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(2019) 07 PAT CK 0321

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 6440 Of 2016

Prashant Kumar Mahensaria APPELLANT

Vs

State Of Bihar Through The Inspector General And Ors RESPONDENT

Date of Decision : 25-07-2019

Acts Referred:

Bihar Stamp (Prevention Of Under Valuation Of Instruments) Rules, 1995 — Rule 5, 6
Indian Stamp Act, 1899 — Section 6, 47(A), 47(A)(ii)

Citation : (2019) 07 PAT CK 0321

Hon'ble Judges : Mohit Kumar Shah, J

Bench : Single Bench

Advocate : Gautam Kumar Kejriwal, Prashant Pratap

Final Decision : Allowed

Judgement

1. The present writ petition has been filed for directing the respondents no. 3 and 4 to register and release the registered copy of the sale deed dated 12.03.2014 received vide token no. 1129, issued by the respondent no.4, for quashing the order dated 27.01.2016 issued by the respondent Assistant Inspector General (Registration), Munger Division, Munger (hereinafter referred to as "AIG") in Stamp Case No. 15/ 2015 in a proceeding under Section 47(A) of the Indian Stamp Act as well as for directing the respondent no.3 for inclusion of rates for irrigated/ agricultural category of land in the Minimum Valuation Register (MVR) under Rule 5 of the Bihar Stamp (Prevention of under Valuation of Instruments) Rules, 1995 pertaining to Nagar Panchayat, Gogri, Jamalpur and for declaring that in absence of an entry of rates specified in the MVR for irrigated/ agricultural lands for Nagar Panchayat Gogri, Jamalpur, the respondents cannot draw benefit of such absence in the MVR and recover stamp duty and registration charges at higher rates from the petitioner.

2. The brief facts of the case are that the petitioner has purchased a plot being irrigated/ agricultural at Mauza- Jamalpur, Thana No. 309/1, Nagar Panchayat, Gogri, Ward No. 12, Khata No. 80, Kheshra No. 236, 237, 238 and 239 ad

measuring 157.00 decimals. The said land was purchased by the petitioner from Basudev Pansari & Ors. The petitioner had declared the value of land in the sale deed as Rs. 23,70,000/-, by adopting the rates of irrigated/ agricultural land mentioned in the MVR pertaining to Mauza-Jamalpur and had then presented the sale deed for registration before the respondent no.4 on 12.03.2014. Thereafter, the District Sub-Registrar, Khagaria by a letter dated 22.02.2014 had called for a report from the Circle Officer, Gogri regarding Khesra number in question to the effect as to whether the said land was residential or not. The Circle Officer, Gogri by his letter dated 05.03.2014 had written to the District Sub-Registrar, Khagaria stating that the aforesaid land in question was inspected by the Halka-Karmchari and Incharge Circle Inspector and it has been found that the said land is an irrigated/ agricultural land. Thereafter, the respondent no. 4 is said to have verbally informed the petitioner that the stamp duty totalling to a sum of Rs. 1,89,600/- shall be payable for registration of the sale deed in question, whereafter the petitioner duly paid the said amount by way of stamp duty as also the registration charges, however, the sale deed was then not provided to the petitioner herein, whereupon the petitioner approached the respondent no.4, who intimated him that the matter has been referred to the respondent no.2 under Section 47(A) of the Indian Stamp Act, 1899. Subsequently, a notice dated 31.03.2014 was issued by the AIG, Munger Division, Munger to the petitioner herein, initiating a proceeding under Section 47(A) of the Indian Stamp Act, 1899, for recovery of deficit stamp duty amounting to a sum of Rs.25,01,868/-. The petitioner had then appeared before the respondent no.2, however, neither any hearing was conducted nor any enquiry, as contemplated under Section 47(A) of the Indian Stamp Act, 1899 was conducted, but instead the impugned order dated 27.01.2016 was passed by the respondent no.2 in Stamp Case No. 15/2015 whereby and whereunder the respondent no.2, relying upon the report of the Registration Officer, treating the aforesaid land to be under the Nagar Panchayat, Ward No.12 and not relying upon the report of the Circle Officer dated 05.03.2014, fixed the deficit amount of stamp duty, recoverable from the petitioner, as Rs. 25,01,868/-.

