

**THE BOARD OF REVENUE FOR RAJASTHAN, AJMER****Revision/LR/6509/2011/Ajmer**

- 1- Rameshwar s/o Mangi Lal
- 2- Gordhan s/o Rameshwar
- 3- Mukesh s/o Rameshwar
- 4- Kishan Lal s/o Ram Karan

All Caste Meena residents of village Falasia Tehsil  
Kishangarh, District Ajmer (Raj.)

**----- Petitioners/ Respondents No. 1 to 4.****Versus**

- 1- Smt. Gulab w/o Shankar Lal
- 2- Smt Janki Devi w/o Shri Kishan Lal

All Caste Mali residents of Mali Mohalla, Naya Shehar,  
Kishangarh, Distirct Ajmer (Raj.)

**----- Non-petitioners/ Appellants**

- 3- Municipal Council, Kishangarh

**----- Non-petitioners/ respondent No.5****Single Bench****Shri Moolchand Meena,****Member**

Present:-

Shri G. S. Lakhawat, Advocate for the Petitioners:

Shri K. K. Purihit and Shri Amitabh Bakshi, Advocates for  
non-petitioner No. 1 & 2.

Non-petitioner No.3 absent.

**Dated: 14-02-2012****Order**

1. This revision under section 84 of the Rajasthan Land Revenue Act, 1956 (hereinafter referred to as 'the Act') has been filed by the petitioners against the order dated 23-08-2011 passed by the Divisional Commissioner, Ajmer in appeal No.12/2010, whereby order dated 25-01-2010 passed

by the Sub-Divisional Officer, Kishangarh in case No.15/2009 has been set aside.

2. Brief facts of the case leading to this revision are that petitioners submitted an application under section 90-B (3) of the Act for getting their khatedari land, bearing khasra No.306 measuring to 30 Bighas 12 Biswas (disputed land) situated in revenue village Madanganj, converted for residential purpose. The land is within municipal limits of the Municipal Council Kishangarh (hereinafter referred to as 'the Council'). The Sub-Divisional Officer as an Authorised Officer under Section 90-B of the Act, after making due enquiry and inviting objections etc. passed an order dated 25-01-2010 vide which surrender of the disputed land was accepted and khatedari rights of the petitioners in the disputed land were declared extinguished as per provisions of section 90-B (3) of the Act and the disputed land was put at the disposal of the Council and it was recorded in Revenue Records in the name of the Council. The present non-petitioners Nos. 1 & 2 filed an appeal before the Divisional Commissioner, Ajmer with an application under section 96 of the Civil Procedure Code, 1908 and an application under section 5 of the Indian Limitation Act. After hearing both the parties the Divisional Commissioner, Ajmer accepted the appeal of the non-petitioners Nos. 1 & 2, set aside the order dated 25-01-2010 of the Authorised Officer and the case was remanded to the Authorised Officer with directions that matter be decided afresh after affording opportunity of hearing to both the parties and after having the relevant records examined. Hence, this revision has been filed before the Board of Revenue ('Board' in short).

3. A caveat under section 148A of the Civil Procedure Code, 1908 was filed by the non-petitioners Nos. 1 & 2 in the Board, and they have also filed an application dated 8<sup>th</sup> December, 2011 raising therein preliminary objections against maintainability of the revision in the Board. Vide this application dated 8<sup>th</sup> December, 2011, the non-petitioners have, mainly averred:-

- (i) That the Divisional Commissioner has passed the impugned order under section 90-B of the Act and a revision of such an order is not maintainable in the Board as prohibited under sub-section (9) of this Section.
- (ii) That the impugned order has been passed by the Divisional Commissioner under sub-section (7) of the Section 90-B considering the non-petitioners as aggrieved from the Authorized Officer's order in question, so the impugned order is just and proper.
- (iii) That the Board, under section 84 of the Act, is vested with power only to revise an order passed, by its subordinate Courts/Officers, without jurisdiction. As the Divisional Commissioner is the only authority to entertain an appeal under sub-section (7) of Section 90-B of the Act, therefore the impugned order has been passed well within the jurisdiction of the Divisional Commissioner. The Divisional Commissioner has passed the impugned order on non-petitioners' appeal under section 90-B, and it was not under section 75 of the Act.
- (iv) That sub-section (9) of the section 90-B clearly provides that any order passed in appeal by the Divisional Commissioner shall be final.

