



2026:AHC:121810-DB

RESERVED ON 11.05.2026  
DELIVERED ON 27.05.2026

**A.F.R.**

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**SPECIAL APPEAL No. - 371 of 2026**

Dr Keshbhan Singh and another

.....Appellant(s)

Versus

State of U.P. and 7 others

.....Respondent(s)

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Counsel for Appellant(s)	: Gajendra Pratap Singh (Sr. Adv.) with Jai Singh Parihar
Counsel for Respondent(s)	: Anil Bhushan (Sr. Adv.) with Manish Kumar Pandey, Rajiv Singh (S.C.)

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**Along with**

**SPECIAL APPEAL DEFECTIVE No. - 337 of 2026**

Committee of Management Arya Kanya Pathshala Samiti and 4 others

.....Appellant(s)

Versus

State of U.P. and 5 others

.....Respondent(s)

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Counsel for Appellant(s)	: Anil Bhushan (Sr. Adv.) with Manish Kumar Pandey, Devi Prasad Tripathi
Counsel for Respondent(s)	: Gajendra Pratap (Sr. Adv.) with Jai Singh Parihar, Rajiv Singh (S.C.)

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**Chief Justice's Court**

**HON'BLE ARUN BHANSALI, CHIEF JUSTICE  
HON'BLE KSHITIJ SHAILENDRA, J.**

**(Per : Kshitij Shailendra, J.)**

1. Heard Shri Gajendra Pratap Singh, learned Senior Advocate assisted by Shri Jai Singh Parihar for the appellants, learned Standing Counsel for respondents no. 1 to 3 and Shri Anil Bhushan, learned Senior Advocate assisted by Shri Manish Kumar Pandey for respondents no. 4 to 8 in Special Appeal No. 371 of 2026. Same learned Senior Advocates have been heard in the connected Special Appeal Defective No. 337 of 2026, but from reverse side.

2. These two special appeals raise challenge to the order dated 13.03.2026 whereby the learned Single Judge has disposed of Writ – C No. 8732 of 2026 (Dr. Keshbhan Singh and another vs. State of U.P. and 7 others) setting aside the order dated 13.02.2026 impugned therein and remitting the matter to the Commissioner, Jhansi Division, Jhansi ('Commissioner') to decide an appeal only *qua* order passed under Section 25(2) of the Societies Registration Act, 1860 ('the Act'). The learned Single Judge has further observed that so far as order passed by the Commissioner under Section 4-A of the Act is concerned, the private respondents will have liberty to avail legally available remedy.

3. Since the order passed by the learned Single Judge has been challenged by both sides to the extent they feel aggrieved of the same, both the appeals are being decided by a common order.

**SPECIAL APPEAL No. - 371 of 2026**

4. The memo of present appeal contains solitary ground of challenge to the order passed by the learned Single Judge to the effect that there being no provision for appeal against the order dated 13.06.2025 passed by the Assistant Registrar under Section 25(2) of the Act, the order of remand to the Commissioner for deciding the appeal could not have been passed.

5. The facts of the matter for the purpose of decision in these two appeals are not in dispute. The Assistant Registrar, Jhansi Division, Jhansi, passed a composite order dated 13.06.2025 under Section 25(2) and Section 4-B of the Act. He declared the Society as defunct/time barred under Section 25(2) and also declared a list of 20 members of the General Body under Section 4-B as valid.

6. Challenging the said order, an appeal was filed on behalf of respondents no. 5 to 8 before the Commissioner, which was admitted by him by order dated 19.07.2025. Later on, the same was allowed on 13.02.2026 setting aside the order dated 13.06.2025 and a list of 10 members, as submitted by the contesting respondents (appellants in appeal before the Commissioner), was declared as valid. Further, the Assistant Registrar was directed to ensure further proceedings for the purposes of holding elections of the Society based upon the determination made. It is against the said order dated 13.02.2026 passed by the Commissioner that the writ petition giving rise to these two special appeals was filed.

