

A.F.R.**Court No. - 7****Case :-** WRIT - C No. - 13852 of 2023**Petitioner :-** Tarkeshwar And 2 Others**Respondent :-** State Of U.P. And 5 Others**Counsel for Petitioner :-** Madan Ji Pandey**Counsel for Respondent :-** C.S.C.,Sudhir Bharti**Hon'ble Dr. Yogendra Kumar Srivastava,J.**

1. Heard Sri Sudhanshu Pandey, learned counsel appearing along with Sri Madan Ji Pandey, learned counsel for the petitioners, Sri Ajit Kumar Singh, learned Additional Advocate General appearing along with Sri Abhishek Shukla and Sri Amit Manohar, learned Additional Chief Standing Counsel and Sri Amit Verma, learned Standing Counsel for the State respondents.

2. The present petition seeks to put forth a proposition that against an *ex parte* order passed in proceedings under Section 24 of U.P. Revenue Code, 2006, the remedy of a statutory appeal being available, a recall application would not be maintainable at the behest of a non-party.

3. The facts of the case, as reflected from the pleadings in the writ petition, indicate that an application filed by the petitioner under Section 24 of U.P. Revenue Code, 2006¹, registered as Case No. 994 of 2022, computerized case no.

¹ Code, 2006

T202205200400994 (Tarkeshwar and others vs. Kishor and others) for demarcation of boundaries was allowed by means of an *ex parte* order dated 22.07.2022.

4. Thereafter, the private respondent nos. 3 to 5, asserting themselves to be tenure holders of the adjoining plots and necessary parties in the proceedings under Section 24 of Code, 2006 preferred an application dated 13.09.2022 seeking recall of the *ex parte* order dated 23.07.2022.

5. The said application was taken up by respondent no.2, and after hearing the counsel for the parties on the stay application, an order was passed staying the effect of the earlier order dated 22.07.2022.

6. Counsel for the petitioner has sought to assail the order dated 12.01.2023 by raising the following contentions:

6.1 The order dated 22.07.2022 passed in proceedings under Section 24 of the Code, 2006, being appealable in terms of subsection (4) thereof at the behest of 'any person' it was open to the private respondents to have availed the statutory remedy of appeal, and in view of the same, the recall application was not maintainable.

6.2 Section 209(h), which bars an appeal against an order passed *ex parte* or by default, is subject to the condition contained under the proviso, in terms of which it is open to 'any party aggrieved' by the order passed *ex parte* or by default, to

move an application for setting aside the said order. The private respondents being 'non-parties', the order dated 22.02.2022 could neither be said to be an order passed *ex parte* nor by default, and accordingly, the remedy of seeking recall of the order under the proviso to Section 209 would not be available to the said respondents.

6.3 The private respondents having not chosen to get themselves impleaded at the stage of pendency of proceedings under Section 24, it is not open to them to seek recall of the order subsequently.

7. Learned Additional Advocate General appearing for the State respondents has controverted the assertions made by the learned counsel for the petitioner by submitting as under:-

7.1 The right to file a statutory appeal under Section 24(4) of Code, 2006, can in no manner be understood to take away the right of the private respondents to seek recall of an order passed *ex parte*. This would be more so in a case where as per the provisions contained under Rule 22 of the U.P. Revenue Code Rules, 2016², the private respondents being tenure holders of contiguous plots, would be necessary parties in the proceedings.

7.2 Rule 22 mandates that the application filed under Section 24(1) Code, 2006, is to specify the details of the contiguous plots, and also, the concerned tenure holders are to be made parties in the case having a right to be heard; accordingly, the private respondents being necessary parties, and the order

² Rules, 2016

having been passed *ex parte* without impleading them, it would be open to them to seek recall of the order.

7.3 The expression 'any party' aggrieved under the proviso of Rule 209, which gives the remedy of filing of recall application against the order passed *ex parte*, would include within its ambit the private respondents who, as per the relevant statutory rules, are necessary parties in the proceedings and the mere fact that they were not impleaded, would not take away the rights so conferred.

7.4 The right to recall any order *ex debito justitiae* inheres in every Court or Tribunal which has passed the order, irrespective of the fact whether such right has been expressly conferred by the statute. In this regard, the distinction between the 'procedural review' and 'substantive review' is well known.

