IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16516 of 2023

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Quayamuddin Khan Son of Alauddin Khan, (Madarsa Islamia Arabia Motwali) Resident of Village- Sonbarsa, Post Office- G.B. Nagaar, Police Station- Gautam Budha Nagar Tarwara, District-Siwan.

... ... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Registration Department, Government of Bihar, Patna.
2. The Assistant Inspector General Registration, Saran Division, Chapra.
3. The Sub Registrar, Maharajganj, District- Siwan.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Shailendra Kumar Singh, Adv.

For the Respondent/s : Mr.Vikash Kumar (Sc11)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 25-06-2024

The present writ petition has been filed for quashing the order dated 10.6.2023, passed by the Assistant Inspector General Registration, Saran Division, Chapra, in Stamp Case No. 24 of 2023, whereby and whereunder the petitioner has been directed to deposit deficit stamp duty to the tune of Rs. 1,74,240/- along with penalty of a sum of Rs. 17,424/-, totalling to a sum of Rs. 1,91,664/-.

2. The brief facts of the case, according to the petitioner, are that the petitioner is Motwali of Madarsa Islamia Arabia Naimia, Sonbarsa, P.O.-G.B.Nagar, District-Saran, which was

established long back and some lands were donated by donors including the Motwali of the aforesaid Madarsa, whereafter a gift deed was executed on 8.2.2023 in favour of Madarsa Islamia Arabia Naimia through its Motwali i.e. the petitioner herein and the same was registered by the Sub-Registrar, Maharajganj, i.e. the Respondent No. 3, on 8.2.2023, after payment of the requisite stamp duty and registration charges. It is submitted that the nature of land is Dih and the valuation has been made as per the minimum value register. Nonetheless, the Respondent No. 3, vide letter dated 18.3.2023, referred the matter to the Respondent No. 2 to realize the deficit stamp duty, whereupon spot inspection was conducted behind the back of the petitioner, Stamp Case No. 24 of 2023 was initiated by the Respondent No. 2 and then the impugned order dated 10.6.2023 was passed by the Respondent No. 2.

3. The learned counsel for the petitioner has submitted that reference can be made by the Registering Officer for determination of the proper market value of the property in question, if he is satisfied that the classification of the property or the measurement of the structure contained in the property is wrong or the market value of the property has been set forth at a lower rate than the Guideline register of Estimated Minimum

Value, only before registering the instrument in question, however in the present case, the respondent no. 3 has referred the matter to the respondent no. 2 only after registration of the gift deed on 8.2.2023, hence the said reference itself is bad in law. In this connection, the learned counsel for the petitioner has referred to Section 47(A)(1) of the Indian Stamp Act, 1899 (hereinafter referred 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.
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> 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."

4. 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."

5. 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.
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> 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."

6. Per contra, the learned counsel for the Respondent-State has submitted, by referring to the counter affidavit filed in the present case that the Sub-Registrar, Maharajganj, had conducted spot inspection, which shows construction over 2420 sq. ft. of the transferred land, hence, the category mentioned in the gift deed is incorrect, thus, deficit stamp case bearing Stamp Case No. 24 of 2023 was initiated, notice was served and then the impugned order dated 10.6.2023 has been passed, directing the petitioner to deposit the deficit stamp duty along with the

penalty charges. Thus, it is submitted that there is no illegality in the impugned order dated 10.6.2023.

7. I have heard the learned counsel for the parties and perused the materials on record from which I find that admittedly, in the present case, the Sub-Registrar, Maharajganj, has made reference only after registration of the gift deed on 8.2.2023, hence, the Respondent No. 3 had no authority / jurisdiction to refer the matter to the Respondent No. 2 under Section 47A(1) of the Act, 1899. In fact, the present case is squarely covered by a judgment, rendered by a coordinate Bench of this Court, in the case of ***Shahnaz Begam*** (supra). Thus, this Court finds that the action of the Respondent No. 3 as also that of the Respondent No. 2 is not only arbitrary and perverse, but also against the mandate of Section 47A(1) of the Act, 1899, hence, the impugned order dated 10.6.2023, passed by the Assistant Inspector General Registration, Saran Division, Chapra, being contrary to law, is quashed.

8. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.06.2024
Transmission Date	NA