

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.74 of 2024

Arvind Rai Son of Late Hargovind Rai, R/o Village and P.O. Kanehari, P.S.
Rajpur, Distt- Buxar.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Buxar.
3. Assistant Inspector General of Registration, Patna Division, Patna.
4. District Sub Registrar, Buxar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Rewti Kant Raman, Advocate
For the Respondent/s	:	Mr.Vikash Kumar (SC-11)
		Mr. Sriram Krishna, AC to SC-11

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 27-06-2024

The present writ petition has been filed for quashing the order dated 22.07.2023, passed by the Assistant Inspector General of Registration, Patna Division, Patna i.e. the respondent no. 3 in Deficit Stamp Case No. 50 of 2023, whereby and whereunder the petitioner has been directed to pay deficit stamp duty to the tune of Rs. 2,85,201/- along with a penalty of a sum of Rs.28,520/- totalling to a sum of Rs. 3,13,721/-.

2. The brief facts of the case, according to the petitioner, are that the mother of the petitioner



was in possession of 81 decimal of land and on account of her old age, she expressed her desire to gift her land to her son and daughter-in-law, who are taking care of her, hence she had executed a gift deed pertaining to land bearing R.S. Plot No. 1161, area 21 decimal and Plot No. 1162, having area of 60 decimal, appertaining to R.S. Khata No. 144 situated at village-Kanechari, Revenue P.S. No. 201, P.S. and Anchal-Rajpur, District-Buxar, which was registered on 23.08.2022, after paying registration charges and the requisite stamp duty. Unfortunately, the mother of the petitioner died on 03.10.2022, whereafter the brother of the petitioner appears to have filed a complaint petition before the office of the Sub-Registrar, Buxar, complaining about the petitioner having paid deficit stamp duty, whereupon the District Sub-Registrar, Buxar, had vide letter dated 04.05.2023, referred the matter to the respondent no. 3 for recovery of deficit stamp duty. Thereafter, the aforesaid Deficit Stamp Case No. 50 of 2023 was initiated and the impugned order dated



22.07.2023 has been passed by the respondent no. 3.

3. The learned counsel for the petitioner submits that the land in question is purely an agricultural land and not a commercial land, which is substantiated by spot verification report, annexed as Annexure-1 to the present writ petition. The learned counsel for the petitioner has further 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. 4 has referred the matter to the respondent no. 3 only after registration of the gift deed on 23.08.2022, hence the said reference itself is bad in law. The Ld. Counsel for the petitioner has



referred to Section 47(A)-(1) of the Indian Stamp Act, 1899, which is reproduced herein below :-

“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."

4. In this connection, the Ld. Counsel for the petitioner has relied on a judgment rendered by the learned Division Bench of this Court, reported in **2018 (3) PLJR 136 (The State of Bihar and others vs. 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."

5. The Ld. Counsel for the petitioner has also referred to 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)."

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 upon complaint of one Gupteshwar Nath Rai, enquiry was made and it was found that the land in question falls under the commercial category, hence reference was made by the District Sub Registrar, Buxar vide letter dated 04.05.2023 to the respondent no. 3 for recovery of the deficit stamp duty, whereafter, the respondent no. 3 had initiated Deficit Stamp Case No. 50 of 2023 and then the impugned order dated 22.07.2023 has been passed for recovery of the deficit stamp duty along with the penalty amount, to the tune of Rs. 3,13,721/- from the petitioner, hence there is no infirmity in the order dated 22.07.2023, passed by the respondent no. 3.

7. I have heard the leaned counsel for the parties and gone through the materials on record, from which it is clear that admittedly reference has been made on 04.05.2023 i.e. after registration of the gift deed on 23.08.2022, hence the respondent no. 4 did not have any jurisdiction/authority to refer the matter to the respondent no. 3, after



registration of the sale deed on 23.08.2022, under Section 47-A1 of the Indian Stamp Act, 1899. In fact, the present case is squarely covered by a judgment rendered by the learned Division Bench of this Court in the case of *Shahnaj Begum (supra)*. Thus, this Court finds that the action of the respondent no. 4 as also that of the respondent no. 3 is not only arbitrary and perverse but also against the mandate of Section 47-A of the Indian Stamp Act, 1899, hence the impugned order dated 22.07.2023, passed by the respondent no. 3, being contrary to law, is unsustainable in the eyes of law, thus is set aside.

8. The writ petition stands allowed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	N/A
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