IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17996 of 2023

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Bindu Devi W/o Suresh Sah, R/o- Bishunpura, Basantpur, Siwan, Bihar - 841406.

... ... Petitioner/s

Versus

1. The State of Bihar through the Inspector General of Registration, Patna.
2. The Assistant Inspector General of Registration, Saran Division, Chapra.
3. The Registrar, Department of Registration, Saran.
4. The Sub- Divisional Registrar, Barharia, Siwan.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Suman Kumar, Advocate
For the Respondent/s : Mr.Standing Counsel (11)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 21-06-2024

The present writ petition has been filed for setting aside the order dated 10.06.2023 passed by the Assistant Inspector General of Registration, Saran Division, Chapra i.e. the respondent no. 2, whereby and whereunder the petitioner has been directed to deposit deficit stamp duty to the tune of Rs. 96,063/- along with penalty of 10 per cent of the said amount i.e. a sum of Rs. 9,606/-, totaling to a sum of Rs. 1,05,669/-.

2. The brief facts of the case, according to

the petitioner, are that the petitioner purchased a piece of land situated at village-Chhitauli Kala under Circle Office-Goriakothi, Siwan, appertaining to Khata No. 8, Tauji No. 1625, Khesra No. 807, having an area of 14.883 decimal, from one Awadh Kishore Sah, by a registered sale deed dated 16.03.2023.

3. It is the case of the petitioner that the petitioner has not suppressed anything in the sale deed as far as the land/boundary and locality of the land in question is concerned and he has also deposited the stamp duty as per the circle rate fixed in the area. It is also submitted that the registering authority did not raise any objection at the time of registration of the sale deed on 16.03.2023. Nonetheless, the petitioner received a notice in connection with Stamp Case No. 42 of 2023, to which the petitioner had submitted her reply, categorically stating therein that the land in question is *"Bhith"* land and not commercial land. Nonetheless, the respondent no. 2, by the impugned order dated 10.06.2023, has directed the

petitioner to pay the deficit stamp duty to the tune of Rs. 96,063/- along with a fine of Rs. 9,606/-.

4. The learned counsel for the petitioner has raised a legal issue for consideration by this Court to the effect that as per Section 47(A)(1) of the Indian Stamp Act, 1899, reference can be made by the registering authority 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, the Sub-Registrar, Barharia, Siwan has referred the matter to the respondent no. 2, after registration of the sale deed on 16.03.2023, vide letter dated 18.04.2023, hence the said reference is itself bad in law. In this connection, reference has been made 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."*

5. In this connection, the Ld. Counsel for 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

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)."

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 respondents has submitted that upon enquiry and inspection of the land in question, it was found that the transferred land is adjacent to the pucca road of the village and shops are situated nearby, hence the nature of the transferred land was found to be commercial in nature, thus the Sub-Registrar, Barharia, had sent a proposal under Section 47-A (1) of the Indian Stamp Act, 1899 to the respondent no. 2 to initiate deficit stamp case, whereupon respondent no. 2 had initiated Stamp Case No. 42 of 2023, whereafter notice was issued to the petitioner and then the impugned order dated 10.06.2023 has been passed by the respondent no. 2 directing the petitioner to pay the deficit stamp

duty.

8. I have heard the learned counsel for the parties and gone through the materials on record from which it is clear that a reference can be made under Section 47(A)(1) of the Indian Stamp Act, 1899, with regard to determination of the classification of the property, only before registration of the sale deed in question and not thereafter, as is clear from Section 47(1)(A) of the Indian Stamp Act, 1899 & moreover, this aspect of the matter stands covered by a judgment, rendered by a coordinate Bench of this Court, reported in ***2018(2) PLJR 293 (Shahnaz Begam vs. The State of Bihar & Ors.).*** Thus, this Court finds that admittedly, the Sub-Registrar, Barharia, without any authority or jurisdiction, has referred the matter to the Respondent No. 2, under Section 47(A)(1) of the Indian Stamp Act, 1899, vide letter dated 18.04.2023, i.e. only after registration of the sale deed on 16.03.2023, which itself is contrary to the mandate of Section 47(A)(1) of the Indian Stamp Act, 1899.

9. Having regard to the facts and circumstances of the case and for the forgoing reasons, this Court finds that the action of the respondent no. 2 as also that of the Sub-Registrar, Barharia is not only arbitrary and perverse but also contrary to the provisions contained under Section 47-A(1) of the Indian Stamp Act, 1899, hence the impugned order date 10.06.2023 passed by the respondent no. 2 is unsustainable in the eyes of law, thus is accordingly quashed.

10. The writ petition stands allowed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	31.07.2024
Transmission Date	N/A