#### **Preliminary Objection**

7. Shri Anil Bhushan appearing for the private respondents has raised a preliminary objection as regards maintainability of the present special appeal on the ground that the writ petition had arisen out of an appellate order passed by the Commissioner in exercise of powers under Societies Registration Act, 1860 and, therefore, the present special appeal is not maintainable and the same is barred as per the provisions of Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952.

8. Refuting the submissions made, Shri Gajendra Pratap Singh has made submissions that special appeal is not barred as the Commissioner had wrongly entertained the appeal against composite order dated 13.06.2025 passed by the Assistant Registrar exercising his power under Section 25(2) and Section 4-B of the Act. Submission is that appeal against the order passed under either of the two provisions does not lie under the Act itself and, therefore, once the Commissioner had no

jurisdiction to entertain the appeal, the special appeal arising out of order passed by the learned Single Judge raising a challenge to the order which was without jurisdiction, is very much maintainable.

9. Elaborating his submissions, it is contended by Shri Singh that an appeal is always a creation of statute and the language used in Rule 5 of Chapter VIII makes it clear that the appeal would not be maintainable only when 'appellate jurisdiction is or purported to be exercised under any U.P. Act or 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'. Submission is that since the U.P. Act, i.e. Act of 1860, itself does not provide an appeal against an order passed either under Section 25(2) or Section 4-B, the exercise undertaken by the Commissioner while passing the order impugned in the writ petition, could not be said to be 'in the exercise or purported exercise of jurisdiction, i.e. the appellate jurisdiction'.

10. In support of his submissions, reliance has been placed by Shri Singh on **Sheet Gupta vs. State of U.P. and others : 2009 (4) ADJ 183**, **Kamleshwar Singh vs. District Inspector of Schools and another: 1997 AWC (Supp) 206** and **Mahendra Pratap Bhatt 76 (Clmc) 2015 vs. Saroj Mahana : 2016 (5) ADJ 282**.

11. We have considered the submissions made on maintainability of special appeal and have perused the material available on record.

#### **Maintainability of Special Appeal**

12. There being no dispute about the fact that the Assistant Registrar had passed a composite order under Section 25(2) and 4-B of the Act, it would be appropriate to reproduce Section 4-B and 25(2) of the Act, 1860. The same are quoted as under:-

“**4-B.** (1) At the time of registration/renewal of a society, list of members of General Body of that society shall be filed with the Registrar mentioning the name, father's name, address and occupation of the members. The Registrar shall examine the correctness of the list of members of the General Body of such society on the basis of the register of members of the General Body and minutes book thereof,

cash book, receipt book of membership fee and bank pass book of the society.

2) If there is any change in the list of members of the General Body of the society referred to in sub-section (1), on account of induction, removal, resignation or death of any member, a modified list of members of General Body, shall be filed with the Registrar, within one month from the date of change.

(3) The list of members of the General Body to be filed with the Registrar under this section shall be signed by two office-bearers and two executive members of the society. - Vide U.P. Act No. 23 of 2013, Section 2 (w.e.f. 9.10.2013).”

**Section 25. Disputes regarding election of office-bearers.**

(1) .....

2) Where by an order made under sub-section (1), an election is set aside or an office-bearer is held no longer entitled to continue in office or where the Registrar is satisfied that any election of office-bearers of a Society has not been held within the time specified in the rules of that Society, (he may call a meeting of the general body of such Society for electing such office-bearer or office-bearers, and such meeting shall be presided over and be conducted by the Registrar or by any officer authorised by him in this behalf, and the provisions in the rules of the Society relating to meetings and elections shall apply to such meeting and election with necessary modifications.”

13. There is no provision of appeal in the Act,1860 against the order passed under any of the aforesaid two provisions, rather an appeal lies under Section 25(1)(d) against an order passed under sub-Section (1) of Section 25 of the Act which is reproduced as under:-

**“Section 25. Dispute regarding election of office-bearers.-**(1) The prescribed authority may, on a reference made to it by the Registrar or by at least one-fourth of the members of a society registered in Uttar Pradesh, hear and decide in a summary manner any doubt or dispute in respect of the election or continuance in office of an office-bearers of such society, and may pass such orders in respect thereof as it deems fit:

Provided that the election of an office-bearer shall be set aside where the prescribed authority is satisfied -

a) that any corrupt practice has been committed by such office-bearer;  
or

(b) that the nomination of any candidate has been improperly rejected;  
or

(c) that the result of the election in so far as it concerns such office-bearer has been materially affected by the improper acceptance of any nomination or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any non-compliance with the provisions of any rules of the society.

