

**IN THE COURT OF THE DISTRICT JUDGE, KHURDA  
AT BHUBANESWAR.**

Present:

**Dr. D.P. Choudhury,**  
District Judge, Khurda  
at Bhubaneswar.

*Dated, Bhubaneswar the 02<sup>nd</sup> July'14.*

**F.A.O. No.186 of 2004.**

(Arising out of the order dated 12.08.2004 passed by the learned Sub-Collector-cum-Stamp Collector, Bhubaneswar in U.V. Misc. Case No.1056 of 2003.)

Prasant Kumar Pattanaik, aged 40 years,  
S/o. Jagannath Pattnaik, At/P.O. - Gudum,  
Dist. - Khurda.

... **Appellant.**

*-V e r s u s-*

1. Sub-Collector-cum-Stamp Collector,  
Bhubaneswar, Dist. - Khurda.
2. Sub-Registrar, Jatni, Dist. - Khurda.

... **Respondents.**

**Counsel :**

For Appellant : Shri K.K. Das & Associates.  
For Respondents : Shri R.P. Nanda, G.P.

Date of argument : 25.06.2014.

Date of judgment : 02.07.2014.

**J U D G M E N T**

This is an appeal under sub-section (3) of section 47-A of the Indian Stamp Act, 1899 (hereinafter referred to as “the Act”) preferred by the appellant challenging the order dated

12.08.2004 passed by the learned Sub-Collector-cum-Stamp Collector, Bhubaneswar in U.V. Misc. Case No.1056 of 2003, imposing a sum of Rs.43,485/- towards deficit stamp duty and Rs.4,910/- towards deficit registration fee.

2. The case of the appellant, in brief, is that for his personal purpose he purchased a piece of land in 1999 appertaining to khata No.120 & plot No.58 measuring an area of Ac.0.091 decimals in mouza Jatni from one Durga Prasad Agrawal vide Registered Sale Deed No.948 dated 21.05.1999 on payment of consideration of Rs.59,150/-. He also got delivery of possession of the said land from his vendor. As per instructions on the notice board, stamp paper was purchased and registration fee was deposited before respondent No.2. The instrument was registered by respondent No.2 in favour of the appellant; but, later on, respondent No.2 revalued the instrument and sent the case to respondent No.1, who arbitrarily passed the impugned order determining the deficit stamp duty and registration fee, as aforesaid, with a direction to the appellant for payment of the same. The appellant has challenged the impugned order in this appeal stating that the same is bad in law and without weight of evidence. According to the appellant, respondent No.1, without examining the position of law, has directed to pay the deficit stamp duty and registration fee, as recommended by respondent No.2. Hence the appeal.

3. Learned Government Pleader appearing for the respondents although did not file any show cause, but submitted

that the appeal is not maintainable and the order of the learned Sub-Collector-cum-Stamp Collector is passed according to law. Thus, he submitted to dismiss the appeal.

4. Learned counsel appearing for the appellant submitted that there is no proper inquiry conducted by the learned Sub-Collector-cum-Stamp Collector for which the impugned order is bad in law. He further submitted that the mandate of the provisions of section 47-A of the Act read with concerned rules have not been followed since the order has been passed without determining the market value and hearing the appellant on that issue. It was also submitted by him to set aside the impugned order.

5. The main point for consideration in this appeal is whether the provisions of section 47-A of the Act read with concerned rules have been followed by the respondents or not.

6. On going through the lower Court record, it appears that on 04.02.2004 vide U.V. Misc. Case No.1056 of 2003, respondent No.1 issued notice to the appellant to appear and pay the deficit stamp duty and registration fee or file show cause against the demand fixed by respondent No.2. The order-sheet shows that on 03.03.2004, 27.04.2004 & 28.06.2004, the case was adjourned from time to time stating that the appellant is absent. On 12.08.2004, respondent No.1 passed order to issue notice under Form No.25(1). Such order is assailed in this appeal. The order-sheet further shows that on 20.09.2004, advocate for the appellant appeared and took time to produce

documentary evidence. Subsequently, the case was adjourned on the petition filed by the appellant. The orders dated 20.10.2004 & 20.11.2004 disclose that the appellant has been directed to deposit the deficit stamp duty and registration fee. But, on subsequent dates, the appellant remained absent. Thereafter, the order-sheet does not disclose when final order was passed, although the appellant was absent continuously. After 14.06.2005, no order seems to have been passed.

7. From the aforesaid discussion on the order-sheets, there is nothing found that, at any point of time before 12.08.2004, notice has been sent to the appellant and S.R. is back. So, necessary compliance with regard to sub-section (2) of section 47-A of the Act has not been made. For better clarification, let me analyse the provisions of law.

