

A.F.R.

Reserved

Court No. - 4

Case :- WRIT - B No.229 of 2023

Petitioner :- Dinesh Chandra @ Dinesh Chandra Tiwari And Others

Respondent :- Deputy Director Of Consolidation, Sultanpur And Others

Counsel for Petitioner :- Vivek Tripathi

Counsel for Respondent :- C.S.C.,Prabhat Kumar

CONNECTED WITH

Case :- WRIT - B No.245 of 2023

Petitioner :- Amar Nath And 3 Others

Respondent :- Deputy Director Of Consolidation Sultanpur And 24 Others

Counsel for Petitioner :- Mohiuddin Khan,Mohd. Yasir

Counsel for Respondent :- C.S.C.,Jaydeep,Satish Kumar,Vineet Kumar Chaurasia

AND

Case :- WRIT - B No.232 of 2023

Petitioner :- Jai Bahadur Singh

Respondent :- Deputy Director Of Consolidation, Sultanpur And Others

Counsel for Petitioner :- Amit Kumar Singh,Sharad Pathak

Counsel for Respondent :- C.S.C.,Mohan Singh,Pradeep Kumar Tiwari

Hon'ble Rajesh Singh Chauhan,J.

1. In the present matter, the question of maintainability has been raised, therefore, the Members of the Bar have been permitted to address the Court. Pursuant thereto, Shri M.E. Khan has argued on behalf of the petitioners assisted by other counsels of the writ petitioners, Shri Shailendra Kumar Singh, Chief Standing Counsel-II assisted by Shri Rohit Nandan Shukla, Shri R.C. Tiwari, learned Additional Chief Standing Counsel, Shri Upendra Singh, Shri Yogesh Kumar Awasthi, learned Standing Counsel have argued the case on behalf of the State and Shri Prabhat Kumar has argued the case on

behalf of the private opposite parties in Writ B No. 229 of 2023 and Shri Mohan Singh, learned counsel for the Gaon Sabha.

2. Since the similar question is to be decided i.e. maintainability of the writ petition in the writ petitions bearing Writ-B No.245 of 2023 & Writ-B No.232 of 2023, therefore, these writ petitions are connected and the aforesaid question is decided by a common judgment.

3. Sri Prabhat Kumar, learned counsel for the private opposite parties has raised objection regarding maintainability of the writ petition under Article 226 of the Constitution of India against the orders being passed by the 'Revenue Courts' placing reliance upon the judgment Apex Court in re; **Shalini Shyam Shetty and another vs. Rajendra Shankar Patil, (2010) 8 SCC 329** and judgment of this Court in re; **Suraj Singh** (since deceased and substituted by legal heirs) **vs. Deputy Director of Consolidation, Jhansi and others, 2016 (34) LCD 1860.**

4. The sole premise of the objection regarding maintainability of the writ petition is that, to decide the title dispute, be it civil matter or revenue matter, appropriate remedy would not be to file petition under Article 226 of the Constitution of India, rather a petition should be filed under Article 227 of the Constitution of India, therefore, as per Sri Prabhat Kumar, this petition may be dismissed.

5. In response to the aforesaid objection, learned counsel for the petitioners has stated that it is true that the issue in question is relating to the title dispute, but the orders being passed by the consolidation authorities, which are not the revenue authorities, therefore, the objection so raised by learned counsel for the private opposite parties, placing reliance upon the aforesaid judgments in re: **Shalini Shyam Shetty** (supra) and **Suraj Singh** (supra), would not be applicable in the present case.

6. On the next date, learned counsel for the petitioners has addressed on the point of maintainability of the writ petition placing

reliance upon the judgment of Apex Court rendered in re: **Radhey Shyam and another vs. Chhabi Nath and others, (2015) 5 SCC 423** wherein the judgment of Apex Court rendered in re: **Shalini Shyam Shetty** (supra) has been considered.

7. Learned counsel for the petitioners has also placed reliance upon the judgment of the Apex Court rendered in re; **Suraj Singh** (supra), which is based on the judgment of the Apex Court rendered in re: **Radhey Shyam** (supra) as well as the Full Bench judgment of Apex Court rendered in re: **Kiran Devi vs. The Bihar State Sunni Wakf Board and others, (2021) AIR (SC) 1775**, by submitting that if the order is passed by the Revenue Authority, a writ under Article 226 of the Constitution of India may lie.

