

28. The Court also takes note of a judgment passed by Supreme Court in **Shamsher Singh vs. State of Punjab (1974) 2 SCC 831** that since principle of natural justice was substantially complied with and the petitioner was not able to explain his mis-conduct and that his services was not satisfactory, the law proposed in **Shamsher Sing (supra)** was also complied with that, even order of termination may be punitive, however since proper opportunity of hearing was granted, therefore, no ground exists for interference. (also see **Swati Priyadarshini vs. the State of Madhya Pradesh & Ors., 2024 INSC 620**).

29. So far as the writ petition being Writ-A No. 52910 of 2011 is concerned. In the said petition, an interim order was already passed in favour of selected candidate i.e. petitioner no. 2 therein and that there is merits in the arguments of learned counsel for the said petitioner that the posts are not subject wise and that there are teachers for other subjects, as such there was no bar to appoint another Teacher for *Vyayam*. Therefore, there was no illegality in the appointment of petitioner no. 2 in the said petition. Therefore, the interim order is made absolute.

30. With aforesaid observations, writ petition i.e. Writ-A No. 63857 of 2007 (Sanjay Kumar Sengar vs. State of U.P. & Ors.) is **dismissed** and connected writ petition i.e. Writ-A No. 52910 of 2011 (C/M K.L. Jain Inter College Sasni Mahamaya Nagar & Anr. vs. State of U.P. & Ors.) is **allowed**. The impugned order dated 29.06.2010 passed by Joint Director of Education, Aligarh Region Aligarh is hereby quashed.

(2025) 3 ILRA 219

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: LUCKNOW 19.03.2025

BEFORE

THE HON'BLE ARUN BHANSALI, C.J.
THE HON'BLE JASPREET SINGH, J.

Writ B No. 1261 of 2024

Smt. Sushila Srivastava ...Petitioner
Versus
Board of Revenue U.P. & Ors.
...Respondents

Counsel for the Petitioner:

Akhilesh Kumar Pandey, Swadha Gupta

Counsel for the Respondents:

C.S.C., Lakkhi Chand Tyagi, Mohan Singh,
Shiv Shanker Tyagi

A. Civil Law -Constitution of India,1950-Article 226-U.P. Revenue Code,2006-Sections 210 & 212-Maintainability of revision-Transfer of revenue case-Concurrent jurisdiction-The petitioner challenged an order dated 05.09.2024 passed by the Board of Revenue, which had allowed a revision filed u/s 210 of U.P. Revenue Code,2006, against a transfer order u/s 212(2) of the same code-Learned single Judge referred the matter to a Larger Bench-The Division Bench held that a revision petition is maintainable against such order as section 210 provides revisional jurisdiction over proceedings where no appeal lies, and an order u/s 212(2) is not appealable under the code-The bench further clarified that the earlier view taken in Sharda Singh Case which held that no revisional jurisdiction existed over such transfer orders, does not lay down the correct law-The reference was answered accordingly, affirming the maintainability of revision in such cases. (Para 1 to 21)

The writ petition is allowed. (E-6)

List of Cases cited:

1. Sharda Singh & ors. Vs St. of U.P. & ors.(2019) 142RD 190.

2. Babu Singh & ors. Vs Raj Bahadur Singh & ors.{T.A. (Civil) No. 121 of 2021}

(Delivered by Hon'ble Arun Bhansali, C.J.
&
Hon'ble Jaspreet Singh, J.)

1. On a reference made by learned Single Judge vide order dated 19.12.2024 to a larger Bench, for consideration of the following question, the matter has been placed before us :

"Whether any revision under Section 210 of the Revenue Code, 2006 would be maintainable against an order passed transferring any case or proceedings in exercise of power under Section 212 of the Revenue Code 2006 particularly taking into account Section 209 read with Section 210 of the Code of 2006 ?"

2. Writ petition was filed challenging order dated 05.09.2024 passed in revision petition filed under Section 210 of the U.P. Revenue Code, 2006 ('Code, 2006') whereby revision preferred by the respondent no. 3 against an order permitting transfer of case in exercise of powers under Section 212 of the Code, 2006 has been allowed.

