

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Revision/LR/9867/2012/Nagaur.

Jagdish Prasad son of Jai Narain caste Brahmin resident of Madpura
Tehsil Khinvsar Distt. Nagaur.

...Petitioner.

Versus

1. Bhopal Ram so of Jai Narain caste Brahmin resident of
Madpura Tehsil Khinvsar Distt. Nagaur.
2. Sub-Registrar, Khinvsar Distt. Nagaur.
3. Tehsildar, Khinvsar Distt. Nagaur.

...Non-petitioners.

Full Bench

Shri Chandra Mohan Meena, Chairman
Shri Mool Chand Meena, Member
Shri Bajrang Lal Sharma, Member
Shri Rajendra Singh Choudhary, Member
Shri Priyavrat Pandya, Member

Present:-

Mr. Bhiyan Ram Choudhary, counsel for the petitioner.
Mr.S.P. Singh, counsel for the non-petitioner No.1.
Mrs. Poonam Mathur, Additional Govt. Advocate for the State.
Mr. Hagami Lal Choudhary, Dy. Govt. Advocate for the State.

Amicus Curiae

Mr. J.P. Mathur, Mr. S.N. Beniwal, Mr.P. S. Dashora, Mr.Duni Chand,
Mr.V.P. Singh, Mr. Vijai Soni, Mr. Pradeep Bishnoi, Mr. R.P. Sharma,
Mr. Brahmanand Sharma, Mr. G.S. Lakhawat, Mr.Vikas Parashar, Mr.
Basant Vijayvargiya, Mr. S.K. Purohit.

Case laws referred:

- *Uma Ram Vs. Panna [1985 RRD 351];*
- *Premji Ratansey Shah Vs. Union of India and others {1994, 5 SCC 547};*
- *Colgate Palmolive (India) Ltd. Vs. Hindustan Lever Limited {AIR 2001 (SC) 3105};*
- *Hindustan Petroleum Corporation Ltd. Vs. Sri Sriman Narayan & Anr. {AIR 2002 SC 2598};*
- *Smt. Vimla Devi Vs. Jang Bahadur {AIR 1977 Raj. 196};*
- *Nair Service Society Ltd Vs. K.C. Alexander & ors. {AIR 1968 SC 1165};*
- *M. Kallappa Setty Vs. M.V. Lakshminarayana Rao {AIR 1972 SC 2299};*

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- *Kayamuddin Shamsuddin Khan Vs. State Bank of India* {(1988) 8 SCC 676};
- *K. Bhaskaran Vs. Sankaran Vaidhyan Balen & Anr.* {(1999) 7 SCC 510};
- *Ramrameshwari Devi ors. Vs. Nirmala Devi and Ors.* {(2011) 8 SCC 249}
- *Swaran Singh V. State of Punjab* {(2005) 5 SCC 668};
- *Venkatasubbiah Naidu vs S. Chellappan and Ors* {AIR 2000 SC 3032};
- *Smt. Jumni versus Smt. Dhapu* {1987 RRD 123};
- *Dharm Singh versus State of Rajasthan* {1988 RRD 112};
- *Jamna Das versus Karnel Singh & others* {1991 RRD 359};
- *Jalli V. Boli* {1998 RRD 331};
- *Devilal V. Prahalad* {1988 RRD 534};
- *Ajaib Singh V. Darshan Singh* {1989 RRD 515};
- *Chhavindar Singh Vs. State of Rajasthan* {1976 RRD 591};
- *Narayan versus Bhouria* {1977 RRD 560};
- *Abdul Razaq versus Shoorvir Singh* {1979 RRD 175};
- *Hoshiyar Singh versus Ram Singh* {1981 RRD 640};
- *Guru Dayal Singh versus State of Rajasthan* {RRD 1981 NUC 67};
- *Kastoori (through LRs) & Ors. V/s. The Board of Revenue for Rajasthan & Ors* {2010 RRD 415};
- *Chanda and ors. case* {2003 (4) WLC Raj. 390};
- *UIT Jodhpur versus Thanaram & Others* {1993 RRD 683};
- *State of Rajasthan versus Krishna Nand Giri & others* {DBCWP/ No.1202/ 1982 decided on 13-11-1991};
- *Surendra Singh & others versus Kisturi & others* {2009 RRT 1094};
- *Surendra Pal Singh vs The Board Of Revenue for Rajasthan* {AIR 1994 SC 1439 =1993 SCR (3) 722 =1993 RRD 598};
- *Karan Singh v. Board of revenue, Rajasthan* {1962 Raj LW 178};
- *Permessar Singh v. Kailaspati* {AIR 1916 Pat. 292-FB};
- *Kana v. Board of Revenue* {ILR (1955) 5 Raj. 55};
- *D.L.F. Housing and Construction Co. V. Swaroop Singh* {AIR 1971 (SC) 2324};
- *Bakhtawan V. Mandir Murti Shri Thakur Ji* {1968 RRD 394};
- *Managing Director, Hindustan Aeronautics Ltd. V. Ajit Prasad* {AIR 1973 (SC) 76};
- *Suresh Chandra Nanhorya V. Rajendra Rajak and others* {2006 (7) SCC 800};
- *Harak Chand Vs. State of Rajasthan* {1970 RLW 320};
- *Bhimraj and others Vs. Board of Revenue and others* {1998 RRD 355};
- *Raja Ramkaran Vs. B. Ramulu* {AIR 1982 (A.P.) 256};
- *Sumatiben Maganlal Manani V. Uttam Chand Kashi Prasad Shah and anr.* {(2011) 7 SCC 328}

J U D G M E N T

Date: 12.3.2014

1- The case in hand was referred to Larger Bench by the honourable Member Shri B. L. Naval while hearing revision No. TA/ 9867/ 2012/ Nagaur. The brief facts of the case are that a suit under sections 88, 89, 53 and 188 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as 'the Act') along with an application under Section 212 of the Act was filed before the Assistant Collector, Khinvsar, District Nagaur. The Assistant Collector (Trial Court) passed an ex-parte order dated 05-10-2012 issuing interim temporary injunction, vide which parties were directed to maintain status quo of record and possession of the land in question. The non applicants were also restrained till the next date of hearing not to sell, mortgage or alienate the land. The case was listed for next hearing on 05-11-2012. An appeal was filed against this ex-parte ad-interim order dated 05-10-2012 before the Revenue Appellate Authority, Nagaur on 30-11-2012 under Section 225 of the Act. The Revenue Appellate Authority, while registering the appeal, on the same day passed an ex-parte ad-interim order and execution of the Trial Court's order dated 05-10-2012 was stayed till the next date of hearing, against which a revision petition was filed by the petitioner Jagdish Prasad before the Board under Section 230 read with Section 221 of the Act, which came for hearing before the learned Single Bench.

2- During the course of hearing, two inconsistent sets of pronouncements regarding maintainability of revision in the Board against ex-parte ad-interim orders passed by Revenue Appellate Authority were submitted before the learned Single Bench. One set of judgments referred was that revision under Section 230 of the Act against an ex-parte interim order passed by the Revenue Appellate Authority is not maintainable in the Board. The another set of authorities was that when the lower court has committed material irregularity in passing ex-parte ad-interim stay order or when it has exceeded its jurisdiction in passing such an ex-parte ad-interim order, the Board can interfere with such an ad-interim order through a revision under Section 230 or 221 of the Act. The learned Single Bench after hearing the arguments and after going through various pronouncements of the Board, observed that it is not possible for the Single Bench to draw a conclusion in this regard unless a Larger Bench of the Board examines the issue and sets a clear law on maintainability of such revision petitions. Though the learned Single Bench has not framed any specific point of reference for consideration of the Larger Bench, however operative part of decision dated 30-04-2013 passed by the referring Bench contains some implied issues for consideration. It is proper to quote hereunder, the operative part of the reference dated 30-04-2013:-

“हमारे समक्ष यह स्थिति है कि कौन से न्यायिक दृष्टान्तों को माना जाकर हस्तगत प्रकरण में निर्णय किया जाना चाहिये एवं कौन से दृष्टान्तों को नहीं मान कर प्रकरण को ग्राह्यता के स्तर पर ही खारिज किया जावे। इस बाबत एकल पीठ के स्तर पर किसी प्रकार की राय प्रकट करना अथवा अवधारणा बनाना उचित नहीं होगा। अतः प्रकरण माननीय अध्यक्ष महोदय को इस आशय के साथ प्रेषित किया जाता है कि इस एकल पीठ के समक्ष प्रस्तुत धारा 230 सपठित धारा 221 व धारा 212 अधिनियम, 1955 के तहत प्रस्तुत निगरानी को पोषणीय माना जावे अथवा नहीं माना जावे? साथ ही धारा 221 अधिनियम, 1955 में प्रदत्त शक्तियों का उपयोग कर मण्डल कोई ऐसा आदेश पारित कर सकता है जिसे अधीनस्थ न्यायालय ने गुणावगुण पर निर्णीत कर दिया है, एवं जिसके विरुद्ध न तो निगरानी पोषणीय है व न ही अपील का प्रावधान है। इस बाबत एक वृहद पीठ का गठन किया जाकर उनके समक्ष इस प्रश्न का प्रत्युत्तर प्राप्त करना उचित होगा। अतः प्रकरण उक्त निवेदन के साथ माननीय अध्यक्ष महोदय को प्रेषित किया जावे। निबन्धक, राजस्व मण्डल राजस्थान, अजमेर को वास्ते अग्रिम कार्यवाही पत्रावली प्रेषित की जाती है।”

3- The Hon'ble Chairman initially constituted a Larger Bench consisting of three members to answer the issues posed in the reference, but thereafter on 08-11-2013, some of the learned members of the Bar requested the Larger Bench to constitute a Bench consisting of at least five members, as in 1985 a Larger Bench was constituted in the case of Uma Ram Vs. Panna (1985 RRD 351) which had answered almost the similar legal issue. The learned members of the Bar apprised the Larger Bench that in the garb of the judgment rendered in the case of Uma Ram Vs. Panna (1985 RRD 351), rampant misuse of jurisdiction and arbitrariness by the Appellate Courts have been noticed. It has also escalated the multiplicity of the proceedings in the courts. Therefore, the Larger Bench's decision in Uma Ram's case dated 26-02-1985 also now warrants re-examination with a holistic approach in this case of vital consequence. In these circumstances, the larger bench further requested the Hon'ble Chairman to constitute a five members' Bench to decide the issues emanating from the matter under reference. On the request of the larger bench, the Hon'ble Chairman constituted a five member Bench (the present Full Bench) to adjudicate the matter under reference.

4- The Full Bench heard the case on 02-01-2014. The learned counsels of the parties, and other learned members of the Bar as amici curiae argued at length on the powers of the Trial Court under Section 212 of the Act, on applicability of provisions of orders 39 and 40 of the Code of Civil Procedure (hereinafter referred to as 'the Code') while adjudicating an application for temporary injunction and appointment of receiver, on the powers of the Appellate Court under Section 225 of the Act and also on the powers of the Board of Revenue under Section 230 read with Section 221 or solely under Section 221 of the Act.

5- During hearing of the case, an important issue was raised before this Bench as to whether some provisions of Orders 39 and 40 of the Code can be made applicable in the process of deciding an

application for temporary injunction and appointment of receiver by Revenue Courts? After having heard the learned members of the Bar, this Bench is of the view that issues for adjudication be framed on the basis of the operative part of the order of the learned referring Bench and on the other aspects of the controversies emerged during the course of hearing of the case. On the basis of observations of the learned referring Bench mentioned hereinabove and on the basis of arguments advanced by the learned members of the Bar, this bench finds that issues to be considered, decided and answered by this Bench are, mainly, as under:-

(1) Whether a Revenue Court is competent for granting an ex-parte or ad-interim ex-parte temporary injunction or for passing an ex-parte order of appointment of a receiver under section 212 of the Act; and Whether provisions of order 39 and 40 of the code of civil procedure are applicable when an application under 212 of the Act is adjudicated before a revenue court?