8. Referring various paragraphs of the judgment rendered in re: **Radhay Shyam** (supra), specific reliance has been placed towards para-25 wherein the Apex Court has clearly observed that the orders of the civil court stand on different footing from the orders of authorities or tribunals or courts other than judicial/ civil courts and learned counsel for the petitioners has submitted that if order of any judicial officer/ civil court is assailed, the petition should have been filed under Article 227 of the Constitution but in other cases the writ petition under Article 226 of the Constitution of India may lie. However, learned Chief Standing Counsel and learned counsel for private opposite parties referred para 18 of the judgment of the Apex Court in re; **Radhay Shyam** (supra).

9. Learned counsel for the petitioners has also referred Section 3 of C.P.C. which provides the subordination of courts and as per Section 3 of C.P.C., the District Court is subordinate to the High Court, and every Civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court and District Court. He has also referred Section 5 of C.P.C., which provides application of the Code to Revenue Courts. Sub-Section 2 of Section 5 C.P.C. provides that the "Revenue Court" in sub-section (1) means a Court having jurisdiction under any local law

to entertain suits or other proceedings relating to the rent, revenue or profits of land used for agricultural purposes, but does not include a Civil Court having original jurisdiction under this Code to try such suits or proceedings as being suits or proceedings of a civil nature.

10. In view of the above, learned counsel for the petitioners has stated that the Revenue Court is different from the District/ Civil Court and the bar carved out in **Radhey Shyam** (supra) is only meant for District/ Civil Court not for Revenue Court, therefore, no other inference of dictum of the Apex Court in re; **Radhey Shyam** (supra) may be drawn since the findings and observations of the Apex Court are very clear.

11. So as to understand the difference between the Civil Court and Revenue Court, Sections 3 and 5 of Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") would have to be considered, which read as under:-

"3. Subordination of Courts- For the purposes of this Code, the District Court is subordinate to the High Court, and every Civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court and District Court.

5. Application of the Code of Revenue Courts- (1) Where any Revenue Courts are governed by the provisions of this Code in those matters of procedure upon which any special enactment applicable to them is silent, the State Government may, by notification in the Official Gazette, declare that any portions of those provisions which are not expressly made applicable by this Code shall not apply to those Courts, or shall only apply to them with such modifications as the State Government may prescribe.

(2) "Revenue Court" in sub-section (1) means a Court having jurisdiction under any local law to entertain suits or other proceedings relating to the rent, revenue or profits of land used for agricultural purposes, but does not include a Civil Court having original jurisdiction under this Code to try such suits or proceedings as being suits or proceedings of a civil nature.

12. Notably, Section 5 (2) CPC provides that proceedings relating to the rent, revenue or profits of land used for agricultural purposes are conducted by the Revenue Courts not by the Civil Court having

original jurisdiction under the CPC to try such suits or proceedings as being suits or proceedings of a civil nature. Therefore, it is clear from the CPC itself that Civil Courts are different from the Revenue Courts.

13. U.P. Consolidation of Holding Act, 1953 (hereinafter referred to as “the Act”) is a complete Code, which provides redress of all the grievances of a *Chak Holder* in respect of improper allotment either it may be in respect of wrong valuation, wrong placement or other objection of similar nature. “Consolidation” means re-arrangement of holdings in a unit amongst several tenure-holders in such a way as to make their respective holdings more compact vide Section 3 (2) of the Act. “Consolidation Scheme” means the scheme of consolidation in a unit as provided in Section (3-B) of Section 3 of the Act. Section 4 of the Act provides declaration and notification regarding consolidation. Consolidation operation starts after declaration and notification being issued under Section 4 of the Act.

14. Therefore, considering the aforesaid aspect, the Consolidation Officers may not be treated as Officers of the Civil Court, however, they may more or less be treated as Revenue Officers.

15. The Apex Court in re; **Radhey Shyam** (supra) has decided the issue as to what orders can be assailed under Article 226 of the Constitution of India and what orders can be assailed under Article 227 of the Constitution of India. The relevant observations of the judgment in re; **Radhey Shyam** (supra) have been given in paras- 18 and 25 to 29, which read as under:-

“18. While the above judgments dealt with the question whether judicial order could violate a fundamental right, it was clearly laid down that challenge to judicial orders could lie by way of appeal or revision or under Article 227 and not by way of a writ under Articles 226 and 32.