8. Sub-section (2) of section 47-A of the Act prescribes in the following manner :

“On receipt of a reference under Sub-section (1), the Collector shall, after giving the parties an opportunity of making their representations and after holding an inquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which is the subject-matter of such instrument, and the duty as aforesaid and the deficient amount, if any, shall be payable by the person liable to pay the duty.”

9. Rule 23 of the Orissa Stamp Rules, 1952 (“the Rules”, for short) speaks about the procedure for determination of the market value in the following manner :

**“23. Reference to Collector on instruments for determination of Market Value** – If the Registering Officer while registering any instrument of conveyance, exchange, gift, partition or

settlement has reasons to believe that the market value of the property has not been correctly set forth in the instrument, as per the market value guidelines under Clause (j) of Rule 2 he may, after registering the instrument, refer the same to the Collector for determination of the market value and duty payable thereon, and while referring the document to the Collector, the fact and circumstances that prompted the Registering Officer to come to the belief that property has been undervalued shall be fully and clearly stated”.

10. Rule 24 of the Rules prescribes as follows :

**“24. Assessment of duty –** (1) On receipt of reference under Rule 23 the Collector shall start a miscellaneous case record and serve on the person or persons concerned a notice in Form No.1, appended to these rules requiring him to appear on a date and to produce any evidence on which such person or persons may reply in his support.

(2) On the day specified in the notice the Collector, after taking such evidence as the person or persons may produce and making such inquiry as he may deem proper, shall determine the Market value of the property and assess the amount of deficit duty recoverable from the person concerned.

(3) If the person or persons fails or fail to attend in response to the notice served under Sub-rule (1), the Collector shall assess the deficient amount of duty, if any, to the best of his judgment”.

11. Sub-rule (1) of Rule 25 reads as follows :

**“25. Recovery of duty –** (1) Notice in Form No.2 appended to these rules shall be issued by the Collector directing the person concerned to pay, on or before such date, not being earlier than thirty days from the date of service of the notice, as may be specified in the notice, either in cash directly or into the Government Treasury through chalan, the deficient amount of duty due from him and to furnish the receipt of such direct cash payment or as the case may be, a copy of the receipt chalan showing the payment of such deficient amount :

Provided that the Collector may -

- (a) extend the date of such payment in any deserving case for reasons to be recorded in writing;
- (b) treat the person concerned as not being in default of any payment of the due amount where such

person has preferred an appeal under Sub-section (3) of Section 47-A so long as the appeal remains pending”.

12. On going through the statutory provisions and rules, as aforementioned, it appears that the Stamp Collector must determine the market value and duty payable thereon after holding an inquiry as per sub-section (2) of section 47-A. Similarly, after receipt of reference under rule 23 of the Rules, the Stamp Collector shall serve on the person concerned notice in Form No.1 to appear and produce evidence and, after taking evidence and making such inquiry, as he may deem proper, shall determine the market value of the property. Under sub-rule (3) of Rule 24, if a person fails to attend in response to the notice, then the Collector shall assess the deficient amount of duty, if any, to the best of his judgment. After assessment by the Stamp Collector, he shall issue notice in Form No.2 directing the person concerned to pay the deficient amount of duty.

13. In the instant case, as discussed above, it is reiterated that no such notice under Form No.1 appears to have been served on the appellant and no such inquiry has been conducted by the learned Sub-Collector-cum-Stamp Collector about determination of the market value. Instead, all of a sudden, on 12.08.2004, he passed the order to issue notice under Form No.2 as per Rule 25 of the Rules, which is contrary to the provisions of law. Not only this, but also on subsequent dates on 20.10.2004 & 20.11.2004, in spite of time asked by the appellant, respondent No.1 went on directing to deposit the deficient

amount of stamp duty and registration fee. Thus, the order passed on 12.08.2004 and on subsequent dates directing the appellant to pay the deficit stamp duty and registration fee appears to be illegal and not tenable in the eye of law. In view of the aforesaid discussion, there is justifiable ground to interfere with the impugned order and the same is liable to be set aside. Hence ordered :

**O R D E R**

The appeal is allowed and the order dated 12.08.2004 passed by the learned Sub-Collector-cum-Stamp Collector, Bhubaneswar in U.V. Misc. Case No.1056 of 2003 is hereby set aside; but in the circumstances, there shall be no order as to cost. The matter is remanded to the lower Court to hold an inquiry and determine the market value of the property in question and dispose of the matter within a period of one month from the date of receipt of this order, after giving reasonable opportunity to the appellant, since the instrument is of the year 1999.

**District Judge, Khurda  
at Bhubaneswar.**

02.07.2014.

Dictated, corrected by me and pronounced in the open Court this day the 02<sup>nd</sup> July, 2014.

**District Judge, Khurda  
at Bhubaneswar.**

02.07.2014.