

Court No. - 6

Case :- WRIT - C No. - 10931 of 2023

Petitioner :- Qamar Abbas

Respondent :- Additional Commissioner (Judicial)-I, Lucknow Division, Lucknow And Others

Counsel for Petitioner :- Rohit Tripathi, Nida Navi, Shishir Srivastava, Syed Zulfiqar Husain Naqvi

Counsel for Respondent :- C.S.C., Abhitendra Singh, Dilip Kumar Pandey, Jaibind Singh Rathour, Nritika Singh

Hon'ble Rajnish Kumar, J.

1. Heard Shri Rohit Tripathi, learned counsel for the petitioner, Shri Brijendra Singh, learned Additional Chief Standing Counsel, Shri J.B.S. Rathour, learned counsel for the respondent no.3/ caveator and Shri Dilip Kumar Pandey, learned counsel for the respondent no.7.

2. Learned Additional Chief Standing Counsel raised a preliminary objection that this petition against the impugned order dated 17.11.2023 passed by the appellate authority is not maintainable because the petitioner has a remedy of revision under Section 210 of the U.P. Revenue Code- 2006 (here-in-after referred as the Code-2006). He relies on judgment and order dated 12.05.2022 passed in **Writ- C No.25616 of 2021; Jhinka Devi Vs. State of U.P. and 4 Others.**

3. Learned counsel for the petitioner further submits that the petitioner had earlier filed Writ-B No.1072 of 2023 under Article 226 read with Article 227 of the Constitution of India and in view of the office report, the petitioner had got dismissed the petition on the ground that the petition is maintainable under Article 227 of the Constitution of India. However, subsequently while preparing the petition he found that the petition is maintainable under Article 226 of the Constitution of India

being against the revenue authority under the Code-2006 in view of the judgment and order dated 03.05.2022 passed in a bunch of writ petitions, the leading of which is **Writ-B No.229 of 2023; Dinesh Chandra @ Dinesh Chandra Tiwari and Others**, therefore the petitioner has filed this petition under Article 226 of the Constitution of India.

4. Learned counsel for the petitioner further in regard to the preliminary objection submits that the petitioner had filed the first appeal under Section 207 read with Section 24 (4) of the Code-2006 and the first appeal against the order passed under Section 24 is maintainable under Section 207. It is also provided in the 3rd schedule that against an order passed by the Sub-Divisional Officer, under Section 24 in regard to boundary and boundary marks, the first appeal is maintainable as provided in column-4. Therefore, the appeal was rightly filed in accordance with law, which has wrongly and illegally been dismissed on the ground that it has been filed in a wrong provision with liberty to the petitioner to file under the correct provision. Therefore, since only the question of law, as to whether the first appeal under Section 207 against an order passed under section 24 of code-2006 is maintainable or not, is involved, which is not disputed by learned counsel for the respondents, therefore instead of relegating to the alternative remedy of revision, this issue may be decided by this Court.

5. Learned Additional Chief Standing Counsel without disputing the maintainability of writ petition under Article 226 submits that the impugned order has rightly been passed in accordance with law because the remedy of appeal is provided under Sub-section (4) of Section 24 of Code- 2006, therefore the first appeal under Section 207 is not provided. Learned counsel for the respondent no.3 also argued the same.

6. Having considered the submissions of learned counsel for the parties, I have perused the records.

7. A coordinate Bench of this Court, in the case of **Dinesh Chandra @ Dinesh Chandra Tiwari and Others (Supra)** has held that the orders being passed by the revenue authority or consolidation authority are not the orders passed by judicial authority/ Civil Courts, therefore, rejected the preliminary objection regarding maintainability of the writ petitions under Article 226 of the Constitution of India. The relevant paragraph 27 is extracted here-in-below:-

"27. Accordingly, considering the arguments of learned counsel for the parties and the judgments so placed, which have been considered herein above, I am of the considered opinion that the orders being passed by the revenue authority or consolidation authority are not the orders being passed by judicial authority/Civil Courts, therefore, the preliminary objections so raised by the learned counsel for the opposite parties regarding maintainability of the writ petitions under Article 226 of the Constitution of India is hereby rejected. These writ petitions under Article 226 of the Constitution of India challenging the orders of the consolidation/revenue authorities are held to be maintainable."

8. In view of above, this petition under Article 226 is maintainable being against an order passed by revenue/appellate authority under Code- 2006.