25. It is true that this Court has laid down that technicalities associated with the prerogative writs in England have no role to play under our constitutional scheme. There is no parallel system of King's Court in India and of all the other courts having limited jurisdiction subject to the supervision of the King's Court. Courts are set up under the Constitution or the laws. All the courts in

the jurisdiction of a High Court are subordinate to it and subject to its control and supervision under Article 227. Writ jurisdiction is constitutionally conferred on all the High Courts. Broad principles of writ jurisdiction followed in England are applicable to India and a writ of certiorari lies against patently erroneous or without jurisdiction orders of tribunals or authorities or courts other than judicial courts. There are no precedents in India for the High Courts to issue writs to the subordinate courts. Control of working of the subordinate courts in dealing with their judicial orders is exercised by way of appellate or revisional powers or power of superintendence under Article 227. Orders of the civil court stand on different footing from the orders of authorities or tribunals or courts other than judicial/civil courts. While appellate or revisional jurisdiction is regulated by the statutes, power of superintendence under Article 227 is constitutional. The expression "inferior court" is not referable to the judicial courts, as rightly observed in the referring order [Radhey Shyam v. Chhabi Nath, (2009) 5 SCC 616] in paras 26 and 27 quoted above.

26. The Bench in Surya Dev Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] also observed in para 25 of its judgment that distinction between Articles 226 and 227 stood almost obliterated. In para 24 of the said judgment distinction in the two articles has been noted. In view thereof, observation that scope of Articles 226 and 227 was obliterated was not correct as rightly observed [Radhey Shyam v. Chhabi Nath, (2009) 5 SCC 616] by the referring Bench in para 32 quoted above. We make it clear that though despite the curtailment of revisional jurisdiction under Section 115 CPC by Act 46 of 1999, jurisdiction of the High Court under Article 227 remains unaffected, it has been wrongly assumed in certain quarters that the said jurisdiction has been expanded. Scope of Article 227 has been explained in several decisions including Waryam Singh v. Amarnath [AIR 1954 SC 215 : 1954 SCR 565] , Ouseph Mathai v. M. Abdul Khadir [(2002) 1 SCC 319], Shalini Shyam Shetty v. Rajendra Shankar Patil [(2010) 8 SCC 329 : (2010) 3 SCC (Civ) 338] and Sameer Suresh Gupta v. Rahul Kumar Agarwal [(2013) 9 SCC 374 : (2013) 4 SCC (Civ) 345]. In Shalini Shyam Shetty [(2010) 8 SCC 329 : (2010) 3 SCC (Civ) 338] this Court observed: (SCC p. 352, paras 64-67).

"64. However, this Court unfortunately discerns that of late there is a growing trend amongst several High Courts to entertain writ petition in cases of pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in cases of dispute between landlord and tenant and also in a case of money decree and in various other

cases where disputed questions of property are involved, writ courts are entertaining such disputes. In some cases the High Courts, in a routine manner, entertain petitions under Article 227 over such disputes and such petitions are treated as writ petitions.

65. We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals writ court should not interfere unless there is any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory authority.

66. We may also observe that in some High Courts there is a tendency of entertaining petitions under Article 227 of the Constitution by terming them as writ petitions. This is sought to be justified on an erroneous appreciation of the ratio in Surya Dev [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] and in view of the recent amendment to Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999. It is urged that as a result of the amendment, scope of Section 115 CPC has been curtailed. In our view, even if the scope of Section 115 CPC is curtailed that has not resulted in expanding the High Court's power of superintendence. It is too well known to be reiterated that in exercising its jurisdiction, High Court must follow the regime of law.

67. As a result of frequent interference by the Hon'ble High Court either under Article 226 or 227 of the Constitution with pending civil and at times criminal cases, the disposal of cases by the civil and criminal courts gets further impeded and thus causing serious problems in the administration of justice. This Court hopes and trusts that in exercising its power either under Article 226 or 227, the Hon'ble High Court will follow the time-honoured principles discussed above. Those principles have been formulated by this Court for ends of justice and the High Courts as the highest courts of justice within their jurisdiction will adhere to them strictly.”

(emphasis supplied)

27. Thus, we are of the view that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226. We are also in agreement with the view [Radhey Shyam v. Chhabi Nath, (2009) 5 SCC 616] of the referring Bench that a writ of mandamus does not lie against a private person not discharging any public duty. Scope of Article 227 is different from Article 226.