(2) Whether the Revenue Appellate Authority has jurisdiction under section 225 of the Act to entertain appeal against an ex-parte or ad-interim ex-parte order passed by a Trial Court; and whether the law laid down by the Larger Bench in the case of Uma Ram vs. Panna (1985 RRD 351) is still a good law?

(3) Whether a revision petition under section 230 of the Act is maintainable before the Board against an ex-parte or ad-interim order passed by the Trial Court or the Appellate Court; and whether provisions of section 221 of the Act can be exercised by the Board in routine matters of revisions relating to interim orders along with section 230 of the Act or independently under section 221 of the Act?

6- Heard the learned counsels of the parties and *amici curiae* in the matter.

7- Mr. Bhiyan Ram, the learned advocate appearing on behalf of the petitioner in this case, contended that the impugned order passed by the learned Appellate Court was simply an arbitrary exercise of jurisdiction as it had no plausible ground to interfere with the ex-parte ad-interim order passed by the learned Trial Court. He submitted that the ad-interim order passed by the learned Trial Court was in larger interest of justice and on the day of filing the appeal before the Appellate Court, the impugned order passed by the trial court was not even in force because it was effective till 05-11-2012 only. He further argued that learned appellate court arbitrarily interfered in a time bound interim order passed by the Trial Court; though the appeal was even not maintainable before the Appellate Court. The Appellate Court virtually allowed the appellants to alienate the disputed land resulting in multiplicity of proceedings. He finally urged the court that there should be explicit guidelines for the Trial Courts as well as for the Appellate

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Courts to deal with such matters so that equity and consistency can be maintained in the justice delivery system.

8- Mr. Sohan Pal Singh, the learned counsel appearing for the non-petitioner No. 1 contended that the impugned interim order dated 05-10-2012 passed by the Trial Court was illegal and capricious which could be assailed in appeal under Section 225 of the Act. He submitted that the provisions of Section 225 of the Act are very distinct and provide for appeal not only against a final order but also against such other orders as are mentioned under Section 212 of the Act and Section 104 of the Code. On issuance of ex-parte ad-interim order or any other order passed by the Trial Court, the aggrieved party has two options before it. Firstly, it can file objections before the same Trial Court on the next date of hearing or secondly, to file an appeal under Section 225 of the Act before the Appellate Court. The learned advocate further submitted that, in the matter in hand, the learned Appellate Court has judiciously exercised its jurisdiction as provided under section 225 of the Act, but as the impugned order passed by the Appellate Court is an ad-interim order, therefore, no revision is maintainable under Section 230 of the Act before the Board of Revenue as it does not fall in the category of a case decided. The learned advocate relied upon authorities reported at 2008 RRD 710 and 840, 2006 (1) RRT 637, 2006(2) RRT 105, 1980 RRD 1, 2009 RRT 291 and 2012 RRT 881 in support of his arguments.

9- Mr. Hagami Lal, learned Deputy Government Advocate contended that Section 212 of the Act empowers the Trial Court to pass an order of temporary injunction on the basis of the revenue record and affidavits filed by the petitioner, but there is no clear provision for issuing an ad-interim ex-parte order of temporary injunction or appointment of a receiver in the Act. He submitted that the provisions of Section 212 of the Act are in variance from Order 39 Rule 1 and 2 of the Code, under which the Trial Court has powers to pass an ad-interim ex-parte orders on the basis of material available before it. He also argued that Section 225 of the Act empowers the Appellate Court to hear appeals against any order passed by the Trial Court, but the Appellate Court should also ensure that an ex-parte ad-interim order passed by it does not result in multiplicity of proceedings and gross injustice to the other party. He vehemently argued that the decision by Larger Bench in Uma Ram's case (1985 RRD 351) needs to be re-visited as the jurisdiction of the Appellate Court cannot be invoked in all the orders passed by the Trial Court, as this jurisdiction is not absolute but somewhat restrictive. He submitted that scope of jurisdiction under Section 225 and 230 also needs to be re-examined as liberal and inconsistent views of the Courts have opened the floodgates of litigation in appellate and revisional courts. The provisions under Section 230 of the Act provide adequate powers to the Board for call for the record and examine the final orders in a decided case. He argued that no revision can be entertained against an ad-interim order passed by the Trial Court or by the Appellate Court before the Board of Revenue under Section

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230 of the Act. The Board of Revenue has the extra ordinary jurisdiction of general superintendence and control over sub-ordinate Revenue Courts under Section 221 of the Act. The Board, under provisions of Section 221 of the Act is fully empowered to examine any order passed by any subordinate Court wherein miscarriage of justice has taken place or manifest irregularity has been committed. He finally contended that the jurisdiction conferred to the Board under Section 221 of the Act is a special jurisdiction which should be sparingly exercised only where public interest has suffered or a gross injustice has been caused.

10- Mr. J.P. Mathur, learned advocate contended that it is not mandatory for the Trial Court to hear both the parties on an application for temporary injunction under section 212 of the Act, but it has powers to pass an ex-parte order when it finds that there is a prima facie case and balance of convenience in favour of the petitioner and there is a threat of irreparable loss. The learned advocate submitted that Rajasthan Tenancy Act, 1955 is a special enactment and provisions of Section 212 of the Act are not at par with the provisions of Order 39 of the Code. As per section 208 of the Act, the provisions of the Code will apply only where there is no provision in the Tenancy Act. He also reiterated that an ex-parte ad-interim order is appealable before the Appellate Court under Section 225 of the Act as held by Larger Bench of this court in 1985 RRD 351. He also submitted that an ad-interim ex-parte order passed by any subordinate Revenue Court cannot be assailed in revision before the Board of Revenue under Section 230 of the Act. He submitted that the Board has unfettered powers under Section 221 of the Act to set right the manifest and gross irregularities committed by the subordinate Courts, and the Board cannot put an embargo on its own powers conferred under the statute. He also put a word of caution that powers under section 221 of the Act are not to be exercised in a routine manner as these powers are extraordinary powers which should be used in rare circumstances. In the last, he submitted that provisions of section 221 of the Act are not an alternative or short cut to Section 230 of the Act and, therefore, the powers under Section 221 of the Act should be exercised with due care.

11- Mrs. Poonam Mathur, learned Additional Govt. Advocate also argued that Board has powers under Section 221 of the Act to interfere with ad-interim ex-parte orders passed by any subordinate Revenue Court where gross injustice has been caused and the public interest has suffered. She also emphasized that the scope of appeals under Section 225 of the Act requires a holistic interpretation so that the independent functioning of the Trial Courts can be protected and the multiplicity of proceedings can be bridled. To avoid multiplicity of proceedings and complexities in the delivery of justice, the Board should exercise these powers and issue guidelines to streamline the justice dispensation system in Revenue Courts.

12- Mr. Dunichand, learned advocate contended that the Larger Bench in the decision in Uma Ram's case (1985 RRD 351) interpreted the provisions of law in such a manner that the litigation escalated

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manifold in Appellate Courts and widespread misuse of jurisdiction has been observed. The Appellate Courts were found exercising their appellate jurisdiction under Section 225 of the Act in a most casual manner. He argued that when an ad-interim ex-parte order has been passed for a specific period by a the Trial Court, the Appellate Court has no business to interfere with such order under the jurisdiction provided under Section 225 of the Act. He also submitted that when the Trial Court passes an order till next date of hearing only, the parties should be directed to file their objections only before the Court issuing such interim order and no appeal should be entertained against such an ad-interim ex-parte order. He apprised the court that even the Trial Courts are not adhering the mandatory provisions of Order 39 Rule 3 and 3-A of the Code which has resulted in miscarriage of justice. The learned advocate vehemently argued that Courts do exist for mitigating the hostilities amongst parties and not to add fuel to fire. And in such circumstances, the Board should also exercise its jurisdiction under Section 221 of the Act in appropriate cases for curbing glaring irregularities of the lower courts, but such powers should not be used in ordinary course. He submitted that there is steep rise in revisions in the Board under Section 230 of the Act against interim orders which are even not maintainable. The learned advocate urged that there should be crystal clear guidelines issued by Board of Revenue for subordinate Revenue Courts and Board itself for the sake of consistency in exercise of powers under Section 212, 225, 230 and 221 of the Act. He finally submitted that harsh remedies like appointment of receiver should not be resorted to ex-parte and the erring presiding officers who are in habit of exercising their jurisdiction negligently should be brought to books so that judicial decorum and discipline becomes the routine order in subordinate Revenue Courts of the state.

13- Mr. S. Beniwal, learned counsel contended that when an ad-interim ex-parte order is passed by the Trial Court under Section 212 of the Act, the aggrieved party has the right to file the objections/ reply before the Trial Court itself or to file an appeal, therefore, as per the Apex Court's decision rendered in 2000 AIR (SC) 3032 the powers of Appellate Court cannot be curbed. He also emphasized that every case should be examined on merits whether the impugned order is ad-interim or final?

14- Mr. Pradeep Bishnoi, learned counsel reiterated the view that even the ad-interim orders are appealable under Section 225 of the Act and the Board should also exercise its jurisdiction under section 221 of the Act, where there is a manifest illegality in the impugned order. He also submitted that revisions under Section 230 of the Act are not maintainable against interim orders passed by Trial Courts or Appellate Courts. The powers of the Board are quite wide under Section 221 of the Act and should be exercised sparingly in appropriate cases.

15- Learned counsel, Mr. G.S. Lakhawat has argued that the Larger Bench's decision passed in the case of Uma Ram Vs. Panna,

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(1985 RRD 351), is a good law and there is hardly anything in this judgment which warrants review, as it has only held that Section 225 of the Act empowers the Appellate Courts to hear appeals against such ad-interim ex-parte orders which have been passed after due application of mind and appreciation of evidence available on file. He contended that no water-tight-lines should be drawn for defining the jurisdiction of the Courts, but the provisions of law should be clarified and interpreted in a just manner, so that the subordinate Courts take a consistent view in light of such lucid interpretation.

16- Mr. P.S. Dashora, learned advocate contended that the Trial Court has unrestricted powers to grant a temporary injunction under Section 212 of the Act. He also contended that a Court equipped with powers to grant a final relief can also grant an interim relief. So the Trial Court having powers to pass an order of temporary injunction can also pass an ex-parte ad-interim order to grant a temporary injunction or to appoint a receiver, if larger interest of justice so warrants. He argued that the provisions of Section 225 evidently empower the Appellate Court to hear appeals against any order, whether final or interim, passed by the Trial Court. Consequently, any ad-interim ex-parte order can be appealed under Section 225 of the Act by the aggrieved party. The learned advocate also submitted that the judgment given by the Larger Bench in the case of Uma Ram Vs. Panna, reported at 1985 RRD 351, is a correct judgment providing lucid interpretation to the existing provisions of the law. He also submitted that the court is under statutory obligation to comprehend and interpret the intent of the legislation in every provision of law.

17- Mr. Vikas Parashar, the learned advocate contended that the parties involved in a case, sometimes, do want to alienate their land involved in the dispute for genuine domestic necessity. Therefore, sale of land should not be taken as a disobedience of the court's order in every case. He submitted that, sometimes, the Trial Court, without affording opportunity for hearing to the opposite party, orders for maintaining the status quo of record and possession and also for not alienation of the land. But the parties involved in the litigation need liquidity and for that sake the land is disposed of by seeking appropriate orders from the Appellate Court. Therefore, it should not casually be taken that orders passed for restraining alienation is always in larger interest of justice.