3. Before the learned Single Judge, a plea was raised that the revision was not maintainable, which plea was raised before the Board of Revenue, however, the same was not considered and reliance in this regard was placed on judgement in **Sharda Singh and others v. State of U.P. and others : 2019(142) RD 190.**

4. Learned Single Judge, was of the opinion that judgement in the case of

Sharda Singh (Supra) had not taken into account the provisions of Section 209 and 210 of the Code, 2006 and that prima-facie revisional power against an order passed by sub-ordinate revenue court or authority even under Section 212 of the Code, 2006, would be exercisable under Section 210 of the Code, 2006 and consequently, referred the issue to the larger Bench.

5. Learned counsel for the petitioner, at the outset, made submissions that he was unaware of the Division Bench judgement in **Babu Singh & others v. Raj Bahadur Singh and others** [Transfer Application (Civil) No. 121 of 2021] decided on 10.11.202.

6. The Division Bench while answering a similar nature reference in relation to exercise of revisional power under Section 115 CPC against order of the District Judge in relation to order passed under Section 24 CPC, which deals with general powers of transfer and withdrawal, came to the conclusion that such revision petition was maintainable.

7. Learned counsel for the respondents also relied on the decision in **Babu Singh (Supra).**

8. We have considered the submissions made by counsel for the parties and perused the material available on record.

9. It would be appropriate to quote provisions of Section 209, 210 and 212 of the Code, 2006, which read as under :

"209. Bar against certain appeals
-- Notwithstanding anything contained in Sections 207 and 208, no appeal shall lie against any order or decree –

(a) made under Chapter XI of this Code;

(b) granting or rejecting an application for condonation of delay under Section 5 of Limitation Act, 1963;

(c) rejecting an application for revision;

(d) granting or rejecting an application for stay;

(e) remanding the case to any subordinate Court;

(f) where such order or decree is of an interim nature.

(g) passed by Court or officer with the consent of parties; or

(h) where has been passed ex-parte or by default:

Provided that any party aggrieved by order passed ex-parte or by default, may move application for setting aside such order within a period of thirty days from the date of the order;

Provided further that no such order shall be reversed or altered without previously summoning the party in whose favour order has been passed to appear and be heard in support of it.

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 subordinate 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 so 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.

Explanation. - For the removal of doubt it is, hereby, declared that when an application under this section has been moved either to the Board or to the Commissioner, the application shall not be permitted to be withdrawn for the purpose of filing the application against the same order to 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.

212. Power to transfer cases --

(1) Where it appears to the Board that it will be expedient for the ends of justice to do so, it may direct that any case be transferred from one revenue officer to another revenue officer of an equal or superior rank in same district or any other district.

(2) The Commissioner, the Collector or the Sub-Divisional Officer may make over any case or class of cases arising under the provisions of this Code or any other enactment for the time being in force, for decision from his own file to any revenue officer sub-ordinate to him and competent to decide such case or class of cases, or may withdraw any case or class of cases from any such revenue officer and may deal with such case or class of cases himself or refer the same for disposal to any other revenue officer competent to decide such case or class of cases."

10. A perusal of the provisions of Section 212 reveals that power of transfer under sub-section (1) is conferred on the Board of Revenue, which may direct that any case be transferred from one revenue officer to another revenue officer of an equal or superior rank in same district or any other district. Under sub-section (2) the power has been conferred on the Commissioner, the Collector and the Sub Divisional Officer in relation to any case or class of cases for transfer from own file to any revenue officer sub-ordinate to him or withdraw any case or class of cases from any such revenue officer and may deal with such case or class of cases himself or refer the same for disposal to any other revenue officer competent to decide such case or such class of cases.

11. The power of the Board of Revenue and that of the Commissioner/Collector/Sub Divisional Officer are concurrent, wherein the power which can be exercised by the Commissioner, the Collector or the Sub Divisional Officer can also be exercised by the Board of Revenue.

12. The Code, 2006 provides for First Appeal under Section 207 against final order or decree passed in a suit, application or proceedings specified in Column 2 of Third Schedule and the same also lies against an order of nature specified in Section 47, 104 and Order XLIII Rule 1 CPC.

