view of the law laid down by this Court, the State has not been able to justify the order of the Assistant Inspector General Registration, Tirhut Division, Muzaffarpur and the Commissioner, Tirhut Division, Muzaffarpur.

11. I have considered the submissions of the parties.

12. The question raised by the petitioner is squarely covered by the judgment passed in the case of ***State of Bihar Vs. Smt. Tetra Devi and Shashi Prabha Vs. The State of Bihar*** reported in ***2023 (3) PLJR 242.***

13. Paragraphs No. 5, 6 and 10 of the ***Shashi Prabha Vs. The State of Bihar*** reads as follows:-

*"**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 herein below :-*

> *"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 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:-

> *"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).*

10. I have heard the learned counsel for the parties and gone through the materials on record from which it is clear that under Section 47-A(3) of the Indian Stamp Act, 1899, the Collector /IG, Registration, Bihar, Patna, could not have suo motu reviewed the matter for the purposes of determination of the market value of the property in question and the duty payable thereon, after expiry of two years from the date of registration i.e. 20.07.2020, as far as the present case is concerned, inasmuch the exercise, purportedly under Section 47-A(3) has been initiated only on 07.10.2022, i.e. after expiry of two years, which is contrary to the mandate of Section 47-A(3) of the Act, 1899, hence this Court finds that the aforesaid Stamp Case No. 207/2022–23 has been initiated illegally and in teeth of the

> *provisions contained under Section 47-A(3) of the Indian Stamp Act, 1899. Another aspect of the matter is that even otherwise, no reference could have been made by the respondent no. 5 after registration of the instrument on 20.07.2020 for determination of the proper market value and the proper duty paybale thereon. These aspects of the matter are squarely covered by the judgments rendered by the Ld. D.B. of this Court in the case of* ***Smt. Tetra Devi*** *(supra) and the one rendered by a coordinate Bench of this Court in the case of* ***Shahnaz Begam*** *(supra)."*

14. In view of the law laid down by this Court, I am of the view that *suo motu* proceeding initiated by the Assistant Inspector General, Registration, Tirhut Division, Muzaffarpur under the Stamp Act is barred by limitation and the order dated 06.03.2023 passed by learned Assistant Inspector General, Registration, Tirhut Division, Muzaffarpur in Stamp Case No. 56 of 2022-23, and the Appellate Order dated 24.07.2023 passed by the Commissioner are hereby quashed.

15. The money deposited by the petitioner has a per-requisite for preferring the appeal before the Commissioner, Tirhut Division, Muzaffarpur is directed to be refunded to the petitioner within four weeks of production/communication of this order to the Commissioner, Tirhut Division, Muzaffarpur as the original *suo motu* proceeding and the appellate order have been quashed, the consequential Certificate Case No. 9 of 2023-

24 is also quashed.

16. This application is allowed.

17. Let a copy of the order be communicated to the Commissioner, Tirhut Division, Muzaffarpur and also to the Collector, Muzaffarpur through FAX/e-mail forthwith for compliance of the order.

(Sandeep Kumar, J)

Saif/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	06.03.2024
Transmission Date	N.A.