With these averments, the petitioner has submitted that the revision in hand is not maintainable and deserves to be rejected.

4. Learned counsels for the parties were heard on the issue of maintainability and admission of the revision.

5. Since the case was listed for hearing on non-petitioners' application dated 8<sup>th</sup> December, 2011, therefore, the learned counsel for the non-petitioners was asked to open the innings. He, while repeating objections enlisted in his application, has submitted:-

- (i) That Section 90-B in the Act is a special enactment and it has an overriding effect on other provisions of the Act. Sub-section (9) of this section clearly provides that

the order passed by the Divisional Commissioner in an appeal under section 90-B shall be final; therefore revision in hand cannot be maintained and heard by the Board. This view has been upheld by the coordinate Benches of this Board in various decisions.

- (ii) The learned counsel for the non-petitioners has also submitted that while filing appeal before the Divisional Commissioner, it was mentioned to be filed under Section 75 of the Act, but mentioning of wrong Section does not affect the merits of the case. The Divisional Commissioner has rightly passed the impugned order under Section 90-B (7), therefore revision against such an order is not maintainable.
- (iii) It has also been argued that the order dated 25-01-2010 passed by the Authorized Officer, though apparently has been passed under section 90-B (3) as mentioned in the order, but it is an order under section 90-B (5) of the Act, as it has been passed after hearing objections of the interest persons.
- (iv) The learned counsel of the non-petitioners has also argued that special enactment has always an overriding effect over the general law, and likewise when there is an authorised officer in any special enactment and when there is special provisions regarding appeals under Section 90-B of the Act, then general provisions of the Act regarding appeals or revisions are not applicable. Since the Divisional Commissioner has specially designated as an appellate authority under Section 90-B (7) of this Section and sub-section (9) of this Section provides that order of the Divisional Commissioner in appeal is final, so revision cannot be maintained before the Board in cases of this Section.
- (vi) The learned counsel has also, with support of decision dated 27-05-2011 passed by the Hon'ble High Court in DBCWC No.6307/11, argued that proceedings under section 90-B cannot be initiated in cases where the land has been transferred after 17-06-1999. Since the land in the present case has been transferred in the year 2010, no proceeding can be initiated under section 90-B in this

case. When the original case was even not entertainable under section 90-B, revision is also not maintainable before the Board.

- (vii) It has also been submitted; relying upon 1995 RRD 179, that the Divisional Commissioner has considered the non-petitioners as aggrieved person in the present case, therefore petitioner's objection in this regard is baseless.

The learned counsel has placed reliance on the following authorities in support of his arguments:-

Revision No.6563/06/LR decided on 23-06-2011, Revision Nos.46 to 83/2011/LR decided on 19-09-2011, Revision No.3625/2008/LR decided on 16-12-2011, Revision No.3523/2010/LR decided on 14-10-2011, 2004 RRD 13, 2005 RRD 147, RRT 2011(2) 1110, 1978 RRD 216, 1969 RRD 102, 1967 RRD 250, 1965 RRD 357, 1966 RRD 12 (RS), 1974 RRD 83, 1972 RRD 275, DBCWC No.6307/11 decided on 27-05-2011.

6. Learned counsel for the petitioner, opposing to the preliminary objections raised by the non-petitioners in their application dated 8<sup>th</sup> December, 2011 and supporting the maintainability of the revision in hand has argued:-

- (i) That the Sub-Divisional Officer- cum- Authorized Officer, Kishangarh has passed the order dated 25-01-2010 under Section 90-B (3) of the Act; whereas the Divisional Commissioner has been authorized to entertain the appeals only against orders passed under sub-section (1) read with sub-section (5) of Section 90-B of the Act. Therefore, according to the learned counsel, the Divisional Commissioner in the present case was not empowered to entertain appeal against the Authorized Officer's order dated 25-01-2010. Since the impugned order has been passed by the Divisional Commissioner without any jurisdiction, therefore the Board is competent to entertain revision against such an order.