18- Mr. V.P. Singh, Mr. R.P. Sharma, Mr. Brahmanand Sharma, Mr. S.K. Purohit also contributed substantially by submitting their contentions, reiterating the views expressed by other members of the Bar as hereinabove, in this case.

19- In order to adjudicate the issue in entirety it will be appropriate to start from the stage of the Trial Court where the application under Section 212 of the Act is initially filed along with a

regular suit by a party. We are aware that the existing laws regulating the tenancies of agricultural lands in the State are special laws which have been brought by the popular Government in 1955-1956 as a measure of land reforms. Ordinarily, the procedure for conducting the proceedings in Revenue Courts has been laid down in the Act itself or in the Revenue Courts Manual. The extent of applicability of provisions of the Code of civil procedure has also been specifically provided under Section 208 of the Act. The provisions of section 212 of the Act for granting a temporary injunction and appointment of a receiver are not akin to the provisions of Orders 39 and 40 of the Code, wherein the provisions of temporary injunction and appointment of receiver have been provided. For ready reference, the provisions of Section 212 of the Act are being reproduced as under:-

“Section 212- Provision for injunction and appointment of a receiver-

(1) If in the course of any suit or proceeding under this Act, it is proved by affidavit or otherwise-

(a) that any property to which such suit or proceeding relates is in danger of being wasted, damaged or alienated by any party thereto, or

(b) that any party to such suit or proceeding threatens or intends to remove or dispose of the said property in order to defeat the ends of justice, the court may grant a temporary injunction and, if necessary, appoint a receiver.

(2) Any person against whom an injunction has been granted or in respect of whose property a receiver has been appointed under sub-section (1) may offer cash security in such amount as the court may determine to compensate the opposite party in case the suit or proceedings is decided against such persons, and on depositing the amount of such security, the court may withdraw the injunction or the order appointing a receiver, as the case may be.”

20- The plain reading of the provisions stated hereinabove manifestly reveal that this special statute regulating the agricultural tenancies in the State does provide the provisions for granting temporary injunction and appointment of receiver in appropriate cases.

21- It is evident that Section 212 of the Act empowers the Court to grant a temporary injunction and, if necessary, to appoint a receiver. Before granting a temporary injunction or appointing a receiver, the Court has to satisfy itself, by affidavit or otherwise evidence adduced by the party seeking such temporary injunction or appointment of receiver, that the suit property is in danger of being wasted, damaged or alienated by any party thereto; or that any party to such suit or proceeding threatens or intends to remove or dispose of the said property in order to

defeat the ends of justice. Further, this Section empowers the Court, on request of the party against whom an injunction has been granted or in respect whose property a receiver has been appointed, to withdraw the injunction or the order of appointment of a receiver, if such party offers and deposits cash security in such amount as determined by the Court.

22- The said Section 212 is silent about affording opportunity of hearing to the opposite party before granting a temporary injunction or appointing a receiver. The Section also does not contain any express provision for granting an ex-parte temporary injunction or ad-interim ex-parte temporary injunction, or for passing an ex-parte or ad-interim ex-parte order of appointment of a receiver. However, it has been in practice in Revenue Courts, since long, to grant an ex-parte or an ad-interim ex-parte temporary injunction. Even ex-parte or ad-interim ex-parte orders of appointment of a receiver are also being issued by the Courts in a casual manner. **The question before us is, that when there is no provision in the Section 212 of the Act of 1955, for granting an ex-parte or ad-interim ex-parte temporary injunction or for issuing an ex-parte or ad-interim ex-parte order of appointment of a receiver, under what provisions of law, such ex-parte or ad-interim ex-parte orders are being passed, without affording opportunity of hearing or even without issuing notices to the opposite party?**

23- During course of arguments in the present case, our attention has also been attracted to Order 39 of the Code, to the extent of granting an ex-parte or ad-interim ex-parte temporary injunction. The Rule-1 of the Order 39 of the Code provides for granting a temporary injunction and Rules-3 and 3A provide for ex-parte or ad-interim ex-parte order of temporary injunction. We deem it proper to reproduce the said Rules 1, 3 and 3-A of order 39 of the Code as under:-

Order 39 Rule 1, 3 and 3A of the Code

“Rule-1. Cases in which temporary injunction may be granted:

Where in any suit it is proved by affidavit or otherwise-

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,]

the Court may be order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property 3[or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further orders.”

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“Rule-3. Before granting injunction, Court to direct notice to opposite party:

The Court shall in all case, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party:

Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay, and require the applicant-

(a) to deliver to the opposite party, or to send to him by registered post, immediately after the order granting the injunction has been made, a copy of the application for injunction together with-

- (i) a copy of the affidavit filed in support of the application;*
- (ii) a copy of the plaint; and*
- (iii) copies of documents on which the applicant relies, and*

(b) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent.”

“Rule-3A. Court to dispose of application for injunction within thirty days:

Where an injunction has been granted without giving notice to the opposite party, the Court shall make an endeavour to finally dispose of the application within thirty days from the date on which the injunction was granted; and where it is unable so to do, it shall record its reasons for such inability.”

24- Hon’ble Apex Court held in the case of Premji Ratansey Shah Vs. Union of India and others (1994, 5 SCC 547) that a temporary injunction should be granted by a court after considering all the *pros* and *cons* of the case in a given set of facts to protect the possession of a lawful owner. The relevant extract of the judgment is reproduced as under:-

“5. It is equally settled law that injunction would not be issued against the true owner.... even assuming that they had any possession, their possession is wholly unlawful possession of a trespasser and an injunction cannot be issued in favour of a trespasser or a person who gained unlawful possession, as against the owner. Pretext of dispute of identity of the land should not be an excuse to claim injunction against true owner.”

25- In the case of Colgate Palmolive (India) Ltd. Vs. Hindustan Lever Limited, AIR 2001 (SC) 3105, the Hon’ble Supreme Court has held as under :-

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“24. We, however, think it fit to note herein below certain specific considerations in the matter of grant of interlocutory injunction, the basic being non-expression of opinion as to the merits of the matter by the court, since the issue of grant of injunction usually, is at the earliest possible stage so far as the time-frame is concerned. The other considerations which ought to weigh with the court hearing the application or petition for the grant of injunctions are as below:-

- (i) Extent of damages being an adequate remedy;*
- (ii) Protect the plaintiff's interest for violation of his rights though however having regard to the injury that may be suffered by the defendants by reason therefore;*
- (iii) The court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the others;*
- (iv) No fixed rules or notions ought to be had in the matter of grant relief of injunction but on the facts and circumstances of each case the relief being kept flexible;*
- (v) The issue is to be looked from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case;*
- (vi) Balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant;*
- (vii) Whether the grant or refusal of injunction will adversely affect the interest of general public which can or cannot be compensated otherwise”.*

26- In the case of Hindustan Petroleum Corporation Ltd. Vs. Sri Sriman Narayan & Anr., AIR 2002 SC 2598, the Hon'ble Supreme Court explained the purpose of grant of temporary injunction, observing as under:-

“7. It is elementary that grant of an interlocutory injunction during the pendency of the legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court normally applies the following tests:-

- (i) whether the plaintiff has a prima facie case;*
- (ii) whether the balance of convenience is in favour of the plaintiff; and*
- (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed”.*

“8. The decision whether or not to grant an interlocutory injunction has to be taken at the time when the exercise of the legal right asserted by the plaintiff and its alleged violation are both contested and remain uncertain till they are established on evidence at the trial. The relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before which that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately

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compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against the injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the “balance of convenience lies. (See Gujarat Bottling Company Ltd. and others V. Coca Cola Co and others (1995) 5 SCC 544.”

27- In the case of Smt. Vimla Devi Vs. Jang Bahadur, AIR 1977 Raj. 196, the Hon’ble Rajasthan High Court held as under:-

“The order refusing temporary injunction is of a discretionary character. Ordinarily court of appeal will not interfere with the exercise of discretion by the trial court and substitute for it its own discretion. The interference with the discretionary order, however, may be justified if the lower court acts arbitrarily or perversely, capriciously or in disregard of sound legal principles or without considering all the relevant records.... A mere possibility of the Appellate Court coming to a different conclusion on the same facts and evidence will also not justify interference..... The appellate court would be acting contrary to the well established principles more so when it does not deal with the reasoning that prevailed with the trial court and further when it does not apply its judicial mind on the materials placed on the record.....A prima facie case implies the probability of the plaintiff obtaining a relief on the materials placed before the court at the stage. Every piece of evidence produced by either party has to be taken into consideration in deciding the existence of a prima facie case to justify issuance of a temporary injunction....”

28- Hon’ble Apex court has also held in the case of Nair Service Society Ltd Vs. K.C. Alexander & ors., AIR 1968 SC 1165 that Interim order should not be passed in favour of dishonest person or where the suit is not maintainable at all, for the reasons that this is the relief in equity and the court should not help a person who has not come to the court with clean hands. No interim relief can be granted to protect the unauthorized possession of a trespasser or a person not in possession at all. This view of the Hon’ble apex court has been restated in M. Kallappa Setty Vs. M.V. Lakshminarayana Rao, AIR 1972 SC 2299; Kayamuddin Shamsuddin Khan Vs. State Bank of India (1988) 8 SCC 676; and K. Bhaskaran Vs. Sankaran Vaidhyan Balen & Anr. (1999) 7 SCC 510.

29- Hon,ble Apex court, in the case of Ramrameshwari Devi ors. Vs. Nirmala Devi and Ors.,(2011) 8 SCC 249 has restated that the court should be extra cautious while granting ex parte ad interim injunctions as such orders have the potential to create havoc in

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somebody's life and to get such orders vacated is a herculean task in the present system. The relevant extracts of the judgment are reproduced here:-

“45....It is a matter of common experience that court's otherwise scarce and valuable time is consumed or more appropriately wasted in a large number of uncalled for cases.

46. Usually the court should be cautious and extremely careful while granting ex-parte ad interim injunctions. The better course for the court is to give a short notice and in some cases even dasti notice, hear both the parties and then pass suitable biparte orders. Experience reveals that ex-parte interim injunction orders in some cases can create havoc and getting them vacated or modified in our existing judicial system is a nightmare. Therefore, as a rule, the court should grant injunction or stay order only after hearing the defendants or the respondents and in case the court has to grant ex-parte injunction in exceptional cases then while granting injunction it must record in the order that if the suit is eventually dismissed, the plaintiff or the petitioner will have to pay full restitution, actual or realistic costs and mesne profits.

48. It is also a matter of common experience that once an ad interim injunction is granted, the plaintiff or the petitioner would make all efforts to ensure that injunction continues indefinitely. The other appropriate order can be to limit the life of the ex-parte injunction or stay order for a week or so because in such cases the usual tendency of unnecessarily prolonging the matters by the plaintiffs or the petitioners after obtaining ex-parte injunction orders or stay orders may not find encouragement. We have to dispel the common impression that a party by obtaining an injunction on even false averments and forged documents will tire out the true owner and ultimately the true owner will have to give up to the wrongdoer his legitimate profit. It is also a matter of common experience that to achieve clandestine objects, false pleas are often taken and forged documents are filed indiscriminately in our courts because they have hardly any apprehension of being prosecuted for perjury by the courts or even pay heavy costs. In Swaran Singh V. State of Punjab (2005) 5 SCC 668 this court was constrained to observe that the perjury has become a way of life in our courts”.

