

IN THE HIGH COURT OF JUDICATURE AT PATNA

Sonu Kumar

vs.

The State of Bihar & Ors.

Civil Writ Jurisdiction Case No. 17603 of 2022

26 June 2023

(Hon'ble Mr. Justice Mohit Kumar Shah)

Issue for Consideration

Whether the Sub-Registrar could validly refer a matter under Section 47A(1) of the Indian Stamp Act, 1899 after the registration of the sale deed, and whether the impugned order demanding deficit stamp duty and penalty was sustainable.

Headnotes

Reference was made by the Sub-Registrar to the Assistant Inspector General, under Section 47A(1) of the Indian Stamp Act, 1899, only after lapse of about 2 years of registration of the sale deed, which in any view of the matter is illegal. Sub - Registrar has made a reference to the Assistant Inspector General after the registration of the sale deed, thus there is a clear contravention of Section 47A(1) of the Indian Stamp Act, 1899. Present case is squarely covered by the law laid down by a coordinate Bench of this Court in the case of Shahnaz Begam case. (Para 5, 6)

Order passed by the Assistant Inspector General of Registration is illegal. Petition is allowed. (Para 7, 8)

Case Law Cited

Shahnaz Begam v. State of Bihar & Ors., **2018 (2) PLJR 293**

List of Acts

Indian Stamp Act, 1899 (as amended by the Indian Stamp (Bihar Amendment) Act, 2013)

List of Keywords

Stamp Duty; Market Value; Registration of Sale Deed; Section 47A(1); Section 47A(3); Post-registration reference; Illegal order

Case Arising From

Challenge to the order dated 27.09.2022 passed by the Assistant Inspector General of Registration, Koshi Division, Saharsa in Stamp Case No. 7 of 2022.

Appearances for Parties

For the Petitioner: Mr. Sanjeev Nikesh, Advocate

For the Respondents: Mr. Vikash Kumar, Standing Counsel-11

Headnotes Prepared by Reporter: Amit Kumar Mallick, Advocate

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17603 of 2022

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Sonu Kumar Son of Ramchandra Prasad Yadav, Resident of Village- Jadia,
Ward No. 6, P.S.- Jadia, District- Supaul.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, Registration Department, Government of Bihar, Patna.
3. The Inspector General of Registration, Registration Department, Government of Bihar, Patna.
4. The Assistant Inspector General of Registration, Registration Department, Government of Bihar, Patna.
5. The Assistant Inspector General of Registration, Koshi Division, Saharsa.
6. The District Magistrate, Supaul.
7. The Sub-Registrar, Triveniganj, Supaul.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sanjeev Nikesh, Advocate
For the Respondent/s : Mr.Vikash Kumar (Standing Counsel-11)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 26-06-2023

The present writ petition has been filed for quashing the order dated 27.09.2022 passed by the respondent No. 5 i.e. the Assistant Inspector General of Registration, Koshi Division, Saharsa in Stamp Case No. 7 of 2022, whereby and whereunder the respondent no. 5 has directed the petitioner to deposit additional stamp duty to the tune of Rs. 1,30,200/- along with penalty of Rs.



13,020/-.

2. The brief facts of the case are that on 23.06.2020, the petitioner had purchased the land appertaining to Khata (Old) No. 1146 admeasuring 16 decimals from one Ram Pratap Yadav situated at Mauja-Jadia, Thana No. 299, Tauzi No. 6122, Bikramganj, District-Supaul after paying sale consideration to the tune of Rs. 4,56,000/- and upon payment of the requisite stamp duty, sale deed was registered on 23.06.2020. It is further submitted that merely after two years of registration of sale deed in question, enquiry was initiated by the respondent no. 7 with regard to category of the land as to whether the same is residential-C category or residential-B category, whereupon he came to the conclusion that the land in question is residential land of B category and not that of C category, whereafter he had referred the matter under Section 47A(1) of the Indian Stamp Act, 1899 (hereinafter referred to as the 'Act, 1899') to the respondent no. 5 who had then initiated a case bearing Stamp Case No. 7 of