28. We may also deal with the submission made on behalf of the respondent that the view in *Surya Dev Rai* [*Surya Dev Rai v. Ram Chander Rai*, (2003) 6 SCC 675] stands approved by larger Benches in *Shail* [*Shail v. Manoj Kumar*, (2004) 4 SCC 785 : 2004 SCC (Cri) 1401], *Mahendra Saree Emporium (2)* [*Mahendra Saree Emporium (2) v. G.V. Srinivasa Murthy*, (2005) 1 SCC 481] and *Salem Advocate Bar Assn. (2)* [*Salem Advocate Bar Assn. (2) v. Union of India*, (2005) 6 SCC 344] and on that ground correctness of the said view cannot be gone into by this Bench. In *Shail* [*Shail v. Manoj Kumar*, (2004) 4 SCC 785 : 2004 SCC (Cri) 1401], though reference has been made to *Surya Dev Rai* [*Surya Dev Rai v. Ram Chander Rai*, (2003) 6 SCC 675], the same is only for the purpose of scope of power under Article 227 as is clear from para 3 of the said judgment. There is no discussion on the issue of maintainability of a petition under Article 226. In *Mahendra Saree Emporium (2)* [*Mahendra Saree Emporium (2) v. G.V. Srinivasa Murthy*, (2005) 1 SCC 481], reference to *Surya Dev Rai* [*Surya Dev Rai v. Ram Chander Rai*, (2003) 6 SCC 675] is made in para 9 of the judgment only for the proposition that no subordinate legislation can whittle down the jurisdiction conferred by the Constitution. Similarly, in *Salem Advocate Bar Assn. (2)* [*Salem Advocate Bar Assn. (2) v. Union of India*, (2005) 6 SCC 344] in para 40, reference to *Surya Dev Rai* [*Surya Dev Rai v. Ram Chander Rai*, (2003) 6 SCC 675] is for the same purpose. We are, thus, unable to accept the submission of the learned counsel for the respondent.

29. Accordingly, we answer the question referred as follows:

29.1. Judicial orders of the civil court are not amenable to writ jurisdiction under Article 226 of the Constitution.

29.2. Jurisdiction under Article 227 is distinct from jurisdiction under Article 226.

29.3. Contrary view in *Surya Dev Rai v. Ram Chander Rai*, (2003) 6 SCC 675, is overruled.”

(emphasis supplied)

16. The Apex Court in re; **Radhey Shyam** (supra) in para-25 has categorically held that writ jurisdiction under Article 226 is conferred on all the High Courts whereby the writ of certiorari can be issued against patently erroneous or without jurisdiction orders of Tribunal or authorities or courts ‘other than judicial courts’. For challenging the judicial orders, writ under Article 227 may lie as the High Court got power of superintendence under Article 227 of the Constitution of India. The Apex Court further provides that orders of the Civil Court

stand on different footing from the orders of authorities or Tribunals or courts other than judicial/Civil Courts. While answering the question referred before the Apex Court in re; **Radhey Shyam** (supra), the Apex Court has clearly held in para-29.1 and 29.2 that judicial orders of civil court are not amenable to writ jurisdiction under Article 226 of the Constitution and jurisdiction under Article 227 is distinct from jurisdiction under Article 226.

17. Sri Prabhat Kumar has drawn attention of this Court towards the decision of this Court in re; **Suraj Singh** (supra) wherein the Hon'ble Single Judge of this Court has, however, observed that against the judicial order of Civil Court, writ under Article 226 would not lie but the reasons assigned in that judgment would equally apply to the Revenue Courts also.

18. Sri Prabhat Kumar, learned counsel for the private opposite parties has referred the decision of this Court dated 05.07.2018 in re; **Paras Nath Vs. Deputy Director of Consolidation, Ambedkar Nagar & Ors., Consolidation No.9855 of 2018**, whereby the writ petition of a similar nature has been entertained under Article 227 of the Constitution of India. Notably, the judgment of the Apex Court in re; **Radhey Shyam** (supra) and the judgment of **Suraj Singh** (supra) have been considered and it has been held that the judgment in re; **Suraj Singh** (supra) would be applicable treating as if that writ petition has been filed under Article 227 of the Constitution of India. Sri Prabhat Kumar has also cited the judgment of this Court dated 28.05.2018 in re; **M/S Shiv Baba Industry Lalpur, Shahjahanpur Vs. State of U.P. and 3 Ors, Matters Under Article 227 No.3626 of 2018**, referring para-27 thereof to submit that instead of Article 226 of the Constitution of India, the writ petition challenging the orders of Revenue Court/ Consolidation Authorities should have been filed under Article 227 of the Constitution of India. Para-27 in re; **M/S Shiv Baba Industry Lalpur, Shahjahanpur** (supra) reads as under:-