- (ii) It has been also submitted that decision in Gajendra Singh's case (RRT 2009 (1) 330) was not cited before the coordinate Benches when decisions in Revision No.6563/06/LR decided on 23-06-2011, Revision Nos.46 to 83/2011/LR decided on 19-09-2011, Revision No.3625/2008/LR decided on 16-12-2011, Revision No.3523/2010/LR decided on 14-10-2011 and also in the case decided under 2011 RRT 1110 were pronounced. Had this authority of Hon'ble High Court in Gajendra Singh's case been cited before the learned Coordinate Benches, their conclusion would have been different regarding maintainability of revisions in the matter of Divisional Commissioner's orders passed without jurisdiction. Therefore above mentioned decisions by the learned coordinate Benches of the Board cannot be applied to the present case when the law laid down by Hon'ble High Court, in Gajendra Singh's case is available before this Court.
- (iii) Attention has also been drawn to provisions contained in sections 8, 9, 17, and 23 of the Act, wherein supervisory powers of the Board are given.
- (iv) It has also been contended that petitioner had filed an application before the Court of the Divisional Commissioner that the order of Authorised Officer is under sub-section (3) of the Act, and appeal before the Divisional Commissioner, against orders passed under sub-section (3) is not provided for. But the Divisional Commissioner, in present case, has passed the impugned order without deciding our application. Therefore, the impugned order is without jurisdiction and bad in the eyes of law.
- (v) It has also been submitted by the learned counsel for the petitioners that lease deed has already been issued by the Municipal Council Kishangarh in pursuance of orders passed by the Authorised Officer, hence now, Civil Court only can set aside that lease deed. So in view this fact also, the impugned order passed by the Divisional Commissioner, is without legal provisions and hence it is bad in law.

The learned counsel for the petitioners has cited a series of pronouncements made by this Board and Hon'ble High Court as well Hon'ble Supreme Court, in this regard. They are as follow:-

2009 (1) RRT 330, 2010 RBJ 238, 2011 RBJ 643, 2009 RBJ 730, 1995 (1) WLC 213, 1980 RRD 1, 1998 RBJ 189, AIR 1994 SC 1439, 1997 RRD 559, 2011 (4) WLC 524, RLW 1967 page 1, 2010 (1) RRT 557, 2010 (2) RRT 1045 and 2001 WLC (4) page 232.

7. After going through the contents of revision application and also application dated 8<sup>th</sup> December, 2011 filed by the non-petitioners raising preliminary objections and after hearing arguments of both the learned counsels, key issues to be decided in this matter, emerge as under:-

- (i) Whether the order dated 23-08-2011 passed by the Divisional Commissioner is without jurisdiction?
- (ii) Whether the Board is empowered to entertain revision against the order dated 23-08-2011 passed by the Divisional Commissioner?
- (iii) Whether the non-petitioners are 'aggrieved person' against the order dated 25-01-2010 passed by the Authorized Officer?
- (iv) Whether the order dated 25-01-2010 passed by the Authorized Officer under sub-section (3) is actually the order under sub-section (5), as it has been passed after inviting objections?

8. To appreciate the contentions made on behalf of both the parties and also to understand the scheme of Section 90-B of the Act, a perusal of Section 90-B would be proper, which is reproduced as under:-

**"90-B. Termination of rights and resumption of land in certain cases-**

*(1) Notwithstanding anything to the contrary contained in this Act and the Rajasthan Tenancy Act, 1955 (Act No.3 of 1955) where before the commencement of the Rajasthan Laws (Amendment) Act, 1999 (Rajasthan Act No.21 of 1999) any person, holding any land for agricultural purposes in*

*Urbanisable limits or peripheral belt of an urban area, has used or has allowed to be used such land or part thereof, as the case may be, for non-agricultural purposes or, has parted with possession of such land or part thereof, as the case may be, for consideration by way of sale or agreement to sell and/or by executing power of attorney and/or will or in any other manner, for purported non-agricultural use, the rights and interest of such person in the said land or holding or part thereof, as the case may be, shall be liable to be terminated and such land shall be liable to be resumed.*

*(2) Where any land has become liable to be resumed under the provisions of sub-section (1), the Collector or the officer authorized by the State Government in this behalf, shall serve a notice, calling upon such person to show cause why the said land may not be resumed summarily, and among other things, such notice may contain the particulars of the land, cause of proposed action, the place, time and date, where and when the matter shall be heard.*

*(3) When the tenant or the holder of such land or any person duly authorized by him, as the case may be, makes an application to the Collector or the officer authorized by the State Government in this behalf, expressing his willingness to surrender his rights in such land, with intention of developing such land for housing, commercial, institutional, semi-commercial, industrial, cinema or petrol pump purposes or, for the purpose of multiplex units, infrastructure projects or tourism projects or, for such other community facilities or public utility purposes, as the case be notified by the State Government, the Collector or the officer authorized by the State Government in this behalf, shall upon being satisfied about the willingness of such person, order for termination of rights and interest of such person in the said land and order for resumption of such land.*