(Emphasis given)

Applicability of Order 39 Rule 1, 3 and 3A of the Code to proceedings under section 212 of the Act of 1955:

30- Section 208 of the Act 1955 provides for applicability of various provisions of the Code in revenue suits and proceedings under Tenancy Act of 1955. The said provisions of section 208 of the Act are as under:-

“208. Application of Civil Procedure Code- *The provisions of the Code of Civil Procedure, 1908 (Central Act V of 1908), except:*

- (1) provisions inconsistent with anything in this Act, so far as the inconsistency extends,*
 - (2) provisions applicable only to special suits or proceedings outside the scope of this Act, and*
 - (3) provisions contained in List I of the Fourth Schedule,*
- shall apply to all suits and proceedings under this Act, subject to the modifications contained in List II of the Fourth Schedule.”*

31- It is evident from perusal of section 208 as above that:-

- (1) Provisions of the Code contained in List I of the Schedule-IV of the Act of 1955 shall not apply to the suits and proceedings under the Act.
- (2) Provisions contained in List II of the said Schedule-IV shall apply with modifications as provided in that List II itself.
- (3) Provisions of the Code which are inconsistent with anything contained in the Act of 1955, shall not apply to the suits and proceedings under the Act, to the extent of such inconsistency.
- (4) Provisions of the Code applicable only to special suits and proceedings out side the scope of the Act of 1955, shall not apply to the suits and proceedings under the Act.

32- The Order 39 of the Code is neither included in the List I nor in the List II of Schedule IV of the Act of 1955. Consequently, provisions of Order 39 are applicable while adjudicating application under section 212 of the Act to the extent of granting an ad-interim ex-parte temporary injunction. So far as inconsistency with provisions of Section 212 of the Act is concerned, there being no exclusion of Order 39 of the Code from application on the proceedings under the Act, we are of the view that that Rules 1, 3 and 3A of the Code are applicable to proceedings under Section 212 of the Act of 1955 to the extent of granting temporary injunction, if it appears to the Court that the object of granting an injunction would be defeated by the delay, the Court may for the reasons to be recorded, grant an ex-parte or ad-interim ex-parte temporary injunction under Rule 3 and 3A of the order 39 of the Code.

33- We are also of the view that the power of the Court to grant an ex-parte or ad-interim ex-parte temporary injunction under Rule 3 of Order 39 of the Code is subject to provisions of Rule 3A of the said Order. The Rule 3A provides that where an ex-parte or ad-interim ex-parte injunction has been issued by the Court in terms of Rule 3 of Order 39 of the Code, the Court shall try hard to dispose of the application within 30 days from the date on which such ex-parte or ad-interim ex-parte injunction was granted. Even, if the court is not able to dispose of such application within 30 days from the date of such injunction, it shall record its reasons for such inability. Mere perusal of the said Rule 3A reveals that provisions therein are mandatory.

34- Rule 3 with its proviso and Rule 3A of the Order 39 of the Code, on one hand casts a mandatory and dual duty upon the Court, firstly to record reasons compelling for granting an ex-parte injunction and secondly to dispose of the application finally within 30 days from the date of such injunction. On the other hand, these rules cast a mandatory duty also upon the party in whose favour an ex-parte order has been passed, to perform the obligations as enumerated in clauses (a) and (b) of the proviso to Rule 3 of Order 39 of the Code, i.e. to deliver notice to the opposite party, or to send notice to him by registered post immediately after the order granting the injunction has been made, and a copy of the application for injunction together with (i) a copy of the affidavit filed in support of the application; (ii) a copy of the plaint; and (iii) copies of documents on which the applicant relies, and also to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent.

35. Hon'ble Supreme Court in the case of A. Venkatasubbiah Naidu vs S. Chellappan and Ors (AIR 2000 SC 3032) has elaborately discussed the scope of Order 39, Rule 3 and 3A of the Code, and at the same time it has given a very stringent observation on non-compliance of mandatory provisions of Rule 3 and 3A of Order 39 of the Code in matters of ex-parte or ad-interim ex-parte orders of temporary injunction. The appropriate extracts of the judgment are reproduced here:-

*“12. What would be the position if a court which passed the order granting interim ex parte injunction did not record reasons thereof or did not require the applicant to perform the duties enumerated in clauses (a) & (b) of Rule 3 of Order 39. In our view such an Order can be deemed to contain such requirements at least by implication even if they are not stated in so many words. But if a party, in whose favour an order was passed ex parte, fails to comply with the duties which he has to perform as required by the proviso quoted above, he must take the risk. Non-compliance with such requisites on his part cannot be allowed to go without any consequence and to enable him to have only the advantage of it. **The consequence of the party (who secured the order) for not complying with the duties he is required to perform is that he cannot be allowed to take advantage of such order if the order is not obeyed by the other party. A disobedient beneficiary of an order cannot be heard to complain against any disobedience alleged against another party.***

16. The aforesaid Rule casts a three-pronged protection to the party against whom the ex parte injunction order was passed. First is the legal obligation that the Court shall make an endeavour to finally dispose of the application of injunction within the period of thirty days. Second is, the legal obligation that if for any valid

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reasons the Court could not finally dispose of the application within the aforesaid time the Court has to record the reasons thereof in writing.

17. What would happen if a Court does not do either of the courses? We have to bear in mind that in such a case the Court would have by-passed the three protective humps which the legislature has provided for the safety of the person against whom the order was passed without affording him an opportunity to have a say in the matter. First is that the Court is obliged to give him notice before passing the order. It is only by way of a very exceptional contingency that the Court is empowered to by-pass the said protective measure. Second is the statutory obligation cast on the Court to pass final orders on the application within the period of thirty days. Here also it is only in very exceptional cases that the Court can by-pass such a rule in which cases the legislature mandates on the court to have adequate reasons for such by-passing and to record those reasons in writing. If that hump is also by-passed by the Court it is difficult to hold that the party affected by the order should necessarily be the sole sufferer.

18. It is the acknowledged position of law that no party can be forced to suffer for the inaction of the court or its omissions to act according to the procedure established by law. Under the normal circumstances the aggrieved party can prefer an appeal only against an order passed under Rules 1, 2, 2A, 4 or 10 of Order 39 of the Code in terms of Order 43 Rule 1 of the Code. He cannot approach the appellate or revisional court during the pendency of the application for grant or vacation of temporary injunction. In such circumstances the party who does not get justice due to the inaction of the court in following the mandate of law must have a remedy. So we are of the view that in a case where the mandate of Order 39 Rule 3A of the Code is flouted, the aggrieved party, shall be entitled to the right of appeal notwithstanding the pendency of the application for grant or vacation of a temporary injunction, against the order remaining in force. In such appeal, if preferred, the appellate court shall be obliged to entertain the appeal and further to take note of the omission of the subordinate court in complying with the provisions of Rule 3A. In appropriate cases the appellate court, apart from granting or vacating or modifying the order of such injunction, may suggest suitable action against the erring judicial officer, including recommendation to take steps for making adverse entry in his ACRs. Failure to decide the application or vacate the ex-parte temporary injunction shall, for the purposes of the appeal, be deemed to be the final order passed on the application for temporary injunction, on the date of expiry of thirty days mentioned in the Rule.”

Emphasis supplied

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36- Therefore, when an ex-parte or ad-interim ex-parte injunction is issued by the Court, the party in whose favour such ex-parte injunction is passed and the Court, both have to comply with provisions of said Rule 3 and 3A of the Code. Since provisions of Order 39 of the Code are applicable to proceedings under the section 212 of the Act, **this Bench finds it appropriate to direct all the revenue courts subordinate to the Board of Revenue, that in proceedings under section 212, if the Court is of the opinion that granting of an ex-parte temporary injunction or an ad-interim ex-parte temporary injunction is necessary to protect the suit land from being damaged, wasted or alienated; or that time taken in issuing notices and affording opportunity of hearing to the opposite party may defeat the ends of justice, the court in exceptional cases, may grant an ex-parte temporary injunction or an ad-interim ex-parte temporary injunction complying with provisions of Rule 3 and 3A of Order 39 of the code, recording its speaking reasons. If the Court fails to comply with the provisions of Rule 3 and 3A of the Code, such an ex-parte temporary injunction or an ad-interim ex-parte temporary injunction shall not last for more than 30 days from the date of issue, and the Court shall pass a fresh order after hearing the opposite party within such period of 30 days. The mandate of the order 39 Rule 3 and 3 A which empowers a court to pass an ex parte ad interim order is only for 30 days. At the same time, if the party in whose favour an ex-parte or ad-interim ex-parte order of injunction has been passed, fails to comply with provisions of clauses (a) and (b) of the proviso to the rule 3 of the order 39 of the Code, such failure disentitles him to take advantage of such an order if the order is not obeyed by the other party.**

Oder of appointment of a receiver under section 212 of the Act:

37- Section 212 (1) of the Act of 1955 empowers the Court to appoint a receiver. The Section provides that if the suit property is in danger of being wasted, damaged or alienated by any party thereto, or if any party to the litigation threatens or intends to remove or dispose of the said property in order to defeat the ends of justice, the court may grant a temporary injunction and, if necessary, appoint a receiver.

38- Apparently, grounds for granting a temporary injunction and appointing a receiver are the same, and no additional grounds have been provided under Section 212 of the Act for necessitating the appointment of a receiver. But, if we examine these provisions minutely, it will reveal that the legislature has basically empowered the Court only for granting the temporary injunction. But, **if necessary**, the court may also appoint a receiver. Thus provisions empowering the Court to appoint a receiver are prefixed with the expressions, **“if necessary”**, which make us to understand that if the Court is satisfied that mere granting of a temporary injunction will not suffice, and it is necessary to appoint a receiver for saving the property from being wasted, damaged or alienated or from being removed or disposed, then the Court, after

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recording reasons for it, may appoint a receiver to take possession of the property and manage it.

39- It has been held, time and again, by the superior Courts and the Board also, that appointment of a receiver is the harshest remedy and it should be resorted to as the last remedy and that too only in exceptional cases. There is a series of pronouncements in this regard, and the law in this matter is well established. Therefore, without referring to any such pronouncement, **we with a considered view hold again, that provisions of appointing a receiver should be invoked only as a last remedy and that too in the rarest of rare cases. While passing an order for appointment of a receiver, the court should record its reasons as to why it is not possible, without appointing the receiver, to protect the suit land from being wasted, damaged or alienated or to save it for the ends of justice.**

An ex-parte or ad-interim ex-parte order of appointment of a receiver under section 212 of the Act, :

40- Now, the question is whether the Court is empowered to pass an ex-parte or ad-interim order for appointment of a receiver. Section 212 of the Act, does not contain any express provisions in this regard. The Order 40 of the Code provides the procedural law for appointment of a receiver. But in the said Order 40 too, there is no express provisions for ex-parte or ad-interim ex-parte order of appointment of a receiver. Thus, the Code provides for granting an *ex-parte* temporary injunction but does not provide for *ex-parte* order of appointing a receiver. After having a comparative look at the provisions of Order 39 and Order 40 of the Code, we are inclined to conclude that **if the legislature had any intention to provide mandate to the courts for granting an ex-parte order of appointment of a receiver, it would have manifestly made provisions for ex-parte or ad-interim ex-parte orders also in Order 40 of the Code akin to proviso to Rule 3 and 3A of the Order 39 of the Code. But there is no provision in Order 40 for ex-parte order, as it finds place in the Order 39. So in our considered opinion, the legislature has no intention to provide for the appointment of a receiver, even as an ex-parte or ad-interim ex-parte measure.** In support of this opinion of ours, we have a series of pronouncements wherein it has been repeatedly held that a receiver should never be appointed without affording opportunity to the other party to show cause, not even as an ad interim measure. A few examples of these pronouncements find place in the cases of Smt. Jumni versus Smt. Dhapu (1987 RRD 123), Dharm Singh versus State of Rajasthan (1988 RRD 112) and Jamna Das versus Karnel Singh & others (1991 RRD 359). Para 12 and 13 of the decision dated 27-05-1991 given by the learned Single Bench of this Board in the case reported in 1991 RRD 359, are reproduced hereunder:-

“12. In Smt. Jumni V. Smt. Dhapu (1987 RRD123), Dharm Singh V. State of Rajasthan (1988 RRD 112), Jalli V. Boli (1998 RRD 331),

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Devilal V. Prahalad (1988 RRD 534), and Ajaib Singh V. Darshan Singh (1989 RRD 515) it has been repeatedly emphasized that an ex-parte order of appointing the receiver should not be passed even as an ad interim measure. It has also been stressed that a receiver should not be appointed without giving opportunity to the other party to show cause, not even as an ad interim measure because it is an extremely harsh step. This also violates the well crystallized principle of audi alteram partem”.

