

(2002) 10 AHC CK 0152
In the Allahabad High Court
Case No : Special Appeal No. 516 of 2002

Jagdish Singh and Others

APPELLANT

Vs

Additional District Magistrate (F/R)/Deputy Director of
Consolidation, Maharajganj and Another

RESPONDENT

Date of Decision : 01-10-2002

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 5
Constitution of India, 1950 — Article 225, 226, 227
Uttar Pradesh High Court (Abolition of Letters Patent Appeals) Act, 1962 — Section 3,
4, 5

Citation : (2002) 5 AWC 4089

Hon'ble Judges : S.P. Srivastava, J;K.N. Sinha, J

Bench : Division Bench

Advocate : A.P. Tiwari and S.S. Tripathi, for the Appellant; H.N. Sharma, S.C.,
for the Respondent

Final Decision : Dismissed

Judgement

S.P. Srivastava and K.N. Sinha, JJ.—Heard counsel.

2. Perused the record.

3. Learned standing counsel representing the Respondent No. 1 has raised a preliminary objection to the maintainability of this special appeal and has urged that since the order impugned in this special appeal is an order passed by the learned Single Judge finally disposing of a writ petition directed against an order passed by the Deputy Director of Consolidation exercising the revisional jurisdiction envisaged under the provisions of the U.P. Consolidation of Holdings Act, 1953, as amended. This special appeal is not maintainable/entertainable in view of the statutory prohibition envisaged under the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) Act, 1962 and deserves to be dismissed on this ground alone.

4. Learned Counsel for the Petitioner Appellant has, however, urged that the

Special Appeal is maintainable and has challenged the report of the Stamp Reporter indicating that the special appeal is not maintainable in view of Chapter VIII Rule 5 of Allahabad High Court Rules, 1952.

5. The present special appeal has been filed under the provisions contained in Chapter VIII Rule 5 of the Rules of the Court, which is to the following effect:

An appeal shall lie to the Court from a judgment (not being a judgment passed in the exercise of appellate jurisdiction) in respect of a decree or order made by a Court subject to the superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of superintendence or in the exercise of criminal jurisdiction (or in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award-(a) of a Tribunal, Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matter enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution, or (b) of the Government or any Officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act of one Judge.

6. It may be noticed that Allahabad High Court Rules (Rules of the Court, 1952), were framed by the High Court of Judicature at Allahabad in exercise of the powers conferred by Article 225 of the Constitution of India and all other powers enabling it on that behalf. The High Court of Judicature at Allahabad, was established under the Letters Patent of His Majesty published in Government Gazette North Western Provinces, dated 27.6.1866. Clause 10 of the Letters Patent contained a provision regulating the appeal to the High Court from the Judges of the said Court. It was stipulated in Clause 10 of the Letters Patent that except certain specified categories of cases, an appeal shall lie to the said High Court of Judicature at Allahabad, from the judgment of one Judge.

7. The contention of the learned Counsel for the Petitioner is that in view of Clause 10 of the Letters Patent, the present special appeal is clearly maintainable specially when the order which had been challenged in the writ petition giving rise to this appeal had been passed in the proceedings under the U.P. Consolidation of Holdings Act by an authority which could not be deemed to fall within the ambit of Tribunal, Court or statutory arbitrator as indicated in Chapter VIII Rule 5 of the Rules of the Court.

8. We have given our anxious consideration to the rival submissions made by the learned Counsel for the parties.

9. In the year 1962, an Act with the nomenclature. "The Uttar Pradesh High Court (Abolition of Letters Patent Appeals) Act, 1962" (U.P. Act No. XIV of 1962) was brought into force providing for abolition of Letters Patent Appeals in the High Court of Judicature at Allahabad. The provisions contained in Sections 3, 4 and 5 of the aforesaid Act imposed a statutory bar against the entertainability/

maintainability of special appeals from the judgment or order of one Judge of the High Court in the same Court that is intra-court appeals in respect of different specified categories of cases. The provisions contained in Section 3 of the Act provided that no appeal, arising from a suit or proceeding instituted or commenced, whether prior or subsequent to the enforcement of the said Act, shall lie to the High Court from a judgment and order of one Judge of the High Court, made in the exercise of appellate jurisdiction, in respect of a decree or order made by a Court subject to the superintendence of the High Court.

10. The provisions contained in Section 4 of the aforesaid Act provided for the abolition of appeals from the judgment and order of one Judge of the High Court, made in the exercise of writ jurisdiction in certain other cases.

11. In view of the statutory prohibition envisaged u/s 4 of the Act, no appeal arising from a suit or proceedings instituted or commenced whether prior or subsequent to the commencement of that section was to lie to the High Court from a judgment or order of one Judge of the High Court made in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution, in respect of a judgment, decree or order made or purported to be made by the Board of Revenue under the United Provinces Land Revenue Act, 1901, or the U.P. Tenancy Act, 1939, or the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, or the Uttar Pradesh Urban Areas Zamindari Abolition and Land Reforms Act, 1956, or the Jaunsar-Bawar Zamindari Abolition and Land Reforms Act, 1956, or the, or by the Director of Consolidation (including any other officer purporting to exercise the powers and to perform the duties of the Director of Consolidation) under the U.P. Consolidation of Holdings Act, 1953.

12. The provisions contained in Section 5 of the aforesaid Act provided for the abolition of Appeals from the judgment or order of one Judge of the High Court made in the exercise of writ jurisdiction in certain other cases.

13. In the present case, we are not, however, concerned with the effect of the provisions contained in Section 5 of the Act.

14. From what has been noticed hereinabove, it is apparent that in view of the statutory prohibition imposed with the enforcement of the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) Act, 1962, the appeal arising from a proceeding under the U.P. Consolidation of Holdings Act, 1953, directed against an order or judgment passed by the Director of Consolidation or any other Officer purporting to exercise the powers and to perform the duties of Director of Consolidation under the provisions of the U.P. Consolidation of Holdings Act, 1953, ceased to be entertainable/maintainable.

15. At this stage it may be noticed that the Hon"ble Apex Court in its decision in the case of Vijay Laxmi Sadho (Dr.) v. Jagdish, 2001 (2) JLJ 1 (SC), had clarified that rules framed by the High Court in exercise of powers under Article 225 of the Constitution of India are only rules of procedure and do not constitute substantive law.

16. We are of the considered opinion that in such a situation, the substantive provisions contained in the U.P. High Court (Abolition of Letters Patent Appeal) Act, 1962, had to prevail over the procedural law and an appeal which might have been entertainable/ maintainable either under Clause 10 of the Letters Patent or under the Chapter VIII Rule 5 of the Rules of the Court could not, by any stretch of imagination, be taken to lie in the teeth of the statutory prohibition/ bar imposed on the entertainability/ maintainability of such an appeal with the enforcement of the aforesaid Act abolishing certain specified categories of Letters Patent Appeals.

17. As has already been noticed hereinabove, the judgment/order impugned in the writ petition giving rise to this special appeal had been passed in the proceedings under the U.P. Consolidation of Holdings Act, 1953, as amended and the said order had been passed by the Deputy Director of Consolidation exercising the revisional powers vesting in the Director of Consolidation. The order of the learned single Judge under Appeal has only maintained the order passed by the Deputy Director of Consolidation by dismissing the writ petition. Such an order passed by a learned single Judge is clearly not appealable.

18. The preliminary objection in the circumstances noticed hereinabove, is liable to be accepted and is hereby upheld.

19. The special appeal in view of what has been indicated hereinabove deserves to be and is dismissed as not maintainable.