3. The learned counsel for the petitioner has submitted that Rules 5 and 6 of the Bihar Stamp (Prevention of Under Valuation of Instruments) Rules, 1995 (herein after referred to as the "Rules, 1995") provides that the Collector of the District shall classify the lands of rural or urban area and prepare a register showing estimated minimum value of the land/ properties of that category as per the procedure prescribed under Rules 6 of the Rules 1995. It is submitted that as per the provisions of the Rules, 1995, for the purposes of determination of estimated minimum market value of the land and property in question, the matter can be referred by the District Sub- Registrar to the District authorities of the State. In the instant case, since there was no entry in the MVR for Nagar Panchayat, Gogri, the respondent no.4 had requested the Circle Officer, Gogri to provide a physical inspection report of the land in question whereupon the Circle Officer, Gogri had reported that the said land in question was do fasla irrigated/

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agricultural land. It is the submission of the learned counsel for the petitioner that the said report of the Circle Officer ought to have been accepted by the respondent no. 4 for the purposes of valuation of the land in question, hence the respondent no.4 has committed a gross error by referring the matter to the respondent no.2 under Section 47(A) of the Indian Stamp Act, 1899. It is further submitted by the learned counsel for the petitioner that neither the petitioner was heard nor any enquiry was made under section 47(A) (ii) of the Indian Stamp Act, hence the impugned order dated 27.01.2016 is without jurisdiction and is liable to be set aside. It is also the submission of the learned counsel for the petitioner that since the petitioner was not provided any opportunity of hearing to deny the liability under section 47(A) of the Indian Stamp Act, the impugned order dated 27.01.2016 is violative of the principles of natural justice, hence is fit to be set aside. Lastly, it is submitted that the impugned order dated 27.01.2016 is cryptic and suffers from the vice of non-application of mind by the respondent no.2.

4. Per contra, the learned counsel for the respondents no. 3 and 4 has submitted that initially the document in question was produced on 12.03.2014 before the District Sub-Registrar, Khagaria, and according to the report submitted by the Circle Officer, Gogri dated 02.04.2012, the land in question has been classified as residential notified urban area, however, the petitioner had presented the document by showing the land in question as agricultural land. In fact, in MVR, Ward No. 12 has been classified as an urban area, hence no agricultural land in situated in the said area. It is the contention of the learned counsel for the respondents that though the land in question has been classified as an urban area but the petitioner has paid registration fee, treating the land in question to be situated in a rural area, hence the deed was not accepted by the respondent no.2 for registration, whereafter the entire deed was carefully examined and it was found that proper registration fee has not been paid, resulting in passing of the impugned order dated 27.01.2016 under Section 47 of the Indian Stamp Act, 1899 whereby the petitioner has been directed to pay the deficit stamp fees of Rs. 25,01,868/-, however, the petitioner has failed to pay the same, hence the sale deed has not been registered till date. Lastly, it is submitted that the land in question was/is under the category of commercial/ residential, hence the valuation has been done accordingly.

5. I have heard the learned counsel for the parties and perused the materials on record. At this juncture, it would be relevant to reproduce Rule 5 of the Bihar Stamp (Prevention of Under Valuation of Instruments) Rules, 1995 herein below:-

"5. Guidelines register of minimum value.- For the purpose of assisting the Registering Officer in finding out actual market value of properties (as accurately as may be possible) the District Sub- Registrar within the area of his district shall after classifying the lands of rural or urban area prepare a register showing estimated minimum value of the land/ properties of the category as per procedure laid down in Rule 6".

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6. Rule 6 of the aforesaid Rules, 1995 prescribes the process for fixation of estimated minimum market value in every district on the recommendation of District Valuation Committee established for this purpose under the chairmanship of the Collector of the district which in turn functions under the overall guidance and supervision of Central Valuation Committee constituted at State level.