“27. Thus after the consistent expression of unanimous opinion by their Lordships of the Supreme Court in Shalini Shyam Shetty (supra) and the decision of Three

Judge Bench of their Lordships in Radhey Shyam (supra), there remains no cavil notwithstanding any kind of interpretation that might have been earlier placed on the amended Rules of Chapter XXII of the High Court Rules that a petition under Article 227 of the Constitution can never be styled as a writ petition and styling it as a writ petition is certainly a defect that goes to the root of the matter rendering such a petition ill-framed beyond maintainability. A petition under Article 227 of the Constitution in order to be in tune with the jurisdiction it invokes may be styled as a Civil Misc. Applications or Criminal Misc. Applications or may be labelled by any appropriate nomenclature which eschews the use of the word writ. In addition, the relief clause should not ask for issue of any of the writs or orders in the nature of writs as are enumerated in Article 226 of the Constitution, that includes mandamus, certiorari, prohibition or quowarranto. The relief in a matter under Article 227 of the Constitution may not only seek setting aside of the order under challenge, but reversal of the same and further orders on the applications made to the subordinate court or tribunal in the same manner as a court of appeal or revision, subject of course to limitations on the exercise of the power under Article 227, could have passed including injunctions and directions of an appropriate kind to private parties or in the context of criminal proceedings like one involving reversal of an interlocutory order, refusing discharge by the Trial Court and the Sessions Judge in revision concurrently.”

19. Notably, the aforesaid writ petition was filed under Article 227 of the Constitution of India and it was entertained under that Article only.

20. The Full Bench of the Apex Court in re; **Kiran Devi** (supra) has considered the dictum of the Apex Court in re; **Radhey Shyam** (supra). Paragraph nos.19 to 23 in re; **Kiran Devi** (supra) read as under:-

“19. A three Judge Bench in a judgment reported as Radhey Shyam v. Chhabi Nath & Ors., (2015) 5 SCC 423 held that the observations in para 25 of the judgment in Surya Dev Rai v. Ram Chander Rai & Ors., (2003) 6 SCC 675, to be not good law. In Surya Dev Rai, it was held that the order of Civil Court could be challenged in a petition under Article 226 and that the distinction between Articles 226 and 227 of the Constitution of India stood almost obliterated. This Court in Radhey Shyam held:

“27. ... we are of the view that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226. We are also in agreement with the view [Radhey Shyam v. Chhabi Nath, (2009) 5 SCC 616] of the referring Bench that a writ of mandamus does not lie against a private person not discharging any public duty. Scope of Article 227 is different from Article 226.

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29. Accordingly, we answer the question referred as follows:

29.1. Judicial orders of the civil court are not amenable to writ jurisdiction under Article 226 of the Constitution.

29.2. Jurisdiction under Article 227 is distinct from jurisdiction under Article 226.

29.3. Contrary view in Surya Dev Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] is overruled.”

20. Therefore, when a petition is filed against an order of the Wakf Tribunal before the High Court, the High Court exercises the jurisdiction under Article 227 of the Constitution of India. Therefore, it is wholly immaterial that the petition was titled as a writ petition. It may be noticed that in certain High Courts, petition under Article 227 is titled as writ petition, in certain other High Courts as revision petition and in certain others as a miscellaneous petition. However, keeping in view the nature of the order passed, more particularly in the light of proviso to sub-section (9) of Section 83 of the Act, the High Court exercised jurisdiction only under the Act. The jurisdiction of the High Court is restricted to only examine the correctness, legality or propriety of the findings recorded by the Wakf Tribunal. The High Court in exercise of the jurisdiction conferred under proviso to sub-section (9) of Section 83 of the Act does not act as the appellate court.