After clause (c), the following clause shall be inserted, namely -

**"(d) An appeal against an order made under this sub-section may be preferred to the Commissioner of the Division in whose jurisdiction the headquarter of the Society lies, within one month from the date of communication of such order:**

Provided that the appellate authority may admit an appeal after the expiry of such period if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within such period."

14. Although, in the present case, title of the appeal preferred before the Commissioner, as reflected from his order, indicates Section 25 (d), mere such indication does not make it a competent appeal under the said provision keeping in view the nature of order which was assailed before the Commissioner. Apparently, the order dated 13.06.2025 passed by the Assistant Registrar was not appealable under Section 25(1)(d) and, hence, indication made by the Commissioner to that effect cannot be treated as decisive.

15. As far as Chapter VIII Rule 5 of Allahabad High Court Rules, 1952 is concerned, words **'in the exercise or purported exercise of appellate or revisional jurisdiction under any U.P. Act/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, any such Act'** would mean that such appellate or revisional jurisdiction is available to the concerned authority. Meaning thereby, if, in a given case, the appeal is not provided by the statute itself, it would not clothe the appellate authority with power to entertain and decide the appeal on merits. If the decision on merits, either correct or incorrect, right or wrong, is passed by the appellate authority in an appeal which is not provided by the statute, it would not fall within the meaning and import of **'exercise or purported exercise of appellate jurisdiction'**.

16. Words **'purported exercise'** appearing in Rule 5 of Chapter VIII are of quite significance, particularly when contention has been raised that even if an authority sitting in appellate/revisional jurisdiction, does not have power/jurisdiction to pass any order, the exercise undertaken by it would be covered by **'purported exercise'** of power and, therefore, the special appeal would not be maintainable.

17. In this regard, we may refer to a judgment of Co-ordinate Bench of this Court in **Sardar Mohammad Ansar Khan vs. State of U.P. and others : 1995 All L.J. 317**, wherein question of maintainability of special appeal had arisen from a situation where an order passed by District Inspector of Schools (D.I.O.S.) as an appellate authority was assailed in writ petition and order of the writ Court was challenged in special appeal. The Co-ordinate Bench found that the D.I.O.S. had exercised power under Regulation 3(1)(b) of Chapter II of Regulations framed under U.P. Intermediate Education Act and though the said provision relates to determination of seniority etc. of 'teachers', the D.I.O.S. exercised such power in respect of 'clerks'. It was held that the order passed by the D.I.O.S. being without jurisdiction and outside the purview of the Act and the Regulations, the exercise of power by him cannot be said to be 'purported exercise' of appellate jurisdiction. The special appeal was thus found maintainable.

18. We may, however, observe that in the case of **Sardar Mohammad Ansar Khan** (supra), reference was made to a judgment of Hon'ble Supreme Court in **Azimunnisa vs. Deputy Custodian : AIR 1961 SC 365**, wherein the Hon'ble Supreme Court had indicated that the word 'purport' has many shades of meaning, it means fictitious, what appears on the face of the instruments; the apparent and not the legal import and, therefore any act which purports to be done in exercise of a power is to be deemed to be done within that power notwithstanding that the power is not exercisable. From reading of the above observations of Hon'ble Supreme Court, it may, at the first instance, appear that an order without jurisdiction also falls within the meaning of the words 'purported exercise of power', however, the Co-ordinate Bench in the case of **Sardar Mohammad Ansar Khan** (supra), took note of the fact that the decision in the case of **Azimunnisa** (supra) was distinguished by the Madhya Pradesh High Court in **Municipal Committee/ Council, Balaghat vs. Meghraj Phojraj Baghrecha and another : AIR 1966 Madh 104**, wherein it was held that imposition of a tax by Municipal Board being

beyond its jurisdiction and power is not an Act ‘purporting to be done under the Act’.