*(4) The proceedings in the matter shall be conducted summarily and shall ordinarily be concluded within a period of sixty days from the first date of hearing specified in the notice served under sub-section (2).*

*(5) Where after hearing the parties, the Collector or the officer authorized by the State Government in this behalf, is of opinion that the land is liable to be resumed under sub-section (1), he shall after recording reasons in writing, order for termination of rights and interests of such person in the said land and order for resumption of the said land.*

*(6) The land so resumed under sub-section (3) and (5) shall vest in the State free of all encumbrances and shall be deemed*



*to have been placed at the disposal of the concerned local authority under section 102-A of this Act with effect from the date of passing such order.*

*Provided that the land surrendered under sub-section (3) above, shall be made available to the person, who surrenders the land, for its development in accordance with the rules, regulation and bye-laws applicable to the local body concerned, for housing, commercial, institutional, semi-commercial, industrial, cinema or petrol pump purposes or, for the purpose of multiplex units, infrastructure projects or tourism projects or, for other community facilities or public utility purposes.*

*(7) The person, aggrieved by the order made under sub-section (5), may appeal to the Divisional Commissioner or the officer authorized by the State Government in this behalf, within thirty days of passing of order under sub-section (5).*

*(8) The Divisional Commissioner or the officer authorized by the State Government in this behalf, after hearing the parties, pass appropriate orders in such appeal within a period of sixty days from the date of presentation of appeal before him.*

*(9) The order passed by the Divisional Commissioner or the officer authorized by the State Government in this behalf in appeal under this section shall be final.*

*(10) No civil court shall have jurisdiction to entertain or decide any suit or proceeding questioning the order made under sub-section (5) by the Collector or the officer authorized by the State Government or and order made under sub-section (8) by the Divisional Commissioner or the officer authorized by the State Government.*

*(11) Nothing in this section shall apply to any land belonging to the Deity, Devasthan Department, any public trust or any religious or charitable institution or a wakf:.*

*Provided that where any public trust registered under the Rajasthan Public Trust Act, 1959 or any registered, charitable institution intends to use its land or holding or part thereof and returns/proceeds received there from for the purposes of fulfillment of its aims and objectives, it may make an application under sub-section (3) to surrender its rights in such land or holding or part thereof and in that case provisions of this section shall apply with its modification that such purposes shall be deemed to have been provided for in sub-section (3) and proviso to sub-section (6).*

**Explanation-** *For the purposes of this proviso, "Land or holding" does not include the land allotted by the State*

*Government free of cost or on token amount or on lease unless the State Government permits otherwise.*

*(12) No proceedings or orders under this section shall be initiated or made in respect of lands for which proceedings under the provisions of Urban Land (Ceiling and Regulation) Act, 1976 (Central Act No.33 of 1976), the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (Act No.11 of 1973) and the Rajasthan Land Reforms and Acquisition of Land Owners Estate Act, 1963 (Act No.11 of 1964) are pending.*

***Explanation-I.*** *Part use of the land for purposes sub-servient to the agriculture such as residential house of the tenant (subject to limits of 1/50<sup>th</sup> part of his holding or 500 sq. yards whichever is less) cattle breeding, dairy farming, fodder storage, poultry farming, horticulture, forestry development, water tank, well pasturage, grove land and such other purposes ancillary thereto or connected therewith shall not be construed to mean non-agricultural purposes.*

***Explanation-II.*** *For the purpose of sub-section (1), urban area shall mean an area for which a municipality is constituted under the Rajasthan Municipality Act, 1959 (Act No.38 of 1959) or Urban Improvement Trust is constituted under Rajasthan Urban Improvement Trust Act, 1959 (Act No.35 of 1959) or the Jaipur Development Authority is constituted under the Jaipur Development Authority Act, 1982 (Act No.25 of 1982).*

***Explanation-III.*** *For the purpose of this section, "Urbanisable limits" means the urbanisable limits as indicated in the master plan or the master development plan of a city or town prepared under any law for the time being in force, and where there is no master plan or master development plan, the municipal limits of the areas.*

***Explanation-IV*** (i) *For the purpose of this section, "peripheral belt" means the peripheral belt as indicated in the master plan or the master development plan of a city or town prepared under any law for the time being in force, and where there is no master plan or master development plan or where peripheral belt is not indicated in such plan, the area as may be notified by the State Government from time to time.*