8. In order to consider the rival contentions, the relevant statutory provisions as contained under the Code, 2006, are being extracted below:

"Section 24: Disputes regarding boundaries. (1) The Sub-Divisional Officer may, on his own motion or on an application made in this behalf by a person interested, decide, by summary inquiry, any dispute regarding boundaries on the basis of existing survey maps or, where they have been revised in accordance with the provisions of the Uttar Pradesh Consolidation of Holdings Act, 1953, on the basis of such maps, but if this is not possible, the boundaries shall be fixed on the basis of actual possession.

(2) If in the course of an inquiry into a dispute under sub-section (1), the Sub-Divisional Officer is unable to satisfy himself as to which party is in possession or if it is shown that possession has been obtained by wrongful dispossession of the lawful occupant, the Sub-Divisional Officer shall-

(a) in the first case, ascertain by summary inquiry who is the person best entitled to the property, and shall put such person in possession;

(b) in the second case, put the person so dispossessed in possession, and for that purpose use or cause to be used such force as may be necessary and shall then fix the boundary accordingly.

(3) Every proceeding under this section shall, as far as possible, be concluded by the Sub-Divisional Officer within [three months] from the date of the application.

(4) Any person aggrieved by the order of the Sub-Divisional Officer may prefer an appeal before the Commissioner within thirty days of the date of such order. The order of the Commissioner shall be final.

Section 206: Jurisdiction of civil Courts and revenue courts.

(1) Notwithstanding anything contained in any law for the time being in force, but subject to the provisions of this Code, no Civil Court shall entertain any suit, application or proceeding to obtain a decision or order on any matter which the State Government, the Board, any Revenue Court or revenue Officer is, by or under this Code, empowered to determine, decide or dispose of.

(2) Without prejudice to the generality of the provisions of sub-section (1), and save as otherwise expressly provided by or under this Code-

(a) no Civil Court shall exercise jurisdiction over any of the matters specified in the Second Schedule; and

(b) no Court other than the revenue Court or the revenue officer specified in [Column 3] of the Third Schedule shall entertain any suit, application or proceeding specified in [Column 2] thereof.

(3) Notwithstanding anything contained in this Code, an objection that a Court or officer mentioned in sub-section (2)(b) had or had no jurisdiction with respect to any suit, application or proceeding, shall not be entertained by any appellate, revisional or executing Court, unless the objection was taken before the Court or officer of the first instance, at the earliest opportunity, and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

Section 207: First appeal. - (1) Any party aggrieved by a final

order or decree passed in any suit, application or proceeding specified in Column 2 of the Third Schedule, may prefer a first appeal to the court or officer specified against it in Column 4, where such order or decree was passed by a Court or officer specified against it in Column 3 thereof.

(2) A first appeal shall also lie against an order of the nature specified-

(a) in section 47 of the Code of Civil Procedure, 1908; or

(b) in section 104 of the said Code; or

(c) in Order XLIII, Rule 1 of the First Schedule to the said Code.

(3) The period of limitation for filing a first appeal under this section shall be thirty days from the date of the order or decree appealed against.

Section 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 the 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.]"

9. The statutory rule corresponding to the provisions contained

under Section 24, is Rule 22 of Rules, 2016, and the same is extracted below:

“22. Settlement of boundary dispute (Section 24)- (1)

Under Section 24(1) of the Code of tenure holder shall submit two copies of the application for settlement of boundary dispute to the Sub-Divisional Officer for one or more than one contiguous gatas, and it shall contain the following particulars-

(a) Details of Gata--Gata number, name of tenure holder. father/husband's name of village/tehsil. If the tenure holders are more than one, then particulars of all shall be mentioned; current updated khatauni shall also be to be attached to the application.

(b) Details of contiguous Gata--Gata number, name of tenure holder, father/husband's name, name of village/tehsil. If the tenure holders are more than one, then particulars of all shall be mentioned. Current updated khatauni shall also be attached to the application.

(2) If the khata is different in khatauni, but sub-division is not done in sazra-map, then sub-division in sazra-map shall be necessary.

(3) If boundary of any property of Gram Panchayat/State Government is adjacent to gata/gatas to be demarcated, then the Chairman, Land Management Committee/Gram Pradhan and the State Government shall be made a party in the case.

(4) Only the outer boundary shall be demarcated for an application made for boundary demarcation of contiguous gatas.

(5) The applicant shall deposit a fee of Rs. 1000/- in Government treasury for the demarcation of gata/attached gatas. A copy of challan receipt shall also be attached with the application form.

(6) On receipt of an application for demarcation, on the same or next working day, the Sub-Divisional Officer shall register the case in Revenue Court Computerised Management System (RCCMS). Three copies of notices shall be issued from the computerized system and will be delivered to the Revenue Inspector through Tehsildar.

