

Court No. - 18

Case :- MATTERS UNDER ARTICLE 227 No. - 5295 of 2023

Petitioner :- Subedar Singh

Respondent :- State Of U.P. Thru. Prin. Secy. Revenue,
Lucknow And Others

Counsel for Petitioner :- Prabhat Kumar Mishra,Ashwini
Kumar Singh

Counsel for Respondent :- C.S.C.,Pankaj Gupta

Hon'ble Saurabh Lavania,J.

Heard learned counsel for the parties.

In view of order proposed to be passed, issuance of notice to the private-respondents is hereby dispensed with.

By means of this petition, the petitioner has sought the following main relief:-

"Wherefore, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to allow the instant petition U/A-Article 227 of the Constitution of India being field by the petitioner to set aside the order dated 18.07.2023 passed by Op. No. 2 i.e. Hon'ble Member The of Board of Revenue, Prayagraj in Second Appeal no. SA/1641/2023(Computerized Case No. AL20230257001641), Anil Kumar Singh V/S Subedar Singh and others, filed under section 208 of the U.P. Revenue Code, 2006, which is pending before the opp. party no.2, in the interest of justice."

With regard to main relief sought in this petition, learned counsel appearing for the petitioner says that Second Appeal No. SA/1641/2023, Computerized Case No. AL20230257001641 (Anil Kumar Singh vs. Subedar Singh and others), filed under Section 208 of the U.P. Revenue Code, 2006 (in short "Code of 2006") is not maintainable, as such, the order impugned dated 18.07.2023 passed therein is liable to be interfered with by this Court. With regard to issue of maintainability of second appeal, petitioner's counsel has referred Section 209 of the Code of 2006.

A perusal of impugned order dated 18.07.2023 indicates that the appeal, in issue, has yet not been admitted and the plea of maintainability of appeal can be raised before the Appellate Authority itself. The Hon'ble Apex Court as also this Court in

various pronouncements observed that the issue of maintainability at first instance should be raised before the Authority concerned. Reference in this regard can be made on the judgment passed by the Hon'ble Apex Court in the case of ***Jacky vs. Tiny*** reported in **(2014) 6 SCC 508**.

Considering the aforesaid, this Court is not inclined to entertain this petition for the main relief sought. It is accordingly disposed of with liberty to the petitioner to raise the issue of maintainability of second appeal before the Authority concerned namely respondent No. 2/Board of Revenue, Prayagraj, which shall be considered and decided as per law.

It is made clear that the Court has not examined the case of either party on merits and the Authority concerned shall be free to decide the matter strictly in accordance with law.

With the aforesaid, the petition is ***disposed of***.

Order Date :- 17.10.2023

Arun/-