19. With reference to the judgment in the case of **Azimunnisa** (supra), it was also indicated that the observations were made while considering the effect of Section 8 (2-A) of the Administration of Evacuee Property Act, 1950 (in short ‘Evacuee Act’), there was detailed discussion regarding pre-amendment and post-amendment status of the Evacuee Act and the Hon’ble Supreme Court had discussed newly inserted sub-Section (2-A) added to Section 8, which reads as under:-

“2-A) "Without prejudice to the generality of the provisions contained in sub-section (2) all property which under any law repealed hereby purports to have vested as evacuee property in any person exercising the powers of Custodian in any State shall, notwithstanding any defect in or the invalidity of, such law or any judgment, decree, order of any Court, be deemed for all purposes to have validly vested in that person, as if the provisions of such law had been enacted by Parliament and such property shall, on the commencement of this Act, be deemed to have been evacuee property declared as such within the meaning of this Act and accordingly, any order made or other action taken by the Custodian or any other authority in relation to such property shall be deemed to have been validly and lawfully made or taken.”

20. It was in the light of the aforesaid provision that occasion to interpret word ‘**purport**’ had arisen before the Hon’ble Supreme Court however, language incorporated under sub-Section (2-A) of Section 8 of the Evacuee Act is altogether different from the language incorporated in Rule 5 of Chapter VIII of the Allahabad High Court Rule, 1952. Apparently, in the Evacuee Act, the word ‘**purport**’ was used as regards deemed vesting of a property as evacuee property in any person exercising the powers of custodian, notwithstanding any defect in or the invalidity of law, judgment, decree or order and the deeming provision was emphasized so as to validate such vesting as if the provisions of such law had been enacted by Parliament.

21. Contrarily, in Rule 5 of Chapter VIII of the High Court Rules, the language used is plain and simple and words “purported to be exercised under any U.P. Act or Central Act” are not qualified by any further stipulations or explanatory clarification of any nature so as to make further interpretation and, therefore, we take the same view that has been

taken by Madhya Pradesh High Court in the case of **Meghraj Phojraj Baghrecha** (supra), while explaining the judgment in the case of **Azimunnisa** (supra) and also fully endorse the view taken by the coordinate Bench of this Court in the case of **Sardar Mohammad Ansar Khan** (supra).

22. In the case of **Sheet Gupta** (supra), a Full Bench of this Court, while dealing with the provisions of Chapter VIII Rule 5 and a previous decision in **Vajara Yojna Seed Farm, Kalyanpur (M/s) and others vs. Presiding Officer, Labour Court II, U.P., Kanpur and another: 2003 (1) UPLBEC 496**, has laid down that special appeal against an order passed by the writ Court arising out of an appellate order passed under paragraph 28 of the Essential Commodities Distribution Order, 2004 would not be maintainable. In the said case, statutory appeal was itself provided under paragraph 28 of the Distribution Order. The Full Bench took note of a judgment of Hon'ble Supreme Court in **Vijay Prakash D. Mehta and Jawahar D. Mehta vs. Collector of Customs (Preventive), Bombay : AIR 1988 SC 2010** wherein observation was made that right to appeal is neither an absolute right nor an ingredient of natural justice, the principles of which must be followed in all judicial and quasi-judicial adjudications and the right is a statutory right and it can be circumscribed by the conditions in the grant.

23. In the case of **Kamleshwar Singh** (supra), writ petition was filed against an order passed by the D.I.O.S. exercising appellate power. The learned Single Judge allowed the writ petition setting aside the order and remanded the matter to the D.I.O.S. for deciding the dispute. On challenge laid to the order of learned Single Judge, the Division Bench found that the D.I.O.S. earlier happened to be appellate authority but, by virtue of a notification dated 22.08.1992, the said power had been taken away from him and the same was entrusted with Regional Deputy Director of Education, consequently, the D.I.O.S. had ceased to be an appellate authority. Under such circumstances, it was held that the D.I.O.S., not being an appellate authority, his order would not be treated

as an order passed in an appeal and, therefore, special appeal raising a challenge to the order passed by the learned Single Judge in writ petition against the order of the D.I.O.S., would be maintainable.

