

आयुक्त न्यायालय, तिरहुत प्रमण्डल, मुजफ्फरपुर

स्टाम्प अपील वाद संख्या-354 / 2022

अनेशुल निशा

बनाम

राज्य सरकार व अन्य

आदेश

अनुसूची 14- फार्म संख्या-563

आदेश की क्रम-संख्या और तारीख	आदेश और पदाधिकारी का हस्ताक्षर	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख के साथ ।
08.05.2023	<p>प्रस्तुत अपीलवाद सहायक निबंधन महानिरीक्षक, तिरहुत प्रमण्डल, मुजफ्फरपुर के वाद संख्या 37 / 2018-19 में दिनांक 19.01.2022 को पारित आदेश के विरुद्ध दायर किया गया है। जिस आदेश में सहायक निबंधन महानिरीक्षक, तिरहुत प्रमण्डल, मुजफ्फरपुर ने अपीलकर्ता के जोगोलिया टौला पलट मौजान्तर्गत थाना न० 912 खाता संख्या 108 खेसरा संख्या 96 में निष्पादित केवाला दिनांक 08.07.2017 में कमी मुद्रांक पाते हुए कमी मुद्रांक की राशि 221702 एवं उस पर जुमाने की राशि 22170 अर्थात् कुल 243872 / - जमा करने का आदेश पारित किया है।</p> <p>अपीलकर्ता को उनके विद्वान अधिवक्ता एवं विद्वान सरकारी अधिवक्ता को अधिग्रहण के बिन्दु पर सविस्तार सुना। विद्वान सरकारी अधिवक्ता ने बताया कि भारतीय मुद्रांक अधिनियम की धारा 47 A (4) के अंतर्गत अपील वाद दायर करने के पूर्व कमी मुद्रांक की राशि का 50% जमा करना बाध्यकारी है परन्तु अपीलकर्ता ने अपील दायर</p>	

करने के पूर्व कमी मुद्रांक की राशि का 50% जमा नहीं किया है, जिससे उनका (अपीलकर्ता) आवेदन ही त्रुटिपूर्ण है।

भारतीय मुद्रांक अधिनियम के **Section 47 A** में अंकित है कि :-

(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 the 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.”

(2) On receipt of a reference under sub-section (1), the Collector shall, after giving one month's time to the parties for making their representation and after holding an enquiry determine the market value of the property which is

the subject matter of such instrument and the duty as aforesaid. The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty:

Provided that no such person shall be required to pay any amount to make up the difference between the consideration or the market value as set forth in the instrument [or is less than even the minimum value determined in accordance with any rules made under this Act] and the market value determined by the Collector does not exceed 10 per cent of the market value so determined.

(3) *The Collector may suo moto 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 the 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:*

Providing that nothing in this sub-section shall apply to any instrument registered before in date of commencement of the Indian Stamp (Bihar Amendment Ordinance, 1986).

(4) *Any person aggrieved by an order of the Collector under sub-section (2) or (3) may appeal to the Commissioner concerned of the administrative division. Such appeal shall be preferred within sixty days of the order and shall be heard and disposed of by the Commissioner.*

(5) For the purpose of this Act, Market value of any property shall be estimated to be the price which in the opinion of the Collector or the appellate authority, as the case may be such property would have fetched or would fetch, it sold, in the open market on the date of execution of the instrument of conveyance, exchange, gift, partition or settlement.

(6) Before filing an appeal under sub-section (4), the aggrieved party shall deposit 50% (fifty percent) amount of the payable deficit Stamp duty chargeable on the market value of the property as determined by the Collector.

(7) If after determination of the proper market value, it is established that the parties have deliberately concealed the actual description of property or the market value of the property or any other facts and circumstances affecting the chargeability of the duty as required under section-27 of the Indian Stamp Act, 1899 [as amended by Indian Stamp (Bihar Amendment), 1988], the Collector, or in cases where appeal has been filed, the appellate authority, may impose a fine equal to 10% (ten percent) amount of the deficit stamp duty.

(8) If an appeal is not filed under sub-section (4) of section-47A, interest at the rate of 5% (five percent) per month shall be leviable on the deficit amount of stamp duty if it is not deposited within sixty days from the date of order passed by Collector.

(9) If an appeal is filed as prescribed in sub-section-(4) of Section 47 A, interest at the rate of 5 % (Five percent) per month shall be payable from the date of the order of the appellate authority for deposit of deficient stamp duty if it is not paid within sixty days of such order.

(10) If the amount of deficient stamp duty is not paid within sixty days from the date of the order of the collector in case an appeal is not filed against the said order,

or within sixty days from the date of the order of the appellate authority as the case may be, the amount of deficient stamp duty along with the amount of interest shall be recovered by the collector as prescribed under Section 48 of the Act.

उपरोक्त से स्पष्ट है कि उक्त अधिनियम की धारा 47 A (4) के अंतर्गत इस न्यायालय में समाहर्ता के द्वारा Sub Section (2) एवं (3) के अधीन पारित आदेश के विरुद्ध अपील का प्रावधान है तथा उक्त अधिनियम की धारा 47 A (6) में स्पष्ट रूप से अंकित है कि अपील दायर करने के पूर्व कमी मुद्रांक (Deficit Stamp Duty) की राशि का 50% जमा करना अनिवार्य है। परंतु अपीलकर्ता के द्वारा अपील दायर करने के पूर्व कमी मुद्रांक की राशि का 50% जमा नहीं कराया गया है अर्थात् उक्त अधिनियम की धारा 47 A (6) का अनुपालन नहीं किया गया है जिससे अपीलकर्ता का अभ्यावेदन अपूर्ण/त्रुटिपूर्ण हो जाता है।

उपर्युक्त तथ्यों के आलोक में भारतीय मुद्रांक अधिनियम की धारा 47 A (4) के अंतर्गत अपील दायर करने के पूर्व भारतीय मुद्रांक अधिनियम की धारा 47 A (6) का अनुपालन अपीलकर्ता द्वारा नहीं किये जाने के कारण प्रस्तुत अपीलवाद अस्वीकृत किया जाता है।

आईटी सहायक को आदेश दिया जाता है कि आदेश प्राप्ति के 24 घंटे के अन्दर इस आदेश को आयुक्त कार्यालय के वेबसाइट पर अपलोड करना सुनिश्चित करे।

लेखापित एवं संशोधित

आयुक्त

आयुक्त