(ii) *Where any part of a village falls within the peripheral belt, the whole village shall be deemed to be within the peripheral belt.*

9. The above Section 90-B was specially enacted and inserted in the Act with effect from 17-06-1999 vide the Rajasthan Laws (Amendment) Act, 1999 (Rajasthan Act

No.21 of 1999). Mere perusal of this section reveals that it was enacted to deal with following two types of cases:-

- (i) Firstly, to address the issue of agricultural land situated in Urbanisable limits or peripheral belt of an urban area, **where the holder of such land, before the commencement of the Rajasthan Laws (Amendment) Act, 1999, has used or allowed to be used it for non-agricultural purposes or where the holder of such land has parted with possession of such land or a part thereof, for consideration by way of sale or by an agreement to sale or by power of attorney or by will**, for the purpose of putting it in non-agricultural use. The sub-section (1) of Section 90-B is related to this type of problem and it is “Notwithstanding anything to the contrary contained in this Act”, meaning thereby it has an overriding effect over other provisions of the Act.
- (ii) Secondly, to take care of cases in which a **tenant or the holder of agricultural land or any person duly authorized by such tenant or by such holder of the land, after commencement of the Rajasthan Laws (Amendment) Act, 1999**, expresses willingness to surrender his rights in such land with an intention to put the land in non-agricultural use. Such cases are governed under sub-section (3) of the Section 90-B. The Authorised Officer after making such enquiry as he deems necessary issues orders for termination of rights and interests of such person in the said land and the land is resumed.

10. In 2009 (1) RRT 300 (case of Gajendra Singh), one ‘G’ was the original khatedar of the land in question. The petitioner and 26 other persons, on the basis of sale deed dated 24-05-1996 from the original khatedar ‘G’ applied and surrendered land for issuance of pattas for non-agricultural use of the land in question. The Authorized Officer accepted their surrender under section 90-B (3) and the land was resumed and placed at the disposal of Urban Improvement Trust. The Urban Improvement Trust issued pattas in favour

of the petitioner and 26 others. The Divisional Commissioner had entertained an appeal against order of the Authorized Officer filed by some private respondents who were claiming their rights on the basis of agreement to sale executed on 16-07-1994 by power of attorney holder of 'G'. The Hon'ble High Court in this case has held that petitioner was land holder on the basis of legal title and his land was resumed for developing the land for housing and commercial purposes and thereafter the Authorized Officer regularized that land and issued pattas. The Divisional Commissioner has wrongly exercised its jurisdiction. An appeal can be filed against the order made under sub-section (5) of Section 90-B and not against the order passed under sub-section (3) of the Section 90-B of the Act, because under sub-section (3) of Section 90-B, agricultural land can be surrendered for resumption only by the tenant or the holder of such land whereas under sub-section (5) of Section 90-B of the Act, land can be resumed upon surrender by any interested party and for which the Collector or the Authorized Officer can form opinion that the land is liable to be resumed under sub-section (1) and they can resume the land after recording reasons in writing. An appeal can be filed under sub-section (7) against such resumption order but there is no provision of appeal against the order made under sub-section (3) of Section 90-B of the Act. In view of this discussion, the Hon'ble High Court has categorically held that **“order passed by the Divisional Commissioner is totally without jurisdiction.”** The writ was allowed and the Divisional Commissioner's order was quashed. Relevant part of the decision dated 22-12-2008 given by the Hon'ble High Court in the case of Gajendra Singh (SBCWP No.42/2008) is as under:-

*“.....In this case the main question raised by the petitioner that pattas were under Section 90-B of the Act of 1956 by the U.I.T. to the petitioner on the basis of order passed by competent authority under sub-Section (3) of Section 90-B of the Act of 1956 but no appeal is provided before the Divisional Commissioner under sub-section (7) of the Section 90- B of the Act of 1956. According to the petitioner the Divisional Commissioner, Jodhpur has wrongly exercised its jurisdiction while entertaining such appeal because as per sub-section (7)*