7. Admittedly, in the present case, the minimum valuation register, as prescribed under Rules 5 and 6 of the Bihar Stamp (Prevention of Under Valuation of Instruments) Rules, 1995, does not prescribe any rate in the category of irrigated/ agricultural land of Nagar Panchyat, Gogri, however, according to the petitioner, the minimum valuation register pertaining to Mauza-Jamalpur (Annexure-1/A to the writ petition) shows the rate of irrigated land under the district of Jamalpur whereas on the other hand, the respondents have relied upon a letter dated 02.04.2012 issued by the Circle Officer, Gogri wherein the land in question along with other Khesras have been shown as "NAC" i.e. non-agricultural/ commercial lands and, accordingly, the rate has been decided on the basis of commercial rate prescribed for Ward No.12 in the MVR. This Court finds that the respondent no.2 in the impugned order dated 27.01.2016 has nowhere referred to the aforesaid letter of the Circle Officer, Gogri dated 02.04.2012 which, in fact, is a general letter showing various khesras to be either non-agricultural or commercial land or agricultural/ irrigated land, hence the respondents cannot be permitted to improve their case by supplementing their arguments by way of the counter affidavit filed in the present case and introducing the said letter of the Circle Officer dated 02.04.2012, for the simple reason that an order has to be judged on its own merits, considering the contents thereof. Therefore, this Court finds that the respondent no.2, in the impugned order dated 27.01.2016, though has referred to the letter/report of the Circle Officer, Gogri dated 05.03.2014 showing the land in question to be "do fasla irrigated land", submitted in response to the letter of the District Sub-Registrar, Khagaria calling for a report from him regarding the nature and category of the land in question, but he has failed to rely upon the same and instead has relied upon the opinion of the Registration Officer to the effect that the land in question is situated in Nagar Panchayat Ward No.12.

8. Admittedly, there is no categorization of the land in question i.e. as to whether the said land is irrigated/ agricultural land or urban land or non-agricultural land or commercial land. The respondents, in their counter affidavit, have shown the land in question as belonging to the category of "commercial/ residential", which is not decipherable, in as much as a plot of land cannot be both commercial and at the same time residential. This position has been stated in paragraph-9 of the counter affidavit filed on behalf of the respondent nos. 3 and 4. Thus, this Court finds that there has been neither any fixation of estimated market value of the plot in question nor there has been any categorisation of the irrigated/ agricultural plots of Nagar Panchayat, Gogri District Khagaria. Moreover, this Court finds that the impugned order dated 27.01.2016 does not show that the respondent no.2 has conducted any enquiry before passing the said order, in

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compliance of the provisions as contained in Section 47(A)(ii) of the Indian Stamp Act, 1899. Lastly, this Court is of the opinion that the impugned order dated 27.01.2016 is cryptic and does not show any application of mind by the respondent no.2 in declaring that there is deficit stamp duty of Rs. 25,01,868/-, which is recoverable from the petitioner herein.

9. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, the writ petition is allowed and the order dated 27.01.2016 passed by the respondent no.2 is quashed, however, with a direction to the respondent no.3 i.e. the District Magistrate-cum- Collector, Khagaria to act in terms of Rule 6 of the Bihar Stamp (Prevention of Under Valuation of Instruments) Rules, 1995 and fix the estimated minimum value of the land in question along with other irrigated/ agricultural category land of the Nagar Panchayat, Gogri, District Khagaria as also define the category of the land in question belonging to the petitioner herein for which sale deed has been presented by the petitioner for registration before the respondent authorities.

10. It is needless to state that the respondent no. 3 shall do the needful, as aforesaid, within a period of twelve weeks from the date of receipt/production of a copy of this order, whereupon the respondent no.4 i.e. the District Sub-Registrar, Khagaria shall work out the stamp duty to be paid by the petitioner herein for the purpose of registration of the sale deed in question, as per the categorization and rate fixed by the respondent no.3 under Section 6 of the Indian Stamp Act, 1899. Any consequential action of the respondents, pursuant to passing of the impugned Order dated 27.01.2016, by the respondent no.2 are also quashed, as a consequence of setting aside of the impugned order dated 27.01.2016.

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