21. We find merit in the argument raised by Mr. Sanyal that the nomenclature of the title of the petition filed before the High Court is immaterial. In Municipal Corporation of the City of Ahmedabad v. Ben Hiraben Manilal, (1983) 2 SCC 422, this Court held that wrong reference to the power under which an action was taken by the Government would not per se vitiate the action, if the same could be justified under some other power whereby the Government could lawfully do that act. The Court held as under:

“5.It is well settled that the exercise of a power, if there is indeed a power, will be referable to a jurisdiction, when the validity of the exercise of that power is in issue, which confers validity upon it and not to a jurisdiction under which it would be nugatory, though the section was not referred, and a different or a wrong section of different provisions was mentioned. See in this connection the observations in *Pitamber Vajirshet v. Dhondu Navlapa* [ILR (1888) 12 Bom 486, 489]. See in this connection also the observations of this Court in the case of *L. Hazari Mal Kuthiala v. ITO, Special Circle, Ambala Cantt.* [AIR 1961 SC 200:(1961) 1 SCR 892:(1961) 41 ITR 12, 16 : (1961) 1 SCJ 617] This point has again been reiterated by this Court in the case of *Hukumchand Mills Ltd. v. State of M.P.* [AIR 1964 SC 1329:(1964) 6 SCR 857:(1964) 52 ITR 583: (1964) 1 SCJ 561] where it was observed that it was well settled that a wrong reference to the power under which action was taken by the Government would not per se vitiate that action if it could be justified under some other power under which Government could lawfully do that act. See also the observations of the Supreme Court in the case of *Nani Gopal Biswas v. Municipality of Howrah* [AIR 1958 SC 141: 1958 SCR 774: 1958 SCJ 297 : 1958 Cri LJ 271].”

22. Later, in *Pepsi Foods Ltd.*, this Court held that nomenclature under which the petition is filed is not quite relevant and it does not debar the Court from exercising its jurisdiction which otherwise it possesses. If the Court finds that the appellants could not invoke its jurisdiction under Article 226, the Court can certainly treat the petition as one under Article 227 or Section 482 of the Code. This Court held as under:

“26. Nomenclature under which petition is filed is not quite relevant and that does not debar the court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If in a case like the present one the court finds that the appellants could not invoke its jurisdiction under Article 226, the court can certainly treat the petition as one under Article 227 or Section 482 of the Code. It may not however, be lost sight of that provisions exist in the Code of revision and appeal but some time for immediate relief Section 482 of the Code or

Article 227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate courts. The present petition though filed in the High Court as one under Articles 226 and 227 could well be treated under Article 227 of the Constitution.”

23. Therefore, the petition styled as one under Article 226 would not bar the High Court to exercise jurisdiction under the Act and/or under Article 227 of the Constitution. The jurisdiction of the High Court to examine the correctness, legality and propriety of determination of any dispute by the Tribunal is reserved with the High Court. The nomenclature of the proceedings as a petition under Article 226 or a petition under Article 227 is wholly inconsequential and immaterial.”

21. Sri Shailendra Kumar Singh, learned Chief Standing Counsel-II has also adopted the objection so raised by Sri Prabhat Kumar and has submitted that if the orders of Consolidation Authorities or Revenue Authorities have been assailed, the writ petition under Article 226 would not be maintainable. He has also cited those judgments, which have been cited by the learned counsel for the petitioners and Sri Prabhat Kumar.

22. As has been considered above vide paras-25 to 29 in re; **Radhey Shyam** (supra), the Apex Court has clarified the position. Particularly, in para-25 in re; **Radhey Shyam** (supra), the Apex Court has observed that writ of certiorari may lie against patently erroneous and without jurisdiction order of Tribunal or authorities or courts other than judicial/Civil Courts. Further, the Revenue Court is not the Judicial/ Civil Court. In the judgment of **Radhey Shyam** (supra), judgment of **Shalini Shyam Shetty** (supra) has been considered by the Apex Court in para-26 and after considering the judgment of **Shalini Shyam Shetty** (supra), the Apex Court in re; **Radhey Shyam** (supra) has carved out the distinction between the orders being passed by the Civil Court and other than Civil Court by holding that the judicial orders of the Civil Court are not amenable to writ jurisdiction under Article 226 of the Constitution of India.

