

**THE HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE****W. A No.279 of 2018*****(Dhapubai vs. Anwar & others)*****Indore, dated : 04.04.2018**

Shri C. L. Yadav, learned Senior Counsel with Shri Shyam Singh Thakur, learned counsel for the appellant.

Heard on the question of maintainability of the writ appeal.

2. In the writ petition filed by the respondent No.1 – Anwar Patel, the writ petitioner had challenged the order dated 26.04.2017 passed by the Board of Revenue in Revision Case No.2063-PBR/2014 by which Revisional Authority reversed the order passed by the Additional Commissioner, Indore in second appeal.

3. Learned Senior Counsel for the appellant has submitted that the Revisional Court i.e., Board of Revenue exercised its original jurisdiction in declaring the respondent No.1 as **Bhumiswami** of the land in question and, therefore, the writ petitioner in exercise of original jurisdiction under Article 226 of the Constitution of India had filed the writ petition and against the order passed therein, an intra-court appeal would lie. He further submitted that the Writ Court has not exercised the power of superintendency under Article 227 of the Constitution of India and, therefore, the law laid down by the Full Bench of this Court in **W. A. No.286/2017 (Shailendra Kumar vs. Divisional Forest Officer & another)** decided on 06.07.2017, the Division Bench of this Court dismissing **W. A. No.265/2017** vide order dated **04.09.2017 (Trustees of H. C. Dhanda Trust vs. State of MP & others)** is distinguishable and the present appeal is maintainable.

4. It is well settled that merely giving a nomenclature of Article 226 of the writ petition, in case, a writ appeal is preferred, the

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Division Bench is required to consider the pleadings, nature of the order challenged and the relief claimed in the writ petition. Even the finding of the Writ Court in its regard that the writ petition decided in exercise of Article 226/227 is also not decisive.

5. In view of the latest Full Bench decision of this Court in the case of **Shailendra Kumar (supra)**, the law laid down by the three Judges Bench of the Apex Court in the case of **Radheshyam & another vs. Chhabi Nath & others (Civil Appeal No.2548/2009)** passed on **26.02.2015** and the view taken by the Apex Court in the case of **Jogendrasinghji Vijaysinghji vs. State of Gujarat & others** reported in **2015 (9) SCC 1**, we are of the view that the in the present case, against the order of Board of Revenue, no writ appeal is maintainable as the order passed by the Board of Revenue is not an original order.

6. On due consideration of the law laid down in the case of **Trustees of H. C. Dhanda Trust (supra)** and **Shailendra Kumar (supra)**, we are of the view that the writ petition of respondent No.1 was purely a petition under article 227 of the Constitution of India. The present appeal filed under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam is not maintainable. The writ appeal is accordingly, dismissed, as not maintainable.

(P. K. Jaiswal)  
Judge

(Virender Singh)  
Judge

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