“13. The lower court has thus clearly disregarded the law laid down by the Board and committed material irregularity and grave illegality in passing the impugned ex-parte order appointing the receiver on the disputed land.”

41- Further, we are also of the opinion that appointment of a receiver can never be an ad-interim measure. Practically, it deprives the person in possession from the suit land. So appointment of a receiver is always an order of final nature, which should never be passed without hearing the opposite party.

42- In view of discussions hereinabove, and after having a comparative study of provisions under Order 39 and Order 40 of the Code, this Court with a considered opinion, holds that **it is not permissible for a Revenue Court to pass an order for appointment of a receiver on the suit land without issuing notice and affording proper opportunity of hearing to the opposite party.**

Scope of Appeal Section 225 of the Act:

43- Section 225 of the Rajasthan Tenancy Act, 1955, as amended by Ordinance of 1975 (replaced by Act No.2 of 1976) is as under:-

“225. Appeals from orders.- (1) *An appeal shall lie from the final order passed on an application of the nature specified in Third Schedule and from such other orders as are mentioned in Section 212 of this Act and in Section 104 of the Code of Civil Procedure, 1908 (Central Act V of 1908)-*

(a) to the Collector, if such order is passed by a Tehsildar;

(b) to the Revenue Appellate Authority, if such order is passed by an Assistant Collector, A Sub-Divisional Officer or a Collector; and

(c) to the Board, if such order is passed by a Revenue Appellate Authority.

(1A) The provisions of sub-section (1) shall apply to all suits, applications or proceedings pending on the date of the commencement of the Rajasthan Revenue Laws (Amendment) Ordinance, 1975 (Ordinance No. 13 of 1975).

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(1B) All pending appeals from orders other than those from which an appeal lies under sub-section (1) shall abate on the date of the commencement of the Rajasthan Revenue Laws (Amendment) Ordinance, 1975 (Ordinance No. 13 of 1975).

(2) No appeal shall lie from any order passed in appeal under this Section.”

Prior to amendment of 1976, Section 225 stood as under:-

“225. Appeals from Order.- (1) An appeal shall lie from an order-
(i) xxxxxxxxxx
(ii) to the (Revenue Appellate Authority} if such order is passed by an Assistant Collector; a Sub-Divisional Officer or a Collector, and
(iii) xxxxxxx”

44- Maintainability of appeal before the Revenue Appellate Authority against ex-parte or ad-interim ex-parte order granting temporary injunction or ex-parte appointing receiver has been an issue of diverse opinions of Revenue Courts. Especially at the level of Revenue Board, there have been two sets of opinions in this regard. A few of such opinions:-

(1) A Single Bench of the Board, the then Hon’ble Member Shri K. S. Ujwal, in the case of Chhavindar Singh Vs. State of Rajasthan (1976 RRD 591) had held that in amended Section 225 of the Act of 1955, the words ‘final order’ has been used only in case of applications of nature specified in Third Schedule, and not for such other orders as are mentioned in Section 212 of the Act of 1955 or in Section 104 of the Civil Procedure Code, 1908. Therefore, any order under section 212 of the Act of 1955, or Section 104 read with Order 43 of the Civil Procedure Code, 1908 is appealable under Section 225 (1) of the Act of 1955.

(2) Single Bench of the Board presided by the Hon’ble Member Shri K. S. Rastogi, in the case of Narayan versus Bhouria (1977 RRD 560) had held that appeal against any order passed by the Assistant Collector lay to the Revenue Appellate Authority under Section 225 of the Act. This decision was based on pre-amended Section 225 of the Act.

(3) In case of Abdul Razaq versus Shoorvir Singh (1979 RRD 175), an ex-parte order for appointment of receiver was passed by the Assistant Collector. It was held by the then learned Member Shri Anand Mohan Lal that ex-parte order of Assistant Collector is purely in nature of interim order. If applicants were aggrieved by that order, they should have presented objections to the Trial Court itself which would have considered them on merits and then taken final decision regarding appointment of receiver. Without seeking first such remedy from the Assistant Collector, filing of

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appeal under section 225 is un-warranted. The Assistant Collector at this stage has not finally applied its mind to pros and cons of issues involved and has not considered sufficient evidence to take appropriate decision. Even the Revenue Appellate Authority was in much worse position and could not be expected to take a just and equitable decision.

(4) The Single Bench, Hon'ble Member Shri M.L. Mehta in case of Hoshiyar Singh versus Ram Singh (1981 RRD 640) has held that pending hearing of objections before the Trial Court, an ad-interim order of temporary injunction is not appealable, but only the order confirming or vacating ad-interim order of temporary injunction is appealable.

(5) Another Single Bench presided by the learned Member Shri K. S. Lodha in case of Guru Dayal Singh versus State of Rajasthan, {RRD 1981 NUC 67} has held that all orders under section 212 of the Act are appealable before the Revenue Appellate Authority and no distinction is made by Section 225 of the Act between interim and final orders.

45- This issue came up for consideration and decision before the Larger Bench of the Board in the case of Uma Ram versus Panna reported at 1985 RRD 351. The learned Larger Bench after discussing the provisions of Sections 225(1) and 212 of the Rajasthan Tenancy Act, 1955, and Section 104 read with Order 43 Rule 1 of the Code, and agreeing with decision of the Board in the case of Chhavindar Singh Vs. State of Rajasthan (1976 RRD 591), observed **that in Section 225 (1) of the Act of 1955, the clause 'application of the nature specified in the Third Schedule' is preceded by the words 'final order' whereas the clauses 'such other orders as are mentioned in section 212 of this Act and in section 104 of the Code', are not preceded by the word 'final order', and for this reason, the condition of 'final order' is not applicable for orders under section 212 of the Act for making such orders appealable under section 225(1) of the Act. Any order whether final or interim, passed under section 212 of the Act is appealable under section 225 (1) of the said Act.**

With the above observations, it has been concluded by the learned Larger Bench that three types of orders, as mentioned below, are appealable under the said section 225(1), namely:-

- (1) final orders passed on an application of the nature specified in the 3rd Schedule of the Act,
- (2) such other orders (final or interim) as are mentioned in section 212 of the Act of 1955, and
- (3) such other orders (final or interim) as are mentioned in Section 104 of the Code.

After having concluded as above, it has been held by the Larger Bench that:-

“Where an ex-parte order of ad-interim injunction or appointment of receiver is made in favour of a party in a suit on an application made by him under section 212 of Rajasthan Tenancy Act, 1955 and a show cause notice is given to the opposite party, why an ex-parte order of an ad-interim injunction or appointing a receiver should not be made absolute till the decision of the suit, the said order is appealable under amended section 225 of the Act of 1955.”

46- Now this issue, inter alia, has again been referred to this Bench for consideration. After having heard arguments of the learned counsels for the parties and amici curiae, and after going through the pre-amended and post amended provisions of Section 225 of the Act, it is now a settled position that pre-amended Section 225 had provided for appeal against **any order** passed by the Assistant Collector under section 212 of the Act of 1955, whereas, after amendment of 1976, the Section 225 (1) provides that an appeal shall lie from (i) final order passed on an application of the nature specified in the Third Schedule, and (ii) from such other orders as are mentioned in Section 212 of the Act of 1955, and (iii) from such other orders as are mentioned in Section 104 of the Code. Hon’ble High Court for Rajasthan in the case of Kastoori (through LRs) & Ors. V/s. The Board of Revenue for Rajasthan & Ors (reported at 2010 RRD 415), while discussing the scope of Section 225 of the Act of 1955, has observed in paras 10, 11 and 12; as under:-

“10- This case raises two interesting issues; firstly, about the scope and ambit of Section 225 of the Act, and secondly with regard to the jurisdiction of the appellate Court to examine the question of sufficiency or insufficiency of service of notice.”

“11- Section 225 reads as under :-

“225. Appeals from orders.- (1) An appeal shall lie from the final order passed on an application of the nature specified in Third Schedule and from such other orders as are mentioned in Section 212 of this Act and in Section 104 of the Code of Civil Procedure, 1908 (Central Act V of 1908)-

(a) to the Collector, if such order is passed by a Tehsildar;

(b) to the Revenue Appellate Authority, if such order is passed by an Assistant Collector, A Sub-Divisional Officer or a Collector; and

(c) to the Board, if such order is passed by a Revenue Appellate Authority.

(1A) The provisions of sub-section (1) shall apply to all suits, applications or proceedings pending on the date of the

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commencement of the Rajasthan Revenue Laws (Amendment) Ordinance, 1975 (Ordinance No. 13 of 1975).

(1B) All pending appeals from orders other than those from which an appeal lies under sub-section (1) shall abate on the date of the commencement of the Rajasthan Revenue Laws (Amendment) Ordinance, 1975 (Ordinance No. 13 of 1975).

(2) No appeal shall lie from any order passed in appeal under this Section.

“12- A bare perusal of this section clearly reveals that Section 225(1) of the Act can be divided into three different categories, firstly, the final order passed on an application of the nature specified in the Third Schedule; secondly, such other orders as are mentioned in Section 212 of this Act; thirdly, such other orders as are passed under Section 104 of CPC. Although, it has been contended that the word “final” would cover all the three categories, such a contention is untenable. For, before describing the second and third category, the legislature, in its wisdom, has used the words “such other orders”. The words “such other orders” would naturally imply “orders” other than “the final order” as mentioned in the first category. In case, the legislature wanted the word “final” to be read even qua the other orders mentioned in Section 212 or Section 104, it would not have used the words “such other orders”. Moreover, considering the fact that Section 104 of CPC deals with the orders which are not “final” in nature, the legislature was justified in using the words “such other orders” so as to distinguish this category of orders from the category of “final orders”. Therefore, the interpretation placed by Mr. Mehrishi that the word “final” would also cover the second and the third categories is unacceptable.”

47 Thus, in the light of observations in Kastoori’s case, a ‘final order’ on applications of the nature specified in the Third Schedule of the Act and ‘such other orders’ as are mentioned in Section 212 of the Act and Section 104 of the Code, are appealable under Section 225 and meaning thereby, orders other than final orders passed by the Assistant Collector [Trial Court] under Section 212 of the Act are appealable before the Court of Revenue Appellate Authority. The said section 212 provides for the following 3 types of orders:-

- (1) order granting temporary injunction;
- (2) order appointing receiver; and
- (3) order for depositing the amount of cash security under sub-section (2) of the said Section 212.