9. The Hon'ble Supreme Court, in the case of **Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer-cum-Assessing Authority and Others; 2023 SCC OnLine SC 95**, has held that where the controversy is a purely legal one and it does not involve disputed questions of fact but only question of law, then it should be decided by the high court instead of dismissing the writ petition on the ground of an alternative remedy being available. The relevant paragraphs 6 to 8 are extracted here-in-below:-

"6. At the end of the last century, this Court in paragraph 15 of its decision reported in (1998) 8 SCC 1 (Whirlpool Corporation vs. Registrar

of Trade Marks, Mumbai and Others) carved out the exceptions on the existence whereof a Writ Court would be justified in entertaining a writ petition despite the party approaching it not having availed the alternative remedy provided by the statute. The same read as under:

(i) where the writ petition seeks enforcement of any of the fundamental rights;

(ii) where there is violation of principles of natural justice;

(iii) where the order or the proceedings are wholly without jurisdiction; or

(iv) where the vires of an Act is challenged.

7. Not too long ago, this Court in its decision reported in 2021 SCC OnLine SC 884 (Assistant Commissioner of State Tax vs. M/s. Commercial Steel Limited) has reiterated the same principles in paragraph 11.

8. That apart, we may also usefully refer to the decisions of this Court reported in (1977) 2 SCC 724 (State of Uttar Pradesh & ors. vs. Indian Hume Pipe Co. Ltd.) and (2000) 10 SCC 482 (Union of India vs. State of Haryana). What appears on a plain reading of the former decision is that whether a certain item falls within an entry in a sales tax statute, raises a pure question of law and if investigation into facts is unnecessary, the high court could entertain a writ petition in its discretion even though the alternative remedy was not availed of; and, unless exercise of discretion is shown to be unreasonable or perverse, this Court would not interfere. In the latter decision, this Court found the issue raised by the appellant to be pristinely legal requiring determination by the high court without putting the appellant through the mill of statutory appeals in the hierarchy. What follows from the said decisions is that where the controversy is a purely legal one and it does not involve disputed questions of fact but only questions of law, then it should be decided by the high court instead of dismissing the writ petition on the ground of an alternative remedy being available."

10. In view of above law laid down by the Hon'ble Supreme Court and also admitted to the parties that only question of law is involved in this petition, it is being entertained, instead of relegating to the alternative remedy, and this Court proceeds to decide it considering the rival contentions.

11. The petitioner had filed an application under Section 24 of the Code-2006 for demarcation of Gata No.1882/ area 0.0570 hec. of Village- Nasirabad, Pargana- Rokha, Tehsil- Salon, District- Raibareli. The application was disposed of by means of the order dated 30.09.2023 and dismissed accepting the demarcation report. Being aggrieved, the petitioner filed an appeal under Section 207 read with Section 24 (4) of the Code-2006. The Appeal No.3045 of 2023 has been dismissed by means of the impugned order dated 17.11.2023 contained in annexure no.1 to the petition on the ground that the appeal

against an order passed under Section 24 of the Code-2006 is not maintainable under Section 207 of the Code-2006 in accordance with law. The liberty has also been granted to the petitioner to file the appeal under the appropriate provision.

12. In view of above, the issue for consideration in the case in hand is as to whether an order passed under Section 24 can be challenged in first appeal filed under Section 207 or not.

13. Section 24 of code- 2006 provides the disputes regarding boundaries, which is extracted here-in-below:-

"24. Disputes regarding boundaries. - (1) The Sub-Divisional Officer may, on his own motion or on an application made in this behalf by a person interested, decide, by summary inquiry, any dispute regarding boundaries on the basis of existing survey maps or, where they have been revised in accordance with the provisions of the Uttar Pradesh Consolidation of Holdings Act, 1953, on the basis of such maps, but if this is not possible, the boundaries shall be fixed on the basis of actual possession.

(2) If in the course of an inquiry into a dispute under sub-section (1), the Sub-Divisional Officer is unable to satisfy himself as to which party is in possession or if it is shown that possession has been obtained by wrongful dispossession of the lawful occupant, the Sub-Divisional Officer shall¹⁴
(a) in the first case, ascertain by summary inquiry who is the person best entitled to the property, and shall put such person in possession;

(b) in the second case, put the person so dispossessed in possession, and for that purpose use or cause to be used such force as may be necessary and shall then fix the boundary accordingly.

(3) Every proceeding under this section shall, as far as possible, be concluded by the Sub-Divisional Officer within three months from the date of the application.

(4) Any person aggrieved by the order of the Sub-Divisional Officer may prefer an appeal before the Commissioner within thirty days of the date of such order. [The order of the Commissioner shall, subject to the provisions of Section 210, be final]."