(7) The Revenue Inspector shall serve notice to the concerned tenure holder/tenure holders as mentioned in sub-rule (1), through the Lekhpal or through any other mode. In absence of the tenure holders, notice will be served to the adult family member of the tenure holder/tenure holders. The information of demarcation shall also be given to the Chairman. Land Management Committee.

(8) At the time of sending the information or before the demarcation on site, if the Revenue Inspector wants to make any other affected person, a party to the case he can do so.

(9) After fixing the date of demarcation and intimation to all the concerned tenure holders, the Revenue Inspector or any other revenue official will demarcate the land parcel or parcels, as the case may be. During demarcation if any affected tenure holder is not a party to the case, such tenure holder shall be made a party to the case by the Revenue Inspector on the spot and he will mention the same in his demarcation report. Demarcation shall be completed within a month from the date of order for the same by the Sub-Divisional Officer.

(10) The Revenue Inspector or other revenue officials shall prepare the demarcation report alongwith the site memo. If there are no objections to the same, then after getting the consent and signature of all the concerned parties on the demarcation report, the same shall be sent it to the Sub-Divisional Officer through Tehsildar in a week. On receipt of the aforesaid report of the Revenue Inspector, the Sub-Divisional Officer will pass the order confirming the demarcation report.

(11) If the affected parties to the demarcation have not given their consent to the demarcation, or if there is any objection to the demarcation report, notice(s) will be issued by the Sub-Divisional Officer to all the parties, fixing a date of hearing which shall not be beyond 15 days from the date of issuance of notice.

(12) The Sub-Divisional Officer shall pass an order on the matter of boundary demarcation after hearing all the concerned parties. The Revenue Inspector shall comply with such order within two weeks from the date of order, and shall submit his report to the Sub-Divisional Officer.

(13) Where the boundary of gata/survey number is not recognizable due to alluvion or diluvion of land, or heavy rain, or due to damage caused by any other reason, then on

the application of the Chairman of Village Revenue Committee of that village, or on the report of the Revenue Inspector or Lekhpal, or on the joint application signed by all the concerned parties, the Sub- Divisional Officer shall instruct the Revenue Inspector or Lekhpal by a general or special order in writing, that the demarcate the boundary on ground on the basis of current survey map or, where it is possible, on the basis of possession, and if there is any complaint, then on the advise of Village Revenue Committee, resolve the same on the basis of mutual consent. The Revenue Inspector or Lekhpal shall comply with such order within two weeks from the date of order, and will submit his report to the Sub-Divisional Officer.

(14) At the time of passing order for demarcation under sub-rules (10), (13) or (14), the Sub-Divisional Officer can direct the SHO of the concerned police station to make police force available on the spot at the time of demarcation of land, in order to maintain law and order.

(15) The Sub-Divisional Officer, will try to complete the process within the stipulated time as mentioned in Section 24(3) of the Code and if the process is not completed within such time then the reason for the same shall be recorded.]”

10. Section 24 of the U.P. Revenue Code, 2006, relates to disputes regarding boundaries. The procedure with regard to the settlement of boundary disputes is provided under Rule 22 of Rules, 2016.

11. As per terms of sub-rule (1) of Rule 22, the tenure holder is required to submit two copies of the application for settlement of boundary disputes to the Sub-Divisional Officer for one or more than one contiguous gata, containing particulars with regard to; (a) details of Gata, and (b) details of contiguous Gata. Sub-rule (6) provides that on receipt of an application for demarcation, the Sub-Divisional Officer shall register a case from the Revenue Court Computerized Management System (RCCMS), and three copies of the notices shall be issued from the computerized

system and will be delivered to the Revenue Inspector through Tehsildar. The Revenue Inspector shall, in terms of sub-rule (7), serve notice to the concerned tenure holder/tenure holders as mentioned in sub-rule (1), through the Lekhpal or through any other mode. At the time of sending the information on or before the demarcation on site, the Revenue Inspector is empowered under sub-rule (8), to make any other affected person/a party to the case. After fixing the date of demarcation and intimation to all the concerned tenure holders, the Revenue Inspector or any other revenue official, under sub-rule (9), is to demarcate the land parcel or parcels, and during demarcation, if any affected tenure holder is not a party to the case, such tenure holder shall be made a party to the case by the Revenue Inspector on the spot and the same would also be mentioned in the demarcation report. The demarcation report, along with the site memo, is to be prepared under sub-rule (10) by the Revenue Inspector or any other revenue official, and if there are no objections to the same, then after getting the consent and signature of all the concerned parties on the demarcation report, the same shall be sent to the Sub-Divisional Officer through the Tehsildar. Upon receipt of the aforesaid report, the Sub-Divisional Officer is to pass an order confirming the demarcation report. In the event, the affected parties to the demarcation have not given their consent, or if there is any objection to the demarcation report, it is provided under sub-rule (11) that the Sub-Divisional Officer would issue notices to all the concerned parties, fixing a date for hearing. The Sub-Divisional Officer shall, thereafter, pass an