48- When an order is passed on the above mentioned matters, such orders are appealable under the amended Section 225 of the Act. These orders were appealable prior to amendment of 1976 also. The basic difference between the amended and pre-amended provisions is

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that whereas 'any order' was appealable prior to amendment, only 'three specific categories of orders' have been included in appealable orders and none other than these three categories of orders are appealable now under amended section 225 of the Act of 1955.

49- First category of the three categories, i.e. 'final order on applications of nature specified in Third Schedule of the Act needs no interpretation, but the categories 'such other orders under section 212' and 'such other orders under section 104 of the Code, have generated two types of opinions as to whether ex-parte or ad-interim ex-parte orders passed under the said section 212 are appealable or not? As already discussed hereinabove, Section 212 of the Act does not, expressly, provide for passing of ex-parte or ad-interim ex-parte orders. Since Section 104 of the Code, is held to be applicable on matters under the Act of 1955, the issue in hand requires to be examined in terms of provisions of Section 104 read with Order 43 Rule 1 of the Code. **The clause (i) of Section 104 (1) read with Order 43 Rule 1 (r) of the Code provides that an order under Rule 1, Rule 2, Rule 2A, Rule 4 or Rule 10 of the Order 39 is appealable. Since an ex-parte or ad-interim ex-parte order of temporary injunction is passed not under said Rules 1, 2, 2A, 4A or 10 but it is passed under Rule 3 read with Rule 3A of the order 39, and an order passed under Rule 3 or 3A of the order is, expressly, not appealable in terms of Section 104 read with Order 43 of the Code, therefore it can be concluded that an ad interim ex-parte order granting temporary injunction under section 212 of the Act is also not appealable. However the Hon'ble Supreme Court of India in A. Venkatasubbiah Naidu's case (AIR 2000 SC 3032) has observed that ex-parte order passed under Rule 3 of Order 39 of the Code, in normal circumstances, is not appealable, but if the Court fails to comply with the provisions of Rule 3A of the said Order 39, then the aggrieved party has no option, but to avail remedy of appeal. We deem it proper to reproduce relevant portion from para 18 of the decision of the Apex Court in A. Venkatasubbiah Naidu's case, as under:-**

“Under the normal circumstances the aggrieved party can prefer an appeal only against an order passed under Rules 1, 2, 2A, 4 or 10 of Order 39 of the Code in terms of Order 43 Rule 1 of the Code. He cannot approach the appellate or revisional court during the pendency of the application for grant or vacation of temporary injunction. In such circumstances the party who does not get justice due to the inaction of the court in following the mandate of law must have a remedy. So we are of the view that in a case where the mandate of Order 39 Rule 3A of the Code is flouted, the aggrieved party, shall be entitled to the right of appeal notwithstanding the pendency of the application for grant or vacation of a temporary injunction, against the order remaining in force. Failure to decide the application or vacate the ex-parte temporary injunction shall, for the purposes of the appeal, be deemed to be the final

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order passed on the application for temporary injunction, on the date of expiry of thirty days mentioned in the Rule.”

50- In view of observations of the Hon'ble Apex Court, as above, we are unanimously of the view to hold that **an ex-parte order granting temporary injunction under Section 212 of the Act, in normal circumstances, is not appealable under Section 225 of the said Act, but if the Court granting such an ex-parte temporary injunction fails to perform its mandatory duty as provided in Rule 3 and 3A of Order 39 of the Code, then the aggrieved party who is deprived of justice due to inaction of the Court shall be entitled to right of appeal against an ex-parte or ad-interim ex-parte order granting temporary injunction.**

51- In the light of the observations made hereinabove, this Bench finds it appropriate to clarify that in Kastoori's case (2010 RRD 415) before the Hon'ble High Court, the facts were entirely at a variance wherein the Trial Court appointed ex parte receiver on the disputed land which was assailed in the appeal. It was also a matter of controversy in appeal that whether insufficiency in service of summons can be examined at the level of Appellate Court. In this case Hon,ble High Court held that such an issue is no longer *res integra*, as the Divisional Bench has already answered this issue in Chanda and ors. case (2003 (4) WLC Raj. 390). Thus, the issue of maintainability of appeal against ad-interim ex-parte orders passed under Rule 3 and 3 A of the Order 39 of the Code was neither raised nor considered, nor it was adjudicated by the Hon'ble Single Bench of the High Court. This issue, with specific reference to Rules 3 and 3A read with Section 104 (1) and Order 43 Rule 1(r) was also not discussed and decided by the learned Larger Bench of the Board in Uma vs. Panna' s case(1985 RRD 351). We, therefore, hold with a considered view that **'such other orders' passed under Rule 1, 2, 2A, 4A and 10 of Order 39 of the Code are appealable but the ad-interim ex-parte orders passed under Rules 3 and 3A of Order 39 of the Code are certainly not appealable as per provisions of Section 104 read with Order 43 Rule 1 (r) of the Code.**

Scope of Section 221 of the Rajasthan Tenancy Act:

52- Section 221 of the Act and Section 9 of the Rajasthan Land Revenue Act, 1956 provide for the Board's powers of general superintendence over all the Revenue Courts subordinate to the Board. The expression 'all Revenue Courts' includes the courts of Divisional Commissioners, Revenue Appellate Authorities, Collectors and Additional Collectors, Sub-Divisional Officers and Assistant Collectors and Tehsildars, Additional Tehsildars and Naib Tehsildars.

53- The said section 221 of the Act and Section 9 of the Land Revenue Act, 1956 are as under:-

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Section 221 of the Tenancy Act, 1955:

“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-

(a) deleted

(b) all Additional Collectors, Sub-Divisional Officers, Assistant Collectors and Tehsildars in the district shall be subordinate to the Collector thereof,

(c) all Assistant Collectors, Tehsildars and Naib-Tehsildars in the a sub-division shall be subordinate to the Sub-Divisional Officer thereof, and

(d) all Additional Tehsildars and Naib-Tehsildars in a Tehsil shall be subordinate to the Tehsildar thereof.”

Section 9 of LR Act, 1956:

“9. General Superintendence of Subordinate Revenue Courts.- Subject to other provisions of the Act, the general superintendence and control over all revenue Courts and over all revenue officers shall be vested in, and all such Courts and officers shall be subordinate to the Board.”

Thus the Board is the highest Revenue Authority in the State, which is equipped with the powers of general superintendence and control over all the Revenue Courts, functioning under the Rajasthan Tenancy Act, 1955, the Rajasthan Land Revenue Act, 1956 and any other court created under any statute for the time being in force related to agricultural land. Thus, the ultimate control of all the Revenue Courts in the State vests in the Board. The basic difference between both the above cited Sections is that powers under section 9 of the Land Revenue Act, 1956 are ‘*subject to other provisions of the Act*’, whereas the powers under section 221 of the Act have no such restriction of being ‘*subject to other provisions of the Act*’, meaning thereby the powers of superintendence and control provided under Section 221 of the Act of 1955 are wider than the powers given under Section 9 of the Land Revenue Act.

54- Now the question for consideration is whether the Board’s powers of general superintendence and control under section 221 of the Act can be invoked on an application against interim/ interlocutory orders passed by the Trial Court or the First Appellate Court under Section 212 of the said Act, when the case is still pending before the Court against whose order an application under section 221 has been filed in the Board? There have been inconsistent views of the Board, the Hon’ble High Court and the Hon’ble Supreme Court in this regard.

55- It has been held by the Board in case of UIT Jodhpur vs. Thanaram & Others reported as 1993 RRD 683 that Section 221 of the Act, 1955 confers on the Board the powers of general superintendence

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and control over all revenue Courts to ensure justice upto the highest level. It empowers the Board to set aside the orders of subordinate courts where breach of law is committed and the error is apparent on the face of record. Such powers would not be exercised where plaintiff or the defendant or any aggrieved party which had a remedy by way of appeal or revision but failed to avail of it. This power is to be used sparingly where grave injustice committed by the lower Courts is brought to the notice of the Board. It cannot be exercised to help a negligent party which has lost its rights or having availed of the rights, has failed to secure the desired relief.

56- In the case of State of Rajasthan versus Krishna Nand Giri & others decided on 13-11-1991 as DBCWP/No.1202/1982 by the Hon'ble High Court, though the issue of powers under section 221 was directly not involved, but dealing with the reference powers of the Board under section 232 of the Act, the Hon'ble High Court has held that the Board is empowered under section 221 of the Act even to set aside the decree passed by a revenue Court. It has been held that even though prior to 1981, the Board of Revenue had no power to set aside the decree of revenue court while exercising its reference jurisdiction under section 232 of the Act of 1955, but after amendment of 1981 with the inclusion of the word "decree" in Section 232, by way of amendment dated 05-10-1981, it has got such powers to set aside even the decree of revenue courts also in reference jurisdiction under Section 232 of the Act. **But, even prior to the amendment, the board had extra ordinary powers under Section 221 of the said Act and thereby even while dealing with the reference application under Section 232 of the Act, it could exercise its jurisdiction under Section 221 of the said Act and set aside the decree if it came to such conclusion.**

57- On the other hand, a Division Bench of the Hon'ble High Court for Rajasthan, in the case of Surendra Singh & others vs. Kisturi & others (reported at 2009 RRT 1094) has held as under:-

"The power of Board under Section 221 is not akin to the power of the High Court as provided under Article 227 of the Constitution. In the Scheme of 1955 Act there is clear demarcation of the judicial and administrative powers of the Board. While Section 230 provides for the judicial power, Section 221 confers only administrative power and in exercise of administrative power no decree or judicial order could be set aside. The apex Court in Devi Singh Vs Board of Revenue Rajasthan (supra) also indicated that in the face of the provisions under Section 222 to 229 the power of general superintendence under Section 221 could not be exercised."

58- The Hon'ble Supreme Court, in the case of Surendra Pal Singh vs The Board Of Revenue for Rajasthan , which is reported at AIR 1994 SC 1439 =1993 SCR (3) 722 =1993 RRD 598, has comprehensively discussed the Board's jurisdiction under Section 221

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of the Act, and it has been held that the Board, under provisions of Section 221 of the Act, is equipped with powers even to set aside a judicial decision of the sub-ordinate Revenue Court, if it comes to the conclusion that the interest of justice requires exercise of such powers.