14. Section 24 (4) of the Code-2006 provides that any person aggrieved by the order of the Sub-Divisional Officer may prefer an appeal before the Commissioner within thirty days of the date of order. By means of the amendment made w.e.f. 10.03.2019 vide U.P. Revenue Code (Amendment) Act, 2019 (Act No.7 of 2019), it has been provided that "the order of the

Commissioner shall, subject to the provisions of Section 210 be final".

15. Section 210 provides that the Board or the Commissioner may call for the record of any suit or proceeding decided by any sub-ordinate Revenue Court in which no appeal lies. The Board has been inserted in this Section by means of the U.P. Act No.4 of 2016, therefore the order passed on appeal under Section 24 (4) of the Code-2006 by the Commissioner is subject to the order passed by the Board under Section 210 of the Code- 2006. Section 210 is extracted here-in-below:-

"210 Power to call for the records.-(1) The Board or the Commissioner may call for the record of any suit or proceeding decided by any sub-ordinate Revenue Court in which no appeal lies, for the purpose of satisfying itself or himself as to the legality or propriety of any order passed in such suit or proceeding, and if such subordinate Court appears to have-

(a) exercised a jurisdiction not vested in it by law; or

(b) failed to exercise a jurisdiction of vested; or

(c) acted in the exercise of such jurisdiction illegally or with material irregularity; the Board, or the Commissioner, as the case may be, may pass such order in the case as it or he thinks fit.

(2) If an application under this section has been moved by any person either to the Board or to the Commissioner, no further application by the same person shall be entertained by the other of them.

(3) No application under this section shall be entertained after the expiry of a period of sixty days from the date of the order sought to be revised or from the date of commencement of this Code, whichever is later."

16. Section 207 of the Code-2006 provides the first appeal. It provides that any party aggrieved by a final order or decree passed in any suit, application or proceeding specified in column 2 of the Third Schedule, may prefer a first appeal to the court or officer specified against it in column 4, where such order or decree was passed by a Court or officer specified against it in column 3 thereof. Sub-Section 2 of Section 207 provides the other orders against which the first appeal can be filed and the sub-section(3) provides the limitation. Section 207 is extracted here-in-below:-

"207 First appeal. - (1) Any party aggrieved by a final order or decree passed in any suit, application or proceeding specified in column 2 of the Third Schedule, may prefer a first appeal to the court or officer specified against it in column 4, where such order or decree was passed by a Court or officer specified against it in column 3 thereof.

(2) A first appeal shall also lie against an order of nature specified-

(a) in section 47 of the Code of Civil Procedure, 1908; or

(b) in section 104 of the said Code; or

(c) in Order XLIII, Rule 1 of the First Schedule to the said Code.

(3) The period of limitation for filing a first appeal under this section shall be thirty days from the date of the order or decree appealed against."

17. Section 208 provides that where in any suit, application or proceeding specified in column 2 of the Third Schedule, any final order or decree is passed in any first appeal filed under section 207, and any party to such appeal is aggrieved by it, such party may prefer a second appeal to the Court specified against it in column 5. Section 208 is extracted here-in-below:-

"208 Second Appeal.- (1) Where in any suit, application or proceeding specified in column 2 of the Third Schedule, any final order or decree is passed in any first appeal filed under section 207, and any party to such appeal is aggrieved by it, such party may prefer a second appeal to the Court specified against it column 5.

(2) The Appellate Court shall not entertain a second appeal unless it is satisfied that the case involves a substantial question of law.

(3) The period of limitation for filing a second appeal under this section shall be ninety days from the date of the order or decree appealed against."

18. In view of above, against an order passed in first appeal filed under Section 207 the second appeal is maintainable under Section 208 and it can be filed, whereas the second appeal is not provided against an order passed on appeal filed under Section 24 (4) of the Code- 2006, therefore, merely because the name of the appellate authority has been given in column 4 of the third schedule, it can not be said that first appeal under Section 207 is maintainable against the order passed under Section 24 by the Sub-Divisional Officer. It appears that since there was only 4th column of first appeal, therefore the

designation of the authority to whom the appeal is to be filed against the order passed by the authority given in the column-3 has been given.

19. Admittedly the order under Section 24 of Code-2006 in regard to the boundary and boundary marks had been passed by the Sub-Divisional Officer, which was challenged before the Commissioner in appeal with the title "Appeal under Section 207, read with Section 24(4) of the U.P. Land Revenue Code-2006", whereas this Court is of the view that the first appeal under Section 207 could not have been filed against an order passed under Section 24 because a specific provision has been made under Section 24 (4) for filing the appeal against an order passed under Section 24 by the Sub-Divisional Officer to the Commissioner.