order, as envisaged under sub-rule (12), on the matter of boundary demarcation after hearing all the concerned parties.

12. Rule 22 of Rules 2016, as referred to above, describes in detail the procedure to be followed by the revenue officials in respect of matters related to settlement of boundary disputes under Section 24. It would be relevant to notice that the application to be filed under sub-rule (1) is to contain particulars with regard to the Gata, including the details of the contiguous Gata. Upon receipt of the application, the Revenue Inspector, under sub-rule (7), is required to serve notice to the concerned tenure holders, as mentioned in sub-rule (1). Sub-rule (8) mandates that at the time of sending information or before the demarcation on site, the Revenue Inspector is empowered to make any other affected person a party to the case. Further, after fixing the date of demarcation and intimation to all the concerned tenure holders, sub-rule (9) mandates that the Revenue Inspector would demarcate the land parcels, and during demarcation, if any affected tenure holder is not a party to the case, such tenure holder shall be made a party by the Revenue Inspector on the spot and the same would be mentioned in the demarcation report. The Revenue Inspector shall, thereafter, prepare the demarcation report along with the site memo, under sub-rule (10), and if there are no objections to the same, then after getting the consent and signature of all the concerned parties to the demarcation report, the same is to be sent to the Sub-Divisional Officer through the Tehsildar whereupon the Sub-Divisional Officer is to pass an order

confirming the report. If the affected parties have not given their consent to the demarcation report or if there are any objections to the demarcation report, the Sub-Divisional Officer is required, under sub-rule (11) to issue notices to all the parties fixing a date for hearing and thereafter an order is to be passed after hearing all the concerned parties, as required under sub-rule (12).

13. The foregoing discussion with regard to the procedure to be followed in matters of demarcation, which has been delineated in detail under Rule 22 of Rules 2016, would show that the details of the contiguous Gata are required to be provided in the application seeking settlement of boundary disputes, and thereafter notices are required to be served upon the concerned tenure holders including tenure holders of the contiguous Gata. The revenue authorities are empowered to make any affected person a party to the case at the time of sending a notice or before the demarcation on site. Also, at the stage of demarcation, if any affected tenure holder is not a party to the case, such tenure holder is required to be made a party on the spot and this is required to be mentioned in the demarcation report to be prepared by the Revenue Inspector. Further, after preparation of the demarcation report along with the site memo, the consent and signature of all the concerned parties are to be obtained, whereupon, the Sub-Divisional Officer is to pass an order confirming the report. However, if the affected parties have not given their consent or if there is any objection to the demarcation report, notices would be issued to all the parties,

fixing a date for a hearing, and the Sub-Divisional Officer shall thereafter pass an order on the matter of boundary demarcation only after hearing all the concerned parties.

14. The aforestated scheme of the Act with regard to the settlement of boundary disputes, as would be seen from the procedure specified under Rule 22, indicates in unambiguous terms that a tenure holder of the contiguous plot would be a necessary party in the proceedings having a right to submit objections and also a right to be heard before an order is passed, confirming the demarcation report and concluding the proceedings.

15. Section 209 contains a bar against certain appeals, and in terms of clause (h) thereof, an order passed *ex parte* has been made non-appealable. The proviso to Section 209 gives a remedy to any party aggrieved by an order passed *ex parte* to move an application for setting aside such an order.

16. The private respondents, in the instant case, being tenure holders of the adjoining contiguous plots, would be necessary parties as per the scheme of the Act and the procedure specified under Rule 22, and therefore, in the event the order relating to demarcation has been passed *ex parte* against the said tenure holders, they would necessarily have to be held, to be covered within the expression 'party aggrieved', under the proviso to Section 209, and would be entitled to move an application for setting aside of such *ex parte* order.