59- In order to comprehend the Hon'ble Supreme Court's observation defining the scope of the said Section 221, it is appropriate to have a look on facts and background of Surendra Pal Singh's case (supra), as under:-

- (1) It was a case of Ceiling proceedings under Chapter III-B of the Act of 1955. The case was decided by the Sub-Divisional Officer. A revision was filed in the Board. It was directed by the Board that ceiling area be determined according to the old law, i.e. Chapter III-B of the Act of 1955, and not according to the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973. Again, the assessee aggrieved by Sub-Divisional Officer's decision filed an appeal before Revenue Appellate Authority's Court, which was disallowed. A revision was filed in the Board by the assessee. Along with other observations, it was concluded by the Board that Surendrapal Singh was born to Raghubir Singh on 14th March, 1963 and was only 13 years of age when the ceiling proceedings were finalized by the Sub-Divisional Officer on 5th May, 1976. Further, it was also held that the provisions of the old ceiling law applied to the case, but the Sub-Divisional Officer had committed an error of law in determining the ceiling area under the new law i.e. the Act of 1973. The learned Member of the Board found that there was a gross and patent illegality in the order of the Sub-Divisional Officer and, consequently, he set aside the order of the Sub-Divisional Officer dated 5th May, 1976 as well as the order of the Appellate Authority dated 6th September, 1976 and remanded the case to the Sub-Divisional Officer, Hanumangarh, for fresh determination.
- (2) A writ petition was filed before the Hon'ble High Court, against the Board's decision. It was argued before the Hon'ble High Court on behalf of Raghubir Singh that no appeal having been filed by the State against the order of the Sub-Divisional Officer dated 5th May, 1976, the said order became final and the Board of Revenue had no jurisdiction to set aside that part of the Sub-Divisional Officer's order which had gone against the State and in his favour. It was also urged that the power of general superintendence and control over all revenue courts which vested in the Board could not be exercised to the detriment of the writ petitioners much less by way of suo motu exercise of powers.
- (3) On dismissal of this writ petition by the Hon'ble High Court, the matter came to the Hon'ble Supreme Court by way of special appeal. It was argued before the Hon'ble Supreme Court that Section 221 of the Act confers executive powers of superintendence and control on the Board and it does not vest any power of superintendence on the Board on judicial side. The

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Division Bench of the Hon'ble Supreme Court, after discussing Section 221 of the Act of 1955 and Section 9 of the Rajasthan Land Revenue Act, 1956 and also judicial pronouncements in Karan Singh v. Board of revenue, Rajasthan (1962 Raj LW 178); Permessar Singh v. Kailaspati {AIR 1916 Pat. 292-FB} and Kana v. Board of Revenue {ILR (1955) 5 Raj. 55}, held that:-

- (a) Section 221 of the Act, 1955 is not subject to other provisions of the Act. It is clear from the language of Section 221 of the Act, 1955 that the Board of Revenue has general powers of superintendence and control over all the Revenue Courts. It is both administrative as well as judicial power. It is open to the Board to exercise its powers of superintendence on all its subordinate Courts in order to regulate the functioning of the subordinate Courts so as to keep them within their respective spheres of jurisdiction. If the subordinate court disregards any specific provision of law and does something illegal it is open to the Board of Revenue to interfere and set the matter right. There is no restriction on the powers of the Board to set aside the order of the Sub Divisional Officer provided it comes to the conclusion that interest of justice requires exercise of such powers.
- (b) In not determining the ceiling area according to the provisions of the Act of 1955, the Sub Divisional Officer committed a grave illegality in not merely ignoring the law but also ignoring the directions of the Board of Revenue itself.
- (c) The Hon'ble Supreme Court has also observed that Hon'ble High Court for Rajasthan, in the case of Karan Singh v. Board of revenue, Rajasthan (1962 Raj LW 178) was concerned to Section 9 of the Rajasthan Land Revenue Act, 1956. Provisions of Section 9 are "subject to other provisions of the Act", whereas there is no such provision in section 221 of the Rajasthan Tenancy Act.

60- We deem it appropriate to reproduce here extracts from para 11 and 12 of the Hon'ble Supreme Court's decision dated 13-05-1993 in Surendra Pal Singh's case (supra), as under:-

"----- on merits the High Court held that it was not appropriate for the Board to exercise the powers conferred by Section 9 of the land Revenue Act in view of the fact that the Board had appellate jurisdiction and it could not, therefore, make use of its powers of superintendence and control and the order of the Board could not be held proper with reference to Section 9 of the Land Revenue Act. This case has no application for interpretation of the present Section 221 of the Act of 1955. Section 221 of the Act of 1955 is not subject to the other provisions of the Act. It is clear from the language of Section 221 of the Act of 1955 that the Board of Revenue has general powers of superintendence and control over

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all revenue courts. It is both administrative as well as judicial powers. It is open to the Board to exercise its powers of superintendence on all its subordinate courts in order to regulate the functioning of the subordinate courts so as to keep them within their respective spheres of jurisdiction. If the subordinate court disregards any specific provision of law and does something illegal it is open to the Board of Revenue to interfere and set the matter right. A similar question arose before the Rajasthan High Court in Kana and others v. Board of Revenue. Rajasthan: ILR (1955) 5 Raj. 55 where the High Court had to construe the power of the Board of Revenue, Rajasthan, conferred on it by the Rajasthan Board of Revenue Ordinance (NO.XXII of 1949). There also there was similar provision like Section 9 of the Land Revenue Act and it was held that Section 12 of the said Ordinance must be held to give powers to the Board to revise judicial orders also passed by courts in appropriate cases. It was observed at page 63 of the report- "of course, -such powers would generally not be exercised where a party had remedy by way of appeal and revision, and did not avail of it. At the same time, the power is there, and-it may be exercised sparingly in extraordinary case, where interest of justice requires that the Board should exercise the power".(para 11)

"Thus there is no restriction on the powers of the Board to set aside the order of the Sub-Divisional Officer provided it comes to the conclusion that interest of justice requires exercise of such powers." (para 12)

61- After going through various pronouncements by the Hon'ble High Court, the Hon'ble Supreme Court and the Board itself, as discussed hereinabove, we with an unanimous considered opinion, hold that:-

- (1) The powers of superintendence and control over subordinate revenue courts given to the Board, under Section 221 of the Act are available both in administrative as well as judicial matters.**
- (2) The powers of the Board, under section 221 of the Act can be used in judicial matters, if a subordinate court has committed gross illegality in disregard to specific and mandatory provisions of law or in disobedience of a superior Court.**
- (3) The powers of the Board under Section 221 of the Act, being powers of superintendence and control over subordinate Revenue Courts, are the subject matter between the Board and the subordinate courts, and as such these provisions are not available to the parties in routine. The Board can use these powers either *suo motu* or on application filed by any party to the proceedings pending in or decided by the subordinate court. But, role of such party is limited to the**

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extent of informing the Board regarding any illegality committed by such subordinate court, but interference by the Board cannot be claimed as a matter of right by a party.

- (4) The powers of superintendence and control over subordinate Revenue Courts cannot be exercised to help a negligent party which has lost its rights or having availed of the rights, has failed to secure the desired relief.**
- (5) The powers of the Board, under section 221 of the Act, are to be used sparingly and exceptionally in judicial matters, if there is no alternative remedy provided in the law for the time being in force.**
- (6) Powers of the Board, under Section 221 of the Act cannot be used where the party approaching to the Board with an application under this Section has an alternate remedy by way of appeal or revision.**
- (7) It has to be followed by the Board, as a condition precedent that Section 230 and 221 of the Act are quite different from each other with a different and distinct objective. They are not supplementary to each other. Section 221 of the Act is not a by-pass or short cut of Section 230 of the said Act.**

Maintainability of Revision Petitions in the Board:

62- The Board has been entrusted with the powers to call for the record of its subordinate courts and examine their impugned orders under the revisional jurisdiction provided under Section 230 of the Act. In general such revisional jurisdiction is entrusted to all the High Courts, Tribunals and Revenue Boards to have control over their subordinate courts. The Act of 1955 provides Section 230 as revisional jurisdiction to the Board. The provision of Section 230 is reproduced as under:-

“ 230. Power of the Board to call for cases.- The Board may call for the record of any case decided by any subordinate court in which no appeal lies either to the Board or to a civil court under section 239 and if such court appears-
(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,
the Board may pass such orders in the case as it thinks fit.”

63- The plain reading of the above provisions of law unequivocally suggests that a revision petition can be filed against a case decided by any subordinate Revenue Court under this Act in which no appeal lies either to the Board or to a civil court. Earlier this provision of law was analogous to the revisional powers provided to High courts under section 115 of the Code.

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64- This is also very relevant to mention here that Government of India constituted a committee headed by Justice Malimath for expeditious disposal of civil litigation. This committee noticed that record of the lower courts is often sent to the High Courts in revision proceedings resulting in virtual stay of proceedings in the Trial Courts. The committee also had a view that scope of interference by revisional Courts against interlocutory orders should be bare minimum. On the basis of the committee's report, the Code of Civil Procedure (Amendment) Act 1999 was introduced in the Parliament and Section 115 of the Code was also amended in light of the observations of the committee. But the provision under section 230 of the Act still remains intact.

65- Under the revisional jurisdiction, basically two types of petitions are filed before the Board. Firstly, against the final or interim orders passed by the Trial Courts or Appellate Courts in the proceedings under the provisions of this Act. Secondly, against the orders passed by the Trial Courts or Appellate Courts on interlocutory applications under various provisions of the Code of Civil Procedure in the proceedings under this Act. In the case in hand, this court has to examine the maintainability of revision petitions filed under Section 230 of the Act assailing the ad- interim ex-parte orders passed by the Trial Courts or Appellate Courts.

66- Hon'ble Apex Court has held in D.L.F. Housing and Construction Co. V. Swaroop Singh (AIR 1971 (SC) 2324) that exercise of revisionary jurisdiction is discretionary in nature and a revising court is not bound to interfere with the impugned order only on the ground that conditions provided in the provisions of revision are satisfied. The Apex Court also observed that if the impugned order is interlocutory and the aggrieved party has other efficacious remedy in form of an appeal, the revisional jurisdiction cannot be invoked. It has also been held that revision is not competent to correct errors of facts, however, gross or even errors of law unless the said errors have relation to the jurisdiction of the court to try such disputes. The Apex Court has held that **revisional jurisdiction is not equal to the appellate jurisdiction. Therefore, only jurisdictional errors with material irregularity can be corrected under the revisional jurisdiction.**

67- The scope of the revision jurisdiction is very restrictive in nature as has been held in Bakhtawan V. Mandir Murti Shri Thakur Ji (1968 RRD 394). The revisional court has the powers to entertain a revision only:-

- (1) Where jurisdiction is vested but not exercised, or
- (2) Exercised jurisdiction when not vested, or
- (3) Where material irregularity or illegality is committed in exercise of jurisdiction.

68- Hon'ble Apex Court has held in Managing Director, Hindustan Aeronautics Ltd. V. Ajit Prasad (AIR 1973 (SC) 76) that the revisional court has no jurisdiction to interfere with the order of the first appellate court. The order of the first appellate court may be right or wrong; may be in accordance with law or may not be in accordance with law but one thing is clear that it has jurisdiction to make that order. Where it was not the case that the First Appellate Court exercised its jurisdiction illegally or with manifest irregularity, in such cases, the revisional court has no jurisdiction.

69- Hon'ble Apex Court also held in the case of Suresh Chandra Nanhorya V. Rajendra Rajak and others (2006 (7) SCC 800) that a revisional court cannot ignore the basic principle of natural justice which is essence of fair adjudication and which is deeply rooted in tradition and conscience of the judicial system. **Therefore, any order which is passed against a party by the revisional court cannot be passed without providing an opportunity of hearing.**

70- In the case of Harak Chand Vs. State of Rajasthan (1970 RLW 320), the Full Bench of Hon'ble High Court has held that revisional jurisdiction of the court can be invoked only when the subordinate court appears to have acted in exercise of its jurisdiction illegally or with material irregularity. It was also held that whether particular evidence is admissible in accordance with law or not, is a question of law which the Trial Court is entitled to decide and if any manifest error has been committed in deciding that question, it cannot form a ground for revisional jurisdiction. In Bhimraj and others Vs. Board of Revenue and others (1998 RRD 355), Hon'ble High Court has held that as a revisional authority, the Board of Revenue may not agree with the finding of fact recorded by the Appellate Court but that itself does not form a ground for the Board to exercise its revisional jurisdiction.

71- In Raja Ramkaran Vs. B. Ramulu (AIR 1982 (A.P.) 256) the Hon'ble High Court has held that **unless there is a manifest error or material irregularity in exercising jurisdiction, revision petitions cannot be entertained.** The relevant extract of the judgment is as under:-

“8.... There is absolutely no semblance of irregularity in the exercise of power of jurisdiction and the error, factual or legal, if any in the course of passing the order does not impinge upon the jurisdiction vested in the court. The alleged intention of the defendant to avert or by pass the proceedings before the trial court cannot be considered as a material irregularity in the exercise of the jurisdiction by the appellate court. The ethics of a litigant in choosing forum is not a factor can be countenanced for the purpose

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of determining the jurisdiction of the court. The alleged dilatory attitude of the party cannot sterilize the legitimate jurisdiction of the court.It is well settled as laid down by Division Bench of this court that the aggrieved party can file an appeal as against an interim order and such appeal is competent and the appellate court is competent to entertain it and to pass appropriate order. ..”