20. The schedule refers to Section 206, 207 and 208. Section 206 (1) provides that notwithstanding anything contained in any law for the time being in force, but subject to the provisions of this Code, no Civil Court shall entertain any suit, application or proceeding on any matter which the State Government, the Board, any Revenue Court or revenue Officer is, by or under this Code, empowered to determine, decide or dispose of. Section 206 (2)(b) provides that no Court other than the revenue Court or the revenue officer specified in column 3 of the Third Schedule shall entertain any suit, application or proceeding specified in column 2 thereof, therefore it is apparent that in view of this sub-section, it has been given in the third scheduled that the Sub-Divisional Officer can pass the order under Section 24 in regard to boundary and boundary marks and consequently the designation of the appellate authority in column-4. Section 206 of Code- 2006 is extracted here-in-below:-

Notwithstanding anything contained in any law for the time being in force, but subject to the provisions of this Code, no Civil Court shall entertain any suit, application or proceeding to obtain a decision or order on any matter which the State Government, the Board, any Revenue Court or revenue Officer is, by or under this Code, empowered to determine, decide or dispose of.

(2) Without prejudice to the generality of the provisions of sub-section (1), and save as otherwise expressly provided by or under this Code-

(a) no Civil Court shall exercise jurisdiction over any of the matters specified in the Second Schedule; and

(b) no Court other than the revenue Court or the revenue officer specified in column 3 of the Third Schedule shall entertain any suit, application or proceeding specified in column 2 thereof.

(3) Notwithstanding anything contained in this Code, an objection that a Court or officer mentioned in sub-section (2)(b) had or had no jurisdiction with respect to any suit, application or proceeding, shall not be entertained by any appellate, revisional or executing Court, unless the objection was taken before the Court or officer of the first instance, at the earliest opportunity, and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice."

21. This Court, in the case of **Jhinka Devi Vs. State of U.P. and 4 Others; Writ- C No.25616 of 2021 by means of the judgment and order dated 12.05.2022**, after considering the amendment made in Section 24 (4) of the Code-2006 by U.P. Act No.7 of 2019, by which the order of the Commissioner shall subject to the provisions of Section 210 be final has been added, has held that the order passed by the Commissioner in appeal under sub-section (4) of Section 24, which is final in the sense that there is no further appeal there against, would be subject to the revisional powers of the Board to be exercised under Section 210. The Court has further held that the objection raised on behalf of the State respondents with regard to the availability of a statutory remedy against the order passed by the Commissioner in an appeal under sub-section (4) of Section 24 of the Code, is sustained. The relevant paragraphs- 63 to 65 of Writ- C No.25616 of 2021 are extracted here-in-below:-

"63. It would therefore follow as a necessary consequence that the order passed by the Commissioner in appeal under sub-section (4) of Section 24, which is final in the sense that there is no further appeal there against, would be subject to the revisional powers of the Board to be exercised

under Section 210.

64. As regards the decision in the case of Vijay Kumar and others (supra), sought to be relied upon on behalf of the petitioner, it may only be noted that the aforestated decision, was rendered in the context of the provisions of the U.P. Land Revenue Act 1901, (now repealed). The statutory scheme under the U.P. Revenue Code, being entirely different, particularly consequent to the amendments made in the year 2019 whereby the order passed in an appeal under sub-section (4) of Section 24 has been made subject to the provisions of Section 210, the aforesaid decision would have no applicability in the facts of the present case.

65. Having come to the aforesaid conclusion, the objection raised on behalf of the State respondents with regard to the availability of a statutory remedy against the order passed by the Commissioner in an appeal under sub-section (4) of Section 24 of the Code, is sustained."

22. In view of above, the contention of learned counsel for the petitioner that the first appeal under Section 207 can be filed against an order passed by the Sub-Divisional Officer under Section 24 is misconceived and not tenable and the appeal against an order passed by the Sub-Divisional Officer under Section 24 can be filed only under Section 24(4) of Code- 2006 before the Commissioner and the order passed by the Commissioner shall, subject to the provision of Section 210, be final. If the contention of learned counsel for the petitioner is accepted, then the statutory provision made in section 24(4) regarding remedy available under section 210 will be redundant because it has not been given in the third schedule.

23. In view of above, this Court is of the view that the impugned order dated 17.11.2023 has, rightly and in accordance with law, been passed by the Additional Commissioner, Judicial-I, in Case No.3045 of 2023, which does not call for any interference. The petition is misconceived and lacks merit.

24. The petition is, accordingly, **dismissed**. No order as to costs.

(Rajnish Kumar, J.)

Order Date :- 15.12.2023/ Haseen U.