2022, whereafter an ex parte order dated 27.09.2022 has been passed by the respondent no. 5. The learned counsel for the petitioner has further submitted that neither the petitioner was issued notice by the respondent no. 5 nor the petitioner was heard and instead an ex parte order dated 27.09.2022 has been passed by the respondent no. 5. It is contended that as per the mandate of Section 47A(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 in the present case, the respondent no. 7 has referred the matter to the respondent no. 5 after registration of the sale deed on 23.06.2020, hence the said reference itself is bad in law. In this



regard, the learned, counsel for the petitioner has 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***.

3. Per contra, the learned counsel for the respondent-State has referred to the counter affidavit filed in the present case to submit that after the sale deed in question was registered on 23.06.2020, wherein the nature of land was mentioned by the vendor as residential, class-C, a complaint was made by one Sanjeev Kumar on 28.01.2021 before the respondent no. 7 that the vendee has deliberately suppressed the value of the land in question and the nature of land is in fact residential, class-B, whereupon the respondent no. 7 had inspected the land in question and had made reference to the respondent no. 5 in light of the provisions contained under Section 47A(1) of the Act, 1899, whereafter the respondent no. 5 had instituted a deficit Stamp Case No. 7 of 2022 and issued notices to the petitioner vide letter dated



14.09.2022, however, the petitioner did not appear before the respondent no. 5, hence the respondent no. 5 had passed the impugned order dated 27.09.2022, as aforesaid. Thus it is submitted that there is no error in the procedure adopted by the respondents for the purposes of realisation of deficit stamp duty.

4. I have heard the learned counsel for the parties and gone through the materials on record. At the outset, it would be relevant to reproduce Section 47A (1) of the Indian Stamp Act, 1899 (as amended by the Indian Stamp (Bihar Amendment) Act, 2013), published in the gazette on 03.05.2013, herein below:-

"(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."

5. It is apparent from a bare perusal of Section 47A(1) of the Indian Stamp Act, 1899 that the registering authority can only refer the matter before registering the document in question to the Collector/ the Assistant Inspector General, for determination of the proper market value of such property and the duty payable thereon. As far as the present case is concerned, it is an admitted fact that the sale deed in question was registered on 23-06-2020 in the office of the Sub-Registrar, Triveniganj, Supaul however, reference was made by the Sub-Registrar, Triveniganj, Supaul to the respondent No. 5, under Section 47A(1) of the Indian Stamp Act, 1899, only after lapse of about 2 years of registration of the sale deed in question,



which in any view of the matter is illegal & contrary to the provisions contained in the Act, 1899.

6. This Court further finds that if at all any proceeding is required to be initiated after registration, the same can be done by the Collector / Assistant Inspector General Registration, who can suo motu, within two years from the date of such registration, under Section 47A(3) of the Indian Stamp Act, 1899, 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, however, this is not the case here, inasmuch as in the present case, the Sub- Registrar, Triveniganj, Supaul has made a reference to the Assistant Inspector General, Registration, Koshi Division, Saharsa, after the registration of the sale deed on 23.06.2020, thus there is a clear contravention of Section 47A(1) of the Indian Stamp Act, 1899. This Court is of the view that the present case is



squarely covered by the law laid down by a coordinate Bench of this Court in the case of Shahnaz Begam (supra), which the Ld. State counsel has not been able to controvert. It would be apt to reproduce paragraphs no. 6 to 9 of the said judgment 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. Having regard to the facts and circumstances of the case and for the reasons



mentioned herein above, this Court finds that the order dated 27.09.2022 passed by the Assistant Inspector General of Registration, Koshi Division, Saharsa is illegal and contrary to law, hence the same is quashed.

8. The writ petition stands allowed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	16.08.2023
Transmission Date	N/A