24. In the case of **Mahendra Pratap Bhatt** (supra), special appeal had arisen out of an order passed by the learned Single Judge on an application under Section 24 C.P.C. and, having found that the learned Single Judge had no territorial jurisdiction to entertain the application and pass order thereon, the special appeal was held maintainable and the order passed by the learned Single Judge was set aside.

25. In view of above discussion, we are of the considered opinion that since the Commissioner had no jurisdiction to entertain and decide the appeal against an order passed either under Section 25(2) or Section 4-B of the Act, 1860, the mere fact that the order had been passed in an appeal which was otherwise not maintainable and was not provided under the Act itself, the present special appeal raising a challenge to the order passed by the learned Single Judge in a writ petition assailing the validity of the order passed by the Commissioner, is maintainable.

**Conclusion on maintainability of special appeal:**

26. We, accordingly, hold that a special appeal arising out of judgment passed by learned Single Judge in a writ petition under Article 226 of Constitution of India, wherein challenge was laid to an appellate order passed by the Government or any officer or authority, made or purported to be made in the exercise of or purported exercise of appellate jurisdiction under any U.P. Act/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, **would be maintainable if the appeal itself was not provided under the statute but was entertained or decided either way and the power exercised by the appellate authority would not be treated as 'purported exercise of power'**.

**On Merits:**

27. The Court now proceeds to examine the nature of the order passed by the learned Single Judge wherein, after setting aside the order passed by the Commissioner, the matter has been remitted back to him to decide the appeal only *qua* order passed under Section 25(2) of the Act.

28. Once we have arrived at a conclusion that the appeal against the order dated 13.06.2025, compositely passed under Section 25(2) and 4-B of the Act, did not lie before the Commissioner, direction for remand to the Commissioner to decide the same *qua* Section 25(2) of the Act, is not proper. As a matter of fact, learned Single Judge has conferred jurisdiction upon the Commissioner to examine challenge to the order passed by the Assistant Registrar under Section 25(2) of the Act, although the Commissioner otherwise has no jurisdiction under the statute to entertain the appeal.

29. We may observe here that mainly three kinds of jurisdiction are recognized under the law; pecuniary, territorial and inherent. If any Court/authority lacks any of such jurisdictions, the order passed by it would be a nullity. Further, jurisdiction cannot be conferred upon the Court/authority in any manner even based upon consent or acquiescence. Reference in this regard can be made to **United Commercial Bank Limited vs. Their Workmen** : AIR 1951 SC 230, **Kiran Singh vs. Chaman Paswan** : AIR 1954 SC 340, **Benarsi Silk Palace vs. Commissioner of Income Tax** : (1964) 52 ITR 220 (All), **Kali Das Wadhvani & Another vs. Jagjiwan Das and another** : 1985 (2) ARC 533, **Sardar Hasan Siddique vs. State Transport Appellate Tribunal** : AIR 1986 Allahabad 132, **Karnal Improvement Trust vs. Prakashwati** : (1995) 5 SCC 159, **U.P. Rajkiya Nirman Nigam Ltd. vs. Indudre Pvt. Ltd.** : AIR 1996 SC 1373, **S. Sethuraman vs. R. Venkataraman and others**: AIR 2007 SC 2499, **Collector, Distt. Gwalior and another vs. Cine Exhibitors P. Ltd. and another** : AIR 2012 SC 1239.

30. In view of above discussion, the Special Appeal No. 371 of 2026 is **allowed**.

31. The order dated 13.03.2026 passed by the learned Single Judge to the extent of remanding the matter to Commissioner is hereby **set aside**.

32. The order dated 13.02.2026 passed by the Commissioner, impugned in the writ petition, being without jurisdiction, is also **set aside**.

**SPECIAL APPEAL DEFECTIVE No. - 337 of 2026**

33. This Special Appeal has been reported to be beyond time by six days. An application seeking condonation of delay has been filed. For the reasons stated in the affidavit supporting the application, the same is allowed. Delay in filing the appeal is hereby condoned.

