(2011) 01 UK CK 0053

In the Uttarakhand High Court

Case No : Special Appeal No. 194 of 2010

Kulwant Singh — APPELLANT

Vs

Board of Revenue and Others — RESPONDENT

Date of Decision : 05-01-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Land Revenue Act, 1901 — Section 4

Citation : (2011) 1 UC 384

Hon'ble Judges : Barin Ghosh, C.J;V.K. Bist, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Barin Ghosh, C.J.—The question is, whether the present appeal is maintainable? The facts, to which there appear to be no dispute, are that the Board of Revenue, by exercising power under Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, passed an order. This order was challenged by the Appellant by filing a writ petition under Article 226 of the Constitution of India. By the judgment and order under appeal, the said writ petition has been dismissed. Aggrieved thereby, Appellant has filed the present appeal. The question is, whether the appeal is maintainable or not.

2. In terms of Sub-section (8) of Section 4 of the Uttar Pradesh Land Revenue Act, 1901, Board of Revenue is a revenue court. In terms of the provisions contained in Rule 5, Chapter VIII of the High Court Rules (Allahabad), an appeal in the form of Special Appeal shall lie to the Court from a judgment 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 of India in respect of any judgment, order or award - (a) of a tribunal, Court of 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 matters 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. Therefore, a Special Appeal will lie where an order is passed in exercise of jurisdiction conferred by Article 226 of the Constitution of India, but not when such jurisdiction is exercised pertaining to an order of a Court.

3. In the instant case, the jurisdiction under Article 226 of the Constitution of India was exercised by this Court against an order of the revenue court. While conferring statutory right of appeal expressly, right to prefer an appeal against an order passed in exercise of jurisdiction conferred by Article 226 in relation to an order of the revenue court has not been conferred.

4. We, accordingly, hold that the present appeal is not maintainable.

