(2011) 02 PAT CK 0097

In the Patna High Court

Case No : C.W.J.C. No''s. 101 and 492 of 2004

Md. Zeyauddin APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 11-02-2011

Acts Referred:

Bihar Stamp (Prevention of under Valuation of Instruments) Rules, 1995 — Rule 11, 12
Stamp Act, 1899 — Section 47A

Citation : (2011) 3 PLJR 28

Hon'ble Judges : Birendra Pd. Verma, J

Bench : Single Bench

Judgement

Birendra Pd. Verma, J.—In both the writ petitions issues involved are similar and identical and parties are also common, therefore, with the consent of parties both matters are taken up together for its disposal.

2. In C.W.J.C. No. 492 of 2004 the Petitioner has prayed for setting aside the order dated 15.10.2001 (Annexure-2) passed in Reference Case No. 5 of 1998(S) by Respondent-District Magistrate-cum-District Registrar, Gaya as also for setting aside the appellate order dated 28.8.2003 (Annexure-1) passed by Respondent-Com-missioner, Magadh Division, Gaya in Appeal Case No. 66 of 2001, whereby the appeal preferred by the Petitioner against the original order dated 15.10.2001 (Annexure-2) has been dismissed and the original order has been affirmed.

3. In C.W.J.C. No. 101 of 2004 the Petitioner, who is common in both the cases, has prayed for setting aside the order dated 15.10.2001 passed in Reference Case No. 6 of 1998(S) (Annexure-2) by District Magistrate-cum-District Registrar, Gaya as also the appellate order dated 28.8.2003 (Annexure-1) passed by Respondent- Commissioner, Magadh Division, Gaya in Appeal Case No. 67 of 2001. However, it is relevant to mention here that both the Reference Case No. 5 of 1998(S) and 6 of 1998(S) have been disposed of by one common order dated 15.10.2001 (Annexure-2 of C.W.J.C. No. 492 of 2004). Similarly Appeal Case No.

66 of 2001 and 67 of 2001 have been disposed of by a common order dated 28.8.2003 (Annexure-1 of C.W.J.C. No. 492 of 2004).

4. Learned Counsel for the Petitioner, in both the cases, has raised very short question for determination by this Court. According to him, while passing the impugned orders by the Respondent-District Registrar, Gaya as also the Respondent-Divisional Commissioner, Gaya, the procedure prescribed under Rules 11 and 12 of Bihar Stamp (Prevention of under Valuation of Instruments) Rules, 1995, herein-after referred to as "the Rules", have not been strictly followed and, therefore, in his submission, the impugned orders passed by the authorities are not sustain-able in the eye of law. He further submits that the matters are required to be re-decided afresh as per the provisions of the rules referred to above.

5. The factual matrix are not in much controversy. The Petitioner herein purchased total 82 decimals of land by two separate registered sale deeds dated 8.7.1998. In both the sale deeds vendor is common, namely, Girija Shanker Verma. In both the sale deeds subject matter of purchase is 41 decimals of land and valuation of the lands has been shown to be 25,000/- only in each sale deeds.

6. It appears that after registration of the aforesaid sale deeds, the District Sub-Registrar, Sherghati referred the matter to the District Registrar, Gaya in terms of Section 47A of Indian Stamp Act, 1899, read with Bihar Amendment Act 15 of 1998 and 8 of 1991, for determination of the market value of the sold property and for realization of proper duty from the Petitioner. He estimated the total price of lands to be Rs. 2,04,000/- in each sale deeds and recommended for realization of deficit stamp of Rs. 27,358/- with respect to each of the sale deeds. From the pleadings it is apparent that some inquiry reports were called for, but admittedly No. other evidence, oral or documentary, were allowed to be adduced by the parties and without complying the mandate of Rules 11 and 12 of the Rules, final order has been passed on 15.10.2001 (Annexure-2) directing the Petitioner to deposit Rs. 27,358/-towards the deficit stamp fee with respect to each of the sale deeds.

7. Learned Counsel appearing on behalf of the Respondents has fairly submit-ted that despite his best endeavour, he has not received instructions for filing counter affidavit in these two cases and as such No. counter affidavit could be filed on behalf of the Respondents. However, he has submitted that the impugned orders passed by Respondent-District Registrar-cum-Collector and the impugned appellate order passed by the Respondent-Divisional Commissioner are valid and are fit to be affirmed by this Court. He also submits that the Petitioner has failed to show any prejudice caused to him in coming to the conclusion arrived at by the authorities, even if Rules 11 and 12 of the Rules have not been strictly followed.

8. After having heard the parties and after considering the material available on

record and submissions made on their be-half, this Court is of the considered opinion that the orders impugned cannot be allowed to stand in the eye of law. It is true that normally this Court may not question the conclusion/decision arrived at by the authorities, but this Court can always examine as to whether the procedures pre-scribed under the law for coming to the conclusion, has been followed or not. The decision making process can always be subject matter of judicial review. On plain perusal of the impugned orders passed by the original authority as also the appellate authority, this Court does not find that Rules 11 and 12 of the Rules have been strictly adhered to by the authorities concerned. Therefore, the impugned orders cannot be sustained in the eye of law:

9. For the reasons recorded above, the orders, as contained in Annexures-1 and 2 in both the cases, are hereby set aside and matter is remitted to the Respondent-District Magistrate-cum-District Registrar, Gaya for fresh decision in accordance with law as also in the light of observations made above. The Petitioner is hereby directed to appear before the District Registrar, Gaya on or before 25th March, 2011 alongwith his representation and all relevant documents in support of his claim, accompanied by a certified copy of the present order. The Respondent-District Magistrate-cum-Registrar shall be obliged to dispose of the matter afresh in accordance with law after giving opportunity of hearing to all concerned within a period of three months from the date of filing of such representation. It is expected that the Petitioner as also the Respondent-authorities shall cooperate and lead evidence in support of their claim in the matter on the dates fixed.

10. It is further made clear that if the Petitioner does not appear before the Respondent-District Magistrate-cum- District Registrar, Gaya on or before 25th March, 2011, as directed above, then it shall be construed that these two writ petitions stood rejected by this Court.

11. With the aforesaid observations/ directions, both these writ petitions are disposed of, but there shall be No. order as to costs.