17. The contention sought to be raised on behalf of the

petitioners that the private respondents being 'non-parties', for the reason that they were not impleaded in the proceedings, would not be entitled to seek recall of the *ex parte* order under the proviso to Section 209, cannot be accepted for the reason that the procedure prescribed under Rule 22, does not give a choice to the party applying for demarcation not to make the tenure holder of the contiguous Gata a party to the proceedings; rather the scheme of the Act and the Rules mandates that a tenure holder of adjoining contiguous Gata or any other such affected person, would necessarily have to be made party to the proceedings.

18. The other argument sought to be put forward that it was for the private respondents to get themselves impleaded, also cannot be accepted for the reason that under the scheme of statute, it was a duty cast on the party applying for demarcation to have impleaded all the affected parties, including tenure holders of contiguous plots.

19. Therefore, merely for the reason that the private respondents were not made a party to the proceedings despite being tenure holders of the adjoining plots, cannot lead to the conclusion that they would not be 'affected parties' or would not be covered within the meaning of the expression 'party aggrieved', so as to seek recall of the order passed *ex parte*.

20. It may also be noted that quite apart from the statutory power of recall of an *ex parte* order conferred under the first proviso to Section 209, every court or Tribunal would have an

inherent power to recall an *ex parte* order to secure the ends of justice.

21. Taking note of the distinction between a ‘procedural review’ and a ‘review on merits’, in **Grindlays Bank Ltd. vs. Central Government Industrial Tribunal and others**³, it was held that even though there may be no express provision under the statute giving jurisdiction to set aside an *ex parte* order, the Court or Tribunal would be considered as endowed with such incidental or ancillary powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. The relevant observations made in the judgment in this regard are as follows:

“6... It is true that there is no express provision in the Act or the rules framed thereunder giving the Tribunal jurisdiction to do so. But it is a well known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary...

10... We are inclined to the view that where a party is prevented from appearing at the hearing due to a sufficient cause, and is faced with an *ex parte* award, it is as if the party is visited with an award without a notice of the proceedings. It is needless to stress that where the Tribunal proceeds to make an award without notice to a party, the award is nothing but a nullity. In such circumstances, the Tribunal has not only the power but also the duty to set aside the *ex parte* award and to direct the matter to be heard afresh.

13.The expression ‘review’ is used in the to distinct senses, namely (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous

3 1980 Supp SCC 420

order passed under a mis-apprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the court in **Patel Narshi Thakershi Case**⁴ held that no review lies on merits unless a statute specifically provides for it. Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected *ex debito justitiae* to prevent the abuse of its process, and such power inheres in every court or Tribunal.”

22. The same view was taken in **J.K. Synthetics Ltd. vs. Collector of Central Excise**⁵, wherein it was held that in a given case if it was established that the respondent was unable to appear for no fault of his own, the ends of justice would clearly require that the *ex parte* order against him should be set aside, and the power to do so is inherent in every Tribunal.

23. The distinction between a ‘review on merits’ and a ‘procedural review’ was reiterated in **Kapra Mazdoor Ekta Union vs. Birla Cotton Spinning and Weaving Mills Ltd. and another**,⁶ and it was held that a ‘review on merits’ is permissible only in case the forum in question is vested with the power of review by the statute; however, the power to grant ‘procedural review’ is inherent.

24. It is a fundamental principle of natural justice and a basic canon of jurisprudence that no adverse orders should be passed against a party without grant of an opportunity of hearing and against an order passed *ex parte*, the person concerned would have a right to seek recall. The distinction between a review and a recall petition is well established.

4 (1971) 3 SCC 844

5 (1996) 6 SCC 92

6 (2005) 13 SCC 777

25. In *Asit Kumar Kar vs. State of West Bengal & others*⁷, the aforesaid distinction was pointed out by stating that while in a review petition, the court considers on merits whether there is an error apparent on the face of the record, in a recall petition the court does not go into the merits but simply recalls an order which was passed without giving an opportunity of hearing to an affected party.

26. In the case at hand, Rule 22 of Rules 2016, contains a specific mandate that a tenure holder of adjoining contiguous plots would be a necessary party in the proceedings for division of holdings under Section 24. It further enjoins upon the revenue authorities to ensure that notice is to be issued to such party prior to initiation of proceedings for demarcation, and further, upon any objection being raised, the said tenure holder is to be granted an opportunity of hearing before a final order is passed.

27. It would, therefore, follow as a corollary that in case the revenue authorities have proceeded to pass an order *ex parte* without grant of notice or opportunity to the affected party, the concerned revenue authority would not be precluded from exercising the power to recall its order to correct the procedural defect, *ex debito justitiae* in order for doing justice between the parties.

