IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 1196 of 2024

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1. Shakuntala Devi Wife of Purushottam Lal Resident of Village Nahauna, P.O. and P.S.- Sasaram District- Rohtas.
2. Sharmila Devi, Wife of Abhaya Lal, Resident of village and P.O.- Dalippur, P.S.- Dhangai, District- Bhojpur.

... ... Petitioner/s

Versus

1. The State of Bihar through the Secretary Land Revenue Department, Govt. of Bihar, Patna.
2. The Divisional Commissioner, Commissionary, Patna.
3. The Assistant Inspector General of Registration, Patna, Patna Commissionary, Patna.
4. The District Collector, Bhojpur.
5. The Registration Officer, Sub-Registry Officer, Piro, Bhojpur
6. That Circle Officer, Piro, Bhojpur.
7. The District Certificate Officer, Bhojpur at Ara.

... ... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Maya Shankar Mishra, Advocate

For the Respondent/s : Mr. Standing Counsel 9

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 28-10-2024

1. The present writ petition has been filed for quashing the order dated 31.10.2017, passed by the Assistant Inspector General, Registration, Patna Division, Patna, i.e. the respondent no.3 in Case No. 201 of 2017, whereby and whereunder the petitioner has been directed to pay a sum of Rs.2,18,690/- on the

head of deficit stamp duty, along with penalty of Rs.21,869/-, totaling to a sum of Rs.2,40,559. The petitioner has further prayed for quashing of the appellate order dated 15.06.2023, passed by the Ld. Court of Divisional Commissioner, Patna i.e. the respondent no.2, in Stamp Appeal Case No.11 of 2018, whereby the appeal filed by the petitioners, has been dismissed.

2. The brief facts of the case according to the petitioners are that they had purchased a piece of land, appertaining to Khata No.1280, Khesra No.3592, admeasuring 15.625 decimal, situated at Mauza-Piro, ward no.17, Thana No.88, Circle-Piro, District-Bhojpur at Ara and after payment of the requisite stamp duty and registration charges, the sale deed was executed on 05.5.2017, however, a notice was served on the petitioner no.1 to appear and explain as to why deficit stamp duty be not recovered from the petitioners on the ground that the petitioners have shown the land in question to be falling under the Vikas Sheel Category, whereas the said land actually falls under the residential category. The respondent no.3 had thereafter, passed the impugned order dated 31.10.2017, directing the petitioner to pay a sum of Rs.2,40,559/-on the head of deficit stamp duty and penalty amount. The petitioner had then filed an appeal bearing Stamp Appeal No.11 of 2018, however, the same has also stood

dismissed by an order dated 15.06.2023, passed by the respondent no.2.

3. The learned counsel for the petitioners has at the outset raised a legal issue to the effect 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, reference has been made to the respondent no.3, only after registration of the sale deed on 05.05.2017.

4. The ld. counsel for the petitioners has referred to Section 47-A (1) of the 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."

5. In this connection, the learned counsel for the petitioners 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 petitioners 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 ofsuch 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 474(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 heen 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 the petitioners had purchased 15.625 decimal of land, appertaining to Survey Plot No. 321, Khata No.1280, situated at Mauza-Piro, vide sale deed dated 05.05.2017, by showing the land in question to be falling under the Vikas Sheel category, however, upon enquiry it has been found by the District Sub-Registrar, Piro that the land in question falls under the residential category, hence he had referred the matter to the respondent no.3 for initiating proceedings U/s. 47A-(1) of the Act, 1899, whereafter the respondent no.3 had instituted a case bearing Stamp Case No. 201 of 2017 and after noticing the petitioner, the impugned order dated 31.10.2017, has been passed, directing the petitioners to pay a sum of Rs.2,40,559/-. The petitioners had then filed an Appeal bearing Stamp Appeal Case No.11 of 2018, however, the same has also stood dismissed by an order dated 15.06.2023, passed by the respondent no.2. Thus, it is submitted that there is no illegality in the impugned orders dated 31.10.2017 and 15.06.2023, hence the present writ petition is fit to be dismissed.

8. I have heard the learned counsel for the parties and perused the materials on record from which this Court finds that as per the provisions contained under Section 47-A(1) of the Act, 1899, reference can be made for determination of the

classification of the property and for determination of the proper market value thereof as also the proper duty payable thereon, only prior to registration of the sale deed, however, in the present case, admittedly, reference has been made by the Sub-Registrar, Piro to the respondent no.3 only after registration of the sale deed on 05.05.2017, thus, undeniably the Sub-Registrar, Piro had no authority/jurisdiction to refer the matter, after registration of the sale deed in question, to the respondent no.3, under Section 47A-(1) of the Act, 1899, thus the very initiation/institution of Stamp Case No.201 of 2017 is contrary to the provision contained under Section 47A-(1) of the Act, 1899. In fact, the present case is squarely covered by a judgment, rendered by a co-ordinate Bench of this Court, in the case of Shahnaz Begum (supra). Thus, this Court finds that the action of the Sub-Registrar, Piro as also that of the respondent no.3 is not only arbitrary and perverse, but also against the mandate of the Section 47A(1) of the Act, 1899, hence the impugned order dated 31.10.2017, passed by the respondent no.3 in Stamp Case No.201 of 2017 is quashed. Consequently, the appellate order dated 15.06.2023, passed by the respondent no.2 in Stamp Appeal Case No.11 of 2018 has got no legs to stand, hence is also set-aside.

9. At this juncture, the learned counsel for the petitioners has submitted that the petitioners had deposited 50% of the deficit stamp duty and penalty amount, at the time of filing of the aforesaid appeal, hence the respondent no.2 be directed to refund the same, forthwith. It is directed accordingly.

10. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Saurav/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.12.2024
Transmission Date	NA