

तारीख हुक्म	हुक्म या कार्यवाही मय इनिशियल्स जज Revision No. 4833/2016/TA/Baran Sardar Singh Vs. Badri Bai	नम्बर व तारीख अहकाम जो इस हुक्म की तामील में जारी हुए
17.8.2016	<p style="text-align: center;"><u>S.B.</u></p> <p style="text-align: center;">Shri Satish Chand Kaushik, Member</p> <p><u>Present:</u></p> <p>Shri Shokind Lal Gurjar : counsel for the petitioner.</p> <p style="text-align: center;">- - -</p> <p>This revision petition has been moved by the petitioner under section 230 read with section 221 of the Rajasthan Tenancy Act, 1955 (hereinafter to be referred as "the Act") being aggrieved with the order of the learned Sub Divisional Officer, Baran dated 18.5.2016 by which order the learned S.D.O. declined to grant ad interim ex-parte injunction in favour of petitioner herein. The operative portion of the order is as under :-</p> <p style="padding-left: 40px;">“वकील प्रार्थी को एक तरफा सुना गया। पत्रावली एवं रिकार्ड का अवलोकन किया गया। प्रार्थी द्वारा ऐसा कोई दस्तावेज पेश नहीं किया गया जिसमें प्रार्थी के पक्ष में एक तरफा स्थगन आदेश जारी किया जा सके। ऐसी स्थिति में प्रार्थी के पक्ष में स्थगन आदेश जारी नहीं किया जा सकता। प्रकरण दर्ज रजि. किया जावे। अप्रार्थीगण को जर्ये सम्मन तलब किया जाकर पत्रावली दिनांक 11.7.16 को पेश हो।”</p> <p>This order was passed on the application of section 212 of the Rajasthan Tenancy Act. It is pertinent to mention here that during the course of hearing on the petition, this court has heard the arguments of the learned counsel for the petitioner on admission and injunction. It was argued that while passing the order, the learned lower court has decided the application under section 212 of the Rajasthan Tenancy Act and on the other hand, admitted the petition and called for record. In the case, the prima facie case, balance of convenience and irreparable loss is in favour of the petitioner. However, after hearing the arguments, this court while referring the judgment of the Hon'ble High Court in the case 2014(1) DNJ Rajasthan 35</p>	

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	<p>held that if in any matter under section 212 of the Tenancy Act injunction was granted or not granted, that order is appealable and not a revisable order. As such, the matter was fixed for arguments on maintainability of the petition.</p> <p>Heard learned counsel for the petitioner on maintainability as well as on admission and stay application.</p> <p>The learned counsel argued that vide impugned order dated 18.5.2016, the learned lower court pronounced the final opinion that injunction cannot be granted and in such a circumstance, there was no occasion to order for the registration of the matter and summoning of the non-applicants. On the one hand, the learned lower court is saying that the learned counsel for the applicant was heard ex-parte, the file concerned and record perused, and on the other hand, saying that there is no document filed by the applicant on the ground of which ex-parte injunction can be granted in favour of applicant and as such the order of the learned lower court is erroneous; because of that order, the applicant is not in a position either to file the appeal or to approach any authority and in such a circumstance, the only remedy lies is that to approach this Board under section 230 read with section 221 of the Tenancy Act for interference because this Board is having ample power to interfere with the proceedings of the lower court, if any unjustified order has been passed. Undoubtedly, the order passed by the learned lower court is an illegal order on the face of it. The learned counsel also argued that as per the mutation, the names of Laxman and Latur both are inserted. The petitioner is the LR of Latur and as such he is having right to file the suit. The court has not appreciated this fact.</p>	

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	<p>After hearing the arguments, the legal question before this court is, "whether if an order is appealable, then revision is maintainable or not?" Second, "whether a revision is maintainable against an interlocutory order?" And third, "if on application under section 212 of the Tenancy Act, ex-parte injunction was not granted by the court, then whether it is within the scope of section 221 of the Tenancy Act for interference by the Board?"</p> <p>So far the first and second questions are concerned, the learned counsel failed to submit any legal pronouncement against the citation 2014(1) DNJ Rajasthan 35 that granting or rejecting injunction is appealable order and not the revisable order. The scope of revision is very limited. The revision under section 230 of the Rajasthan Tenancy Act can be filed only on these grounds :</p> <p>"230. Power of the Board to call for cases - The Board may call for the record of any case decided by any subordinate revenue court in which no appeal lies either to the Board or to a civil court under section 239 and if such court appears ;</p> <ul style="list-style-type: none"> (a) to have exercised jurisdiction not vested in it by law; or (b) to have failed to exercise jurisdiction so vested; or (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity. <p>Board may pass such orders in the case as it thinks fit."</p> <p>Section 115 of the Code of Civil Procedure also provides that :</p> <p>"115. Revision - (1) The High Court may call for the record of any case which has been decided by any court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate court appears -</p>	

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	<p>(a) to have exercised a jurisdiction not vested in it by law, or</p> <p>(b) to have failed to exercise a jurisdiction so vested, or</p> <p>(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity.,</p> <p>the High Court may make such order in the case as it thinks fit."</p> <p>As such, it is very much clear from the provision itself that revision can be filed only in a matter where the order is not appealable. The Hon'ble Supreme Court of India in the matter of (2007) 3 Supreme Court Cases 175 Khajan Singh (dead) by LRs Vs. Gurbhajan Singh and others, has held that, "if there is no illegality or material irregularity found to have been committed by the learned lower court, no interference has to be made." In the case of (2003) 6 SCC 675 Suryadev Rai Vs. Ramchander Rai, the Hon'ble Apex Court held that as per Order 39 Rule 1 and Section 115 (1) of the CPC, if there is any interlocutory order, that order is no longer revisable under section 115 due to the substitution of the proviso. An interlocutory order does not finally dispose of the suit or other proceedings and as such revision is not maintainable. Therefore, it is very much clear that in this matter as well the order passed by the learned S.D.O. is an interlocutory order by which order, application has not been disposed of finally but only ad interim ex-parte injunction was denied and as such, no revision is maintainable against that order.</p> <p>As far as the third question is concerned, section 221 of the Tenancy Act is as under :-</p> <p>"221. Subordination of revenue courts - The general superintendence and control over all revenue courts shall be vested in, and all such courts shall be subordinate to the Board; and subject to such superintendence, control and subordination -</p>	

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	<p>(b) all Additional Collectors, Sub-Divisional Officers, Assistant Collectors and Tehsildars in a district shall be subordinate to the Collector thereof,</p> <p>(c) all Assistant Collectors, Tehsildars and Naib-Tehsildars in a sub-division shall be subordinate to the Sub-Divisional Officer thereof, and</p> <p>(d) all Additional Tehsildars and Naib-Tehsildars in a tehsil shall be subordinate to the Tehsildar thereof."</p> <p>The power under section 221 of the Rajasthan Tenancy Act is an extra ordinary power of the Board of Revenue. This power cannot be used in such a case. The power of general superintendence of the Board under this section can be exercised only in the case if there is any gross illegality or irregularity has been committed by the learned lower court and no remedy is available against that order. Granting or refusing the ex-parte injunction is not an order which can be said to be interfered under this section. However, this is not a fit case for interference under this section because it is the discretion of the learned lower court to provide the person ex-parte injunction or not. This petition is only the abuse of process of law which is not maintainable at all and as such this revision is liable to be dismissed at the stage of admissibility as well. Hence, the revision is hereby dismissed.</p> <p>Pronounced.</p> <p>(Satish Chand Kaushik) Member</p>	