28. The power to review an order on merits though may be held to have been vested in a court or a Tribunal only in terms of

⁷ (2009) 2 SCC 703

express statutory provision or by necessary implication, the power of 'procedural review' would stand entirely on a different footing and would be referable to the inherent power vested in every court or Tribunal to correct procedural illegality which goes to the root of the matter and invalidates the proceedings itself and consequently the order passed therein.

29. The power to set aside an *ex parte* order would amount to a 'procedural review', which is inherent or implicit in every court or Tribunal and is distinct from the power to grant a 'review on merits'.

30. In the facts in the present case where the scheme of the Act and the Rules made thereunder specifically mandate giving notice to the tenure holders of adjoining contiguous plots, and the order passed by the concerned revenue authority is without notice or opportunity, the parties affected i.e the private respondents herein would not be precluded from invoking the power of procedural review.

31. The party seeking review or recall of the order for procedural reasons may not be required to substantiate that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. It would only be required to establish that the procedure followed by the court or the Tribunal suffered from a procedural error or illegality which has the effect of vitiating the proceedings, thereby invalidating the order passed therein, inasmuch as the party concerned was not heard for no fault on its part.

32. In such cases, the matter would be required to be reheard in accordance with law without going into its merits, and the order passed would be liable to be recalled not for the reason that it was erroneous but because it was passed in a proceeding which was vitiated by an error of procedure or mistake which went to the root of the matter and had the effect of invalidating the entire proceedings.

33. The contention sought to be raised on behalf of the petitioner that the order passed in proceedings under Section 24 being appealable in terms of sub-section (4) thereof, it was open to the private respondents to have availed the statutory remedy of appeal, would not be tenable for the reason that clause (h) of Section 209 contains a specific bar by providing that the order passed *ex parte* would not be amenable to remedy of an appeal.

34. It has been held to be an established rule of statutory construction that express grant of power under statute carries with it by necessary implication all powers and duties incidental and necessary to make the exercise of these powers fully effective. In this regard, reference may be had to the exposition of the law in **Sutherland Statutory Construction**⁸, wherein it has been stated as follows:

“Where a statute confers powers or duties in general terms, all powers and duties incidental and necessary to make such legislation effective are included by implication... An express statutory grant of power or the imposition of a definite duty carries with it by implication, in the absence of a limitation, authority to employ all the means that are usually employed and that are necessary to the exercise of the power or the

8 Sutherland Statutory Construction, 3rd Edition, Volume III, Article 5402

performance of the duty.... That which is clearly implied is as much a part of a law as that which is expressed.”

35. It would also be apt to refer to **Domat’s Civil Law**⁹ wherein it has been observed as follows:-

“It is the duty of the judges to apply the laws, not only to what appears to be regulated by their express dispositions but to all the cases where a just application of them may be made, and which appear to be comprehended either within the consequences that may be gathered from it.”

36. Maxwell on Interpretation of Statutes¹⁰, also contains a statement that "where an act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution. *Cui jurisdictio data est, ea quoque concessa esse videntur, sine quibus jurisdictio explicari non potuit.*"

37. A necessary conclusion which flows from the foregoing discussion would be that against *ex parte* order passed in a proceeding under Section 24 of U.P. Revenue Code, 2006, a recall application cannot be held to be not maintainable, particularly when the recall is being sought by a person, who as per the scheme of the Act and the Rules made thereunder, would be a necessary party to the proceeding. This would be more so in a case where an *ex parte* order has been made non-appealable by virtue of the bar contained under clause (h) of Section 209 of the Code, 2006.

38. The private respondents in the instant case being tenure holders of adjoining contiguous plots and, therefore, necessary

9 Domat’s Civil Law, Cushing’s Edition, Vol.1, Page 88

10 Maxwell on Interpretation of Statutes, Eleventh Edition

parties as per Rule 22 of Rules 2016, and the order in proceedings under Section 24 having been passed *ex parte* against them, the said respondents cannot therefore be precluded from invoking the inherent power of the court concerned to seek recall of the order passed in proceeding under Section 24 of Code, 2006.

39. The challenge, which is sought to be raised against the order passed by the respondent no.2 upon the recall application filed by the private respondents on the ground that the application seeking recall was not maintainable, thus, cannot be sustained.

40. The writ petition, therefore, fails and is accordingly **dismissed**.

Order Date :- 25.7.2023

Mohini/Arun K. Singh

[Dr. Y.K. Srivastava, J.]