23. The judgments so cited by the respective parties, there is no dispute that reliance upon the dictum of the Apex Court in re; **Radhey Shyam** (supra) has been placed. Learned counsel for the parties are in agreement that the Apex Court in re; **Radhey Shyam** (supra) has clearly and explicitly has observed as to what would happen in respect of the orders being passed by the Judicial/ Civil Courts and the orders being passed by other than Judicial/Civil Courts. No writ petition shall lie against the orders of Judicial/Civil Courts under Article 226 and there is apparent distinction between Articles 226 & 227 of the Constitution of India. Since the Apex Court has not held that even if any order is passed by a judicial or quasi judicial authority while exercising its statutory powers and even if that authority is other than judicial/ Civil Court, no writ shall lie under Article 226 of the Constitution of India, therefore, no other inference may be drawn from the ratio of the judgment of the Apex Court in re; **Radhey Shyam** (supra), which has not specifically been held. If the specific and clear direction has been issued by the Apex Court in re; **Radhey Shyam** (supra), any other inference should not be drawn. If the Apex Court was of the view that the orders of all judicial authorities, be it Judicial/Civil Court or Revenue/Consolidation Court/Authority, are not amenable under Article 226 of the Constitution of India, specific direction to that effect would have been given but no specific direction to that effect has been given by the Apex Court in para-29 of the judgment in re; **Radhey Shyam** (supra). The Full Bench of the Apex Court in re; **Kiran Devi** (supra) has observed that the Apex Court has considered all relevant judgments in re; **Radhey Shyam** (supra) including the judgment in re; **Shalini Shyam Shetty** (supra) and held that the petition styled as 'Under Article 226' would not bar the High Court to exercise jurisdiction under Article 227 of the Constitution of India. Basically, the jurisdiction of the High Court is to examine the correctness, legality and propriety of the orders being passed by the subordinate authority/court, the nomenclature of the proceedings as a petition under Article 226 or a petition under Article 227 is wholly inconsequential and immaterial. The Full Bench of the Apex Court in

re; **Kiran Devi** (supra) has not restricted entertaining such type of petitions under Article 226 of the Constitution of India, rather has observed that in the given facts and circumstances, the nomenclature of the proceedings would be wholly immaterial.

24. The Apex Court in para 25 in re; **Radhey Shyam** (supra) has considered its own observation of para 18. Further, the observation of para 18 may be read in the light of observation given in paras 25 & 29 in re; **Radhey Shyam** (supra).

25. In view of the above, when there is a settled law of the Apex Court in re; **Radhey Shyam** (supra) and **Kiran Devi** (supra) and there is clarity in the directions of the Apex Court in the aforesaid cases, therefore, being a High Court, I have no other option except to follow those directions of the Apex Court in its letter and spirit. Further, the judgments and orders of the Coordinate Bench are not binding if the directions thereof are not in conformity with the directions being issued by the Apex Court.

26. There is apparent difference between the court of law and the Tribunals. The court of law is vested with general jurisdiction over all the matters, whereas the Tribunals deal with the matters vested with limited jurisdiction to decide a particular issue/issues as per specific statutory prescription to that effect. Courts exercise only the judicial functions whereas the Tribunals undertake various other administrative functions. Officers of the court, more particularly judicial courts, are trained and expert persons in the law, however, it is not mandatory in every case that the members of the Tribunal need to be trained and expert in law. In view of the above, the revenue authorities/consolidation authorities when discharge their judicial/quasi judicial functions used to follow the specific mandate and mechanism so prescribed under the Statute and quite often, those officers are not trained judicial officers but being prescribed authorities under the particular Statute, they discharge their functions as revenue/consolidation officer. In that way, they may not be treated at par with the judicial officers of the Civil Court and therefore, they

are not judicial/Civil Court. At the best, it may be said that they discharge their duties and functions as Tribunal.

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.

28. Let counter affidavit be filed within a period of four weeks. Rejoinder affidavit, if any, may be filed within a period of two weeks.

29. List the aforesaid petitions in the week commencing 3rd July, 2023.

30. Interim orders granted earlier shall continue till the next date of listing in all the writ petitions.

31. Since all the writ petitions were connected for the reason that preliminary objection regarding maintainability was raised and the aforesaid preliminary objection has been rejected, therefore, all the writ petitions would be heard and decided on their own merits.

32. Accordingly, Writ-B No.245 of 2023 & Writ-B No.232 of 2023 are de-linked from Writ-B No.229 of 2023 and list them separately.

[Rajesh Singh Chauhan,J.]

Order Date :- 03.05.2023
RBS/-