*of Section 90-B of the Act of 1956, appeal can be filed against the order made under sub-section (5) of Section 90-B and not against the order passed under sub-section (3) of Section 90-B of the Act of 1956 because under sub-section (3) of Section 90-B, agricultural land can be surrendered for resumption by the tenant or the holder of such land whereas under sub-section (5) of Section 90-B of the Act of 1956, land can be resumed upon surrender by any interested party and for which the Collector or the officer authorized by the State Government in this behalf can form opinion that the land is liable to be resumed under sub-section (1) and they can resume the land after recording the reasons in writing, meaning thereby according to sub-section (7) of Section 90-B of the Act of 1956, appeal can be filed against the order made under sub-section (5) of Section 90-B of the Act of 1956 but there is no provision for filing any appeal against the order made under sub-section (3) of Section 90-B of the Act of 1956. Therefore, the Divisional Commissioner has illegality entertained the appeal against the order so made by the authorized officer for resumption of the land under sub-section (3) of Section 90-B of the Act of 1956. In this view of the matter on the basis of above discussion, it is abundantly clear that the order passed by the Divisional Commissioner is totally without jurisdiction....”*

11. The principal laid down in the Gajendra Singh’s case, was also affirmed by the Hon’ble High Court in case of **Anjana Kothari vs. Divisional Commissioner & Ors. (SBCWP No.1389/2009) decided on 6/5/2011**. Para 15 of that decision dated 06-05-2011 is as under:-

*“15. On a plain reading of these provisions as per Golden Rule of interpretation, and the scheme of Section 90-B of the Act of 1956, it is clear that appeal filed by said respondent- Krishna Nagar Vikas Samiti before the learned Divisional Commissioner was incompetent and was not filed by the person aggrieved because it was not the land owner who surrendered the land in question to the State Government. Since, the order dated 12.01.2004 in Case No.1592/2003 was neither passed in favour of said Krishna Nagar Vikas Samiti, nor against it, therefore, the question of said Krishna Nagar Vikas Samiti being an aggrieved person against such order dated 12.01.2004 under sub-Section (7) of Section 90-B of the Act does not arise. It is only the land owner against whom an adverse order is passed under sub-Section (5) vesting such*

*land in State instead of it being revested in such land owner under proviso to sub-section (6) who can file an appeal under sub-Section (7) before the Divisional Commissioner. Neither the competent authority who himself grants such conversion order under the said Proviso to sub-section (6) nor any third party can file such appeal under sub-Section (7) of Section 90-B of the Act. Therefore, the appeal itself was not maintainable and the order passed by the learned Divisional Commissioner on 26.09.2007 was wholly without jurisdiction and passed on an incompetent appeal and the same, therefore, deserves to be quashed."*

12. The view, held in the Gajendra Singh's case, was again followed and confirmed by the Hon'ble High Court in its decision dated 20-12-2011 by which CWP No.195/2009 (case of M/S Onway Build Estate (P) Ltd) and CWP No. 129/2009 (case of Ghanshyam) were decided by a common order; wherein the Divisional Commissioner, Jaipur had set aside order of Authorized Officer (Land Resumption) and Land Acquisition Officer, UIT, Alwar. In this case, after submission of applications under section 90-B (3) of the Act, notices thereof were published in daily news papers inviting objections. After taking note of objections having been submitted by interested persons, applications under section 90-B (3) of the Act were allowed by the Authorized Officer vide order dated 14-06-2007 and the subject land was mutated in the name of UIT, Alwar and accordingly layout plans and road network plan was approved by the UIT. One of the persons, who had earlier submitted objections before the Authorized Officer, namely Shri Rajesh Agrawal feeling aggrieved by the order of the Authorized Officer preferred an appeal before the Divisional Commissioner, Jaipur, who set aside the order dated 14-06-2007 passed by the Authorized Officer. The Hon'ble High Court, following the decision passed in the Gajendra Singh's case, has held that the order of the Divisional Commissioner was without jurisdiction and it was quashed.

13. In the case of M/S Onway Build Estate (P) Ltd decided on 20-12-2011, as discussed above, the Hon'ble High

Court, has also discussed and followed the principle laid down in Smt. Meena Sharma's case reported as 2011(4) WLC 524, wherein not only the issue regarding the Divisional Commissioner's jurisdiction but also the issue regarding 'aggrieved person' was discussed and adjudicated. Relevant para(s) 7, 8 and 9 of the decision of Hon'ble High Court in the case of Meena Sharma's case are worth reproducing, which are as under:-