34. This appeal raises a challenge to the same order passed by the learned Single Judge to the extent of conclusion drawn and observations made regarding appellate power of the Commissioner to examine validity of the order passed by the Assistant Registrar under Section 4-B of the Act.

35. Submission has been made by Shri Anil Bhushan that by virtue of amendments made in the Act by the Societies Registration (U.P. Amendment) Act, 2021, (U.P. Act No. 8 of 2022), appeal against any order passed under Sections 4, 4-A and 4-B would be maintainable before the Commissioner. It is contended that appeal lies under Section 4(1-A) against an order made under Section 4 and Section 4-B being part of Section 4, appeal would be maintainable and, therefore, the learned Single Judge has wrongly held the appeal to that extent as not maintainable.

36. Per contra, Shri Gajendra Pratap Singh has made submissions that provision of appeal was added by way of insertion of sub-Section (1-A) after Section 4 and there being no insertion/addition/substitution etc. in other provisions, i.e. Section 4-A or 4-B, appeal against the order passed under Section 4-B does not lie.

37. We have considered the submissions made and have perused the material available on record.

38. It would be appropriate to quote relevant portions of the U.P. Act No. 8 of 2022, by which amendments were made in the Principal Act, w.e.f. 18.07.2022. The same reads as under:-

“**3. Amendment of Section 4.**-In Section 4 of the principal Act, after sub-section (1), the following sub-section and the proviso shall be inserted, namely:

**(1-A) An appeal against an order made under this section may be preferred to the Commissioner of the Division in whose jurisdiction the headquarter of the Society lies, within one month from the date of communication of such order:**

Provided that the appellate authority may admit an appeal after the expiry of such period if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within such period.

**4. Amendment of Section 4-B.**-For sub-section (2) of Section 4-B of the principal Act, the following sub-section shall be substituted, namely:

(2) If there is any change in the list of members of the General Body of the society referred to in sub-section (1), on account of induction, removal, registration or death of any member, a modified list of members of General Body, shall be filed with the Registrar, within one month from the date of change. Any change in the list of General Body shall not be valid unless it is approved by the Managing Body.”

39. A bare perusal of the aforesaid provisions of the Amendment Act makes it clear that sub-Section (1-A) was added just after Section 4 and the place of insertion clearly indicates the legislative intent to provide an appeal only against an order passed under Section 4 after its renumbering as Section 4(1) and not against Section 4-B which is altogether a separate and distinct Section. This Court, in **Abhishek Pandey vs. State of U.P. and others, 2025 : AHC:213663-DB**, has already dealt with the same issue in detail and it has been held as under:

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“10. Once Section 4(1-A) clearly provides for an appeal against an order under Section 4, the said appeal is confined to an order passed in relation to accepting the Committee of Management etc. by the Registrar under Section 4(1). Section 4-B is totally independent of Section 4 as the same deals with the list of members of General Body and has nothing to do with the Committee of Management and once

the statute does not provide any appeal qua the order passed under Section 4-B of the Act, the provision as contained under sub-section (1-A) of Section 4 cannot by any stretch of imagination be used for the purpose of maintaining the appeal against an order passed under Section 4-B of the Act.”

40. In view of above discussion, we do not find any force in the submissions advanced by Shri Anil Bhushan that appeal also lies against an order under Section 4-B when we find no such provision in the Statute.

41. Accordingly, the challenge laid to part of the order impugned, whereby learned Single Judge has held the appeal against order passed under Section 4-B of the Act as not maintainable, does not call for any interference.

42. Consequently, the Special Appeal Defective No. 337 of 2026 is hereby **dismissed**.

**Liberty to the aggrieved parties**

43. We, however, leave it open for the parties aggrieved of the order dated 13.06.2025 passed by the Assistant Registrar to the extent the same is against them, to avail remedy before appropriate forum.

**(Kshitij Shailendra, J) (Arun Bhansali, CJ)**

**May 27, 2026**

Sazia