13. Order passed under Section 212 is not specified in Column 2 of the Third Schedule of the Code and as such, the same is not appellable. Section 209 of the Code, 2006 bars filing of appeals against certain orders.

14. Section 210 of the Code, 2006 confers revisional powers on the Board or

the Commissioner in relation to any order passed in any suit or proceeding by any sub-ordinate revenue court in case no appeal lies.

15. A combined reading of the above provisions reveals that against an order passed under Section 212(2) of the Code, 2006, a revision would lie before the Board of Revenue.

16. A Co-ordinate Bench of this Court in **Babu Singh (Supra)**, after scanning the entire law on the subject, came to the following conclusions :

"43. In view of what we have held above, our answers to the questions referred are these:

(i) The question is answered in the affirmative and it is held that an order passed by the District Judge under Section 24 CPC is revisable under Section 115 CPC as applicable in the State of U.P.

(ii) The question stands answered in the negative and it is held that another application under Section 24 CPC by the same applicant based on the same cause of action would not be maintainable before this Court without challenging the order passed by the District Judge, on the application disposed of by the District Judge under Section 24 CPC through a revision under Section 115 CPC. Normally, the order of the District Judge passed on an application under Section 24 CPC being revisable, the constitutional remedy under Article 227, though not barred, may not be invoked on the sound principle of the availability of an equally efficacious statutory alternative remedy under Section 115 CPC."

17. So far as the judgement in the case of **Sharda Singh (Supra)** is

concerned, the issue in the said case arose on account of the plea raised that when the transfer application was filed before the Board of Revenue, it was not disclosed that earlier transfer application was filed before the Collector, Kashganj, which was dismissed, on which submission, the learned Single Judge came to the conclusion that power of transfer under Section 212 is a concurrent power to be exercised by any of the authorities mentioned in sub-section (2) of Section 212 of the Code, 2006, however, after coming to the said conclusion a further observation, as under, was made :

"None of the authorities exercises either appellate or revisional jurisdiction over an order on a transfer application, which may have been passed by a authority subordinate to it."

18. We are of the opinion that the said observations were made without reference to the relevant provisions, including Section 210 of the Code, 2006 and without discussion on the subject matter.

19. In view of the above discussions, our answer to the question referred to us as under :

I. A revision petition under Section 210 of the Code, 2006 would be maintainable against an order passed/transferring any case or proceedings in exercise of powers under Section 212(2) of the Code, 2006.

II. The observations made in the case of **Sharda Singh (Supra)** in relation to the revisional jurisdiction, do not lay down correct law.

20. The reference is answered accordingly.

21. Let the matter be placed before the appropriate Bench.

(2025) 3 ILRA 223

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: LUCKNOW 03.03.2025

BEFORE

THE HON'BLE JASPREET SINGH, J.

Writ B No. 4405 of 1985

Connected with

Writ B No. 3396 of 1987

Agya Ram

...Petitioner

Versus

Joint Director of Consolidation & Ors.

...Respondents

Counsel for the Petitioner:

Sri S. Mirza, Sri H.S. Sahai, Sri Q.M. Haque, Sri S. Mirza, Sri U.S. Sahai

Counsel for the Respondents:

C.S.C., Bal Keshwar Srivastava, Sri N.R. Tripathi, Sri Pankaj Kumar Srivastava, Pinki Devi, Sri Puttu Lal Mishra, Sri Q.M. Haque, Sri R.K. Tripathi, Sri S.P. Dubey, Sri Shri Prakash Verma, Sri Vinod Kumar Gupta, Sri Z. Jilani

A. Civil Law -U.P. Consolidation of Holdings Act,1953-Section 9(A-2)-Co-tenancy and Succession rights-Adverse possession -Family settlement-Mutation proceedings-The dispute concerned Khata No.s5 and 41 in Village Pipra Ekdanga, District Gonda-Upon commencement of consolidation , names of Agya Ram, Parag, and Smt. Chhitna were recorded with shares-Smt. Yashodhara(daughter of Hardwar) filed objections claiming co-tenancy with her sister Chhitna-Agya Ram and Parag also claimed larger shares based on a compromise deed (1959) and a family settlement, asserting the land was ancestral property from one Matai-The Consolidation Officer held the property