*"7. The remedy of appeal to the Divisional Commissioner under sub-section (7) of Section 90-B is only against an order made under sub-section (5) of the Act. Sub-section (5) clearly refers to sub-section (1) only and not sub-section (3) and stipulates that where, after hearing the parties, the Collector or the officer authorized by the State Government in this behalf, is of the opinion that the land is liable to be resumed, under sub-section (1), he shall after recording reasons in writing, order for termination of rights and interest of such person in the said land and order for resumption of the said land. Thus, sub-section (5) of Section 90-B of the Act does not refer to channel of surrender and regularization in favour of tenant or land holder resorting to sub-section (3) of Section 90-B of the Act. Of course, sub-section (6) provides that the land so resumed under sub-section (3) and sub-section (5) shall vest in the State Government free from all encumbrances and shall be deemed to have been placed at the disposal of local body with effect from the date of passing of such order. Proviso to sub-section (6) of Section 90-B further provides that the land surrendered under sub-section (3) shall be made available to the person, who surrendered the land for its planned development in accordance with rules, regulation and by-laws applicable to the local body concerned for housing or commercial purposes.*

*8. It is clear that sub-section (3) has to be read with sub-section (6), whereas, sub-sections (1), (2), (4) and (5) have to be read together as these are two separate streams for operating Section 90-B of the Act. The remedy by way of appeal to the Divisional Commissioner under sub-section (7) is available to a 'person aggrieved' only. If the land is resumed under sub-section (1) read with sub-sections (2), (4) and (5) of the Act any person aggrieved of such resumption can file appeal before Divisional Commissioner under Section 90-B(7) of the Act. The purpose of providing such remedy of appeal to the Divisional Commissioner and excluding the jurisdiction of civil court in such cases is obvious. When the State Government initiates*

*such action, an in house departmental remedy of appeal appears to have been provided under sub-section (7) of the Act. However, if such surrender takes place at the instance of tenant or land holder under sub-section (3), the land is made available to such person himself for planned development and there cannot be any question of such person being aggrieved of such order.*

*9. However, if it is not so made available to him as per proviso to sub-section (6) then such land holder himself can be an aggrieved person and can file appeal under Section 90-B (3) of the Act, but no third party or a stranger is allowed to file appeal under sub-section (3) of Section 90-B of the Act.”*

14. Thus, undisputedly, **it is an admitted position of law that the Divisional Commissioner is not empowered to entertain an appeal against the order passed by the Authorized Officer under Section 90-B (3) of the Act.**

15. It has also been categorically held in by Hon'ble High Court in Anjana Kothari's case and in Meena Sharma's case, that, **when the order is issued by the Authorised Officer under sub-section (3) of Section 90-B of the Act, no third party can be aggrieved person against such order.** Following the principle laid down by the Hon'ble High Court in these cases, I am of the view that non-petitioners in the present case were not aggrieved person, as the order dated 25-01-2010, passed by the Sub-Divisional Officer- cum- Authorised Officer, Kishangarh was neither against the non-petitioners nor in their favour. They are neither tenant/co-tenant of the disputed land nor they are holder of the land in question. They may be tenant/sub-tenant of the land situated adjacent to the land in question, but **neighbouring khatedars cannot be given a right to file objections or appeal, if the khatedar or holder of the land in question submits application under sub-section (3) of Section 90-B of the Act, for surrendering his tenancy for getting the land converted for non-agricultural use.** Therefore, it is my considered view that non-petitioners in the present case are not aggrieved person, so they were even not



entitled to file an appeal before the Divisional Commissioner against the order dated 25-01-2010.

16. One of the arguments from the non-petitioners' side is that the order dated 25-01-2010 passed by the Authorized Officer, though apparently has been passed under section 90-B (3) as mentioned in the order, but it is an order under section 90-B (5) of the Act, as it has been passed after hearing objections of the interest persons. In view of the observations of the Hon'ble High Court in case of M/S Onway Build Estate (P) Ltd decided on 20-12-2011 (CWP No.195/2009 & 129/2009), wherein also the Authorized Officer had passed the order under sub-section (3) after inviting and deciding objections, the law laid down by coordinate bench of this Board in 2004 RRD 13 is not a good law and the argument of the learned counsel for the non-petitioners is not tenable. Proceedings under sub-section (3) of Section 90-B are independent of other provisions of Section 90-B. Inviting of objections may be an extra step taken by the Authorized Officer in the interest of justice, but it does not change the soul of the case. A case under sub-section (3) remains the case under sub-section (3) in spite of the fact that it has been decided after inviting objections.