72- Hon’ble Supreme Court has recently held in the case of Sumatiben Maganlal Manani V. Uttam Chand Kashi Prasad Shah and anr. (2011) 7 SCC 328 as under:-

“34. We are unable to subscribe to the view taken by the High Court. On the basis of the material available on record, as discussed in detail in the judgment of the appellate court, it was perfectly justified in arriving at the finding of sub-letting against defendant No.1. On a careful consideration of the matter, we find that the High Court, in exercise of its revisional jurisdiction, committed a mistake in interfering with the setting aside the findings of fact properly arrived at by the courts below. The judgment and order passed by the High Court is unsustainable by any reckoning.”

73- In light of the guiding pronouncements of the superior courts as discussed hereinabove, and existing legal provisions of Section 230 of the Act, this bench is of the considered opinion that:-

- (1) No revision is maintainable before the Board against ad-interim ex-parte orders passed by the Trial Courts or the Appellate Courts. As per the provisions of law only such decided cases under this Act can be assailed in revision before the Board., where no efficacious remedy of appeal is available.**
- (2) Revisional jurisdiction is not equal to the appellate jurisdiction. Therefore, only jurisdictional errors with material irregularity can be corrected under the revisional jurisdiction.**
- (3) Unless there is a manifest error or material irregularity in exercising jurisdiction, revision petitions cannot be entertained.**
- (4) An order of the Trial Court or the Appellate Court cannot be assailed in revision on the ground that the Court below has recorded erroneous findings on facts or law, if that Court had jurisdiction to pass the order sought to be revised.**

74. On the basis of discussions held in foregoing paras, this Bench answers the questions/ issues raised before it in the following manner:-

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Question no 1:- Whether a Revenue Court is competent for granting an ex-parte or ad-interim ex-parte temporary injunction or for passing an ex-parte order of appointment of a receiver under section 212 of the Act; and Whether provisions of order 39 and 40 of the code of civil procedure are applicable when an application under 212 of the Act is adjudicated before a revenue court?

Answer:- (a) Yes, a Revenue Court, in exceptional cases, is competent to grant an ex-parte or ad-interim ex-pate temporary injunction in proceedings under Section 212 of the Act of 1955, subject to provisions of rules 3 and 3A of order 39 of the Code, if three vital ingredients like prima facie case, balance of convenience and threat of irreparable loss is proved in favour of the applicant. However, a Revenue Court cannot pass an order of appointment of receiver without hearing the opposite party as there is no provision in law to do so.

(b) Yes, provisions of order 39 and 40 of the code are applicable when an application under section 212 of the Act is adjudicated before a revenue court.

Question no 2:- Whether the Revenue Appellate Authority has jurisdiction under section 225 of the Act to entertain an appeal against an ex-parte or ad-interim ex-parte order passed by a Trial Court; and whether the law laid down by the Larger Bench in the case of Uma Ram vs. Panna (1985 RRD 351) is still a good law?

Answer:- Yes, the Revenue Appellate Authority has jurisdiction under Section 225 of the Act to entertain an appeal against an ex-parte or ad-interim ex-parte order passed by a Trial Court under Section 212 of the Act; but the Revenue Appellate Authority has no jurisdiction to entertain appeals against such ad-interim ex-parte orders which are effective only till next date of hearing and have been passed in accordance with provisions of Rule 3 and 3A of the Order 39 of the Code; or where there is no order of the Trial Court on the application filed under Section 212 of the Act for temporary injunction or appointment of receiver. Thus, the law laid down by the Larger Bench in the case of Uma Vs. Panna (1985 RRD 351) is not a good law to this extent.

Question no 3:- Whether a revision petition under section 230 of the Act is maintainable before the Board against an ex-parte or ad-interim ex-parte order passed by the Trial Court or by the Appellate Court; and whether provisions of section 221 of the Act can be exercised by the Board in routine matters of revisions relating to interim orders along with section 230 of the Act or independently under section 221 of the Act?

Answer:- (a) No. A revision is not at all maintainable before the Board of Revenue under Section 230 of the Act against any ex-parte ad-interim order passed by the Trial Court or by the Appellate Court.

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(b) The Board of Revenue has adequate powers of general superintendence under section 221 of the Act, but they are not a substitute of or a by-pass or shortcut of Section 230 of the Act. The powers under Section 221 can be sparingly exercised only in rare cases where a gross illegality in apparent disregard to a specific mandatory legal provision or in disobedience of the Superior Court has been committed by the lower court; and where a miscarriage of justice has taken place or the public interest has suffered.

75- As the questions of law emerged in this reference have already been answered hereinabove, the case be listed before the referring Single Bench for final decision of the revision petition in the light of the answers given by this Bench.

76- This is a well accepted fact that courts have been established by the Government to dispense substantial justice speedily and in an affordable manner to the litigating parties. If the proceedings of the court give rise to the frivolous litigation and unnecessarily add to multiplicity of the proceedings, such a practice needs to be curbed. This court, having powers of general superintendence and control over all the Revenue Courts in the State, is under statutory obligation to look in to such matters and to issue appropriate guidelines in order to bring consistency and equity in the justice delivery system of the Revenue Courts in the State. On appropriate occasions, while adjudicating cases in referred matters or otherwise, this court interprets the existing provisions of land related laws and issues guidelines through its judgments as has been done in 2008 (2) RRT 1330, 2013 RRD 809 and 2014 (1) RRT 113. During the course of arguments in the present case, it has been urged by the learned counsels that there should be clear guidelines issued by Board for subordinate Revenue Courts for the sake of consistency in exercise of jurisdiction. Therefore, we deem it proper to utilize this occasion to issue following directions/ guidelines to be followed by the sub-ordinate Revenue Courts, as under:-

77- Guidelines for the Trial Courts:-

- (1) The courts should, in general, desist from passing ad-interim ex-parte orders of temporary injunction, but, if circumstances so warrant an order may be passed ex-parte, after meticulously examining the material produced before it on the touch stone of the three vital ingredients like prima facie case, balance of convenience and threat of irreparable loss before issuance of any order.
- (2) If the facts and circumstances of the case so warrant, an ex-parte ad-interim order may be passed but such an order should necessarily be a speaking and reasoned order which may last for the next date of hearing.

- (3) The party against whom such an ex-parte order is being passed should be informed invariably by registered post on the day of order itself, complying with the provisions contained in clauses (a) and (b) of proviso to Rule 3 of order 39 of the Code.
- (4) The Trial Court shall be under obligation to dispose of the application of temporary injunction on merits within 30 days of passing such ex parte order as per Rule 3-A of Order 39 of the Code.
- (5) There is no provision in Section 212 of the Act or in Order 40 of the Code for passing an order of appointment of receiver without hearing the opposite party, therefore, a Revenue Court has no mandate to pass an ex-parte order of appointment of receiver. In case of urgency or where the court finds it appropriate to appoint a receiver in larger interest of justice, the service of summons be accelerated by an effective and quick mode.

78- Guidelines for the Appellate Courts:

- (1) On the outset, every Appellate Court is duty bound to examine the issue of limitation, if any, in the appeal. If the appeal is time barred the stay application can be considered only in the light of the mandatory provisions of Order 41 Rule 3A of the Code. Meaning thereby, no ad-interim ex-parte stay order can be passed without hearing the opposite party in time bared appeals.
- (2) The Appellate Courts have no jurisdiction to entertain appeals against such ad-interim ex-parte orders which are effective only till next date of hearing and have been passed under Rule 3 and 3A of Order 39 of the Code or where there is no order of the trial court on the application of temporary injunction or appointment of receiver.
- (3) The Appellate Court is expected to examine as to whether its interference with the impugned order of the Trial Court will serve a justifiable purpose and curb the multiplicity of the proceedings between the parties. The courts are meant to mitigate the hostilities between/ amongst litigating parties, and they are not to add the fuel to fire. Therefore, their every action should aim at this objective.
- (4) The Appellate Court has to use its jurisdiction in a just and balanced manner. Indiscriminate and casual interference in the Trial Court's functioning by the Appellate Court is unwarranted. The Appellate Court should ensure that its stay order will not result in court's protection to a wrong doer or will not lead to legal complications?
- (5) The trial court is a court of original jurisdiction and the parties are expected to furnish their evidence before it. On the basis of initial evidence, the Trial Court passes an ad-interim ex-parte order for maintaining status quo of possession and record or for restraining the parties not to alienate the disputed land. Generally, such orders

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are made effective till the next date of hearing. In such cases, the Appellate Court is expected to interfere only when there is a manifest illegality or perversity in the impugned order. The Appellate Court should direct the appellants to raise their contentions before the Lower Court.

- (6) A new trend has emerged that when the Trial Court chooses not to pass an ad-interim ex-parte order on an application of temporary injunction, and issues notices to the non-applicants to appear and to file their objections, if any, on the next date of hearing, in the meantime the applicant prefers an appeal before the First Appellate Court to obtain the interim order of temporary injunction. In such cases, where the proceedings are still in progress with the Trial Court and no order has been passed either way, there is no reason to unnecessarily disturb the independent functioning of the Trial Court. In appropriate cases directions for early disposal of such applications can be given.
- (7) The Appellate Courts are the courts of appeal and they are expected to respect the independent functioning of the Trial Court. Wherever the Trial Court goes astray or flout the basic provisions of law, the Appellate Court can interfere with such orders explaining the infirmities of the Trial Court's order. This is a general presumption that Trial Courts being in proximity to the disputed land have better awareness and access about the relevant record, evidence and circumstances of the case. Therefore, the trial court should be given full functional liberty to decide the temporary injunction/ stay applications on merits.

79.- This Bench is also of the considered opinion that the existing language of the provisions contained in section 225 of the Act, prima facie, gives an impression that any order, whether ad- interim ex-parte order or of any other nature, passed by the Trial Court is appealable. This existing provision has escalated the frivolous litigation in the Appellate Courts as well as in the Board under the revisional jurisdiction. The vicious circle of obtaining ad-interim stay orders on the ad-interim ex-parte orders or on any other orders passed by the Trial Courts has adversely affected the justice delivery system of the Revenue Courts and the gullible farmers have been pushed to frivolous litigation.

80- In the backdrop of the foregoing discussions, the Bench is of the view that this blind race of obtaining ad-interim ex-parte orders from the Trial Courts, Appellate Courts and the Board has hijacked the substantive justice delivery system. In light of these circumstances, the existing provisions of section 225 of the Act need to be re-examined, looking to its adverse effect on the justice delivery. The Bench deem it appropriate to bring this matter to the notice of the Principal Secretary to the Government in Revenue Department, so that after due deliberations and consultation with the Law Department, an amendment, if found appropriate, can be brought in the existing provisions of law whereby the word 'from such other orders' may be deleted from the said Section 225 of the Act; so that uncalled for litigation may be prevented. The

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Registrar is directed to send a certified copy of this judgment per registered post to the Principal Secretary, Revenue Department, Government of Rajasthan, for necessary action at his end.

81- Before parting, we record our appreciation to the learned members of the Bar, who participated in this reference with preparation and enlightened the bench with their valuable views.

Pronounced in open court.

(Priyavrat Pandya) (Rajendra Singh Choudhary) (Bajrang Lal Sharma)
Member Member Member

(Mool Chand Meena) (Chandra Mohan Meena)
Member Chairman