17. Now the question for determination is that whether the Board can entertain an appeal or revision in the cases of Section 90-B of the Act? In this regard, the learned counsel of the non-petitioners has argued that section 90-B is a special enactment in the Act, and it has an overriding effect over the general provisions of the Act. That, special provisions have been made in the section itself for appeals etc., so general provisions of appeals are not applicable. That, the Divisional Commissioner has been specially designated as an appellate authority under Section 90-B (7) of this Section and sub-section (9) of this Section provides that order of the Divisional Commissioner in appeal is final, so revision cannot be maintained before the Board in cases of this Section. On the other hand, the learned counsel for the

petitioner in this regard, has drawn my attention to provisions contained in sections 8, 9, 17, and 23 of the Act, wherein supervisory powers of the Board are given.

18. The text of the said Section 90-B of the Act has already been reproduced in para 8 hereinabove. It is worth-noting here that sub-section (1) and sub-section (3) are the only substantive sub-sections in Section 90-B. Sub-section (2), (5), (6), (7) (8) and (9) are procedural sub-sections for cases under sub-section (1), whereas sub-section (3) contains substantive as well as procedural law relating to cases in which a tenant or the holder of agricultural land or any person duly authorized by such tenant or by such holder of the land, after commencement of the Rajasthan Laws (Amendment) Act, 1999, expresses willingness to surrender his rights in such land with an intention to put the land in non-agricultural use. Both these sub-sections viz. sub-section (1) and sub-section (3), are independent of each other and are meant for the different purposes. It is also to be noted the expressions “Notwithstanding anything to the contrary contained in this Act” (‘notwithstanding clause’ in short) have been prefixed only to sub-section (1) and these expressions have not been prefixed to the entire Section 90-B. Meaning thereby is that this notwithstanding clause is the part of sub-section (1) only. Sub-section (3) has to be read with sub-section (6) only, whereas, sub-sections (1), (2), (4) and (5) (7) (8) and (9) have to be read together as these are two separate streams for operating Section 90-B of the Act. **Sub-section (3) is not prefixed with the notwithstanding clause, and, therefore proceedings under sub-section (3) cannot be said to be out of domain of the Act. In my view, had the legislature been of intention to put the entire Section 90-B out of the domain of the other provisions of the Act, the expressions “Notwithstanding anything to the contrary contained in this Act” would have been inserted before the expression “(1)” and not after the expression “(1)”. Since the Section 90-B opens with expression “(1)” and thereafter the notwithstanding clause occurs, therefore I am of the considered view that this notwithstanding clause is the**

**part of only sub-section (1) of the Section 90-B and proceedings under that sub-section only, is having the overriding effect over other provisions of the Act. Sub-section (3) is not subject to the notwithstanding clause, therefore any proceeding under sub-section (3) is definitely subject to the other provisions of the Act. Since there is no provision in Section 90-B of the Act for appeals etc. in the matters pertaining to sub-section (3), any dispute arising out of proceedings under sub-section (3) shall be treated under other provisions of the Act.**

19. It can also be noted here that, even the jurisdiction of Civil Court has been excluded only in the matters pertaining to sub-section (5), as provided in sub-section (10) of Section 90-B of the Act. Sub-section (5) deals with cases of sub-section (1) and not the cases of sub-section (3) of Section 90-B. By this provision, it is clear that only sub-section (1) of Section 90-B is covered by notwithstanding clause. Sub-section (3) of the Section and proceedings under this sub-section are not covered under notwithstanding clause.

20. I have gone through the decisions of other coordinate Benches of this Board in Revision Nos. 46 to 83/2011/ LR decided on 19-09-2011, Revision No.6563/ 06/ LR decided on 23-06-2011, Revision No.3625/2008/ LR decided on 16-12-2011 and Revision No.3523/2010/LR decided on 14-10-2011. In the case of Revisions Nos. 46 to 83/2011 decided on 19-09-2011 by the Board, the petitioner Housing Board had challenged the order passed by the Authorized Officer under sub-section (3) of Section 90-B, by way of appeal before the Divisional Commissioner. The Divisional Commissioner rejected that appeal, so revision was filed before the Board. The Board rejected the revision. Whereas, facts in the present revision, are quite different from that of revisions decided by the Board on 19-09-2011. In the present case, the Divisional Commissioner, in spite of the legal position that an appeal against order under section 90-B (3) is not maintainable, has entertained the appeal and has quashed the order of the Authorized Officer, which is his extra-

jurisdictional order. Therefore the decisions in revisions Nos. 43 to 84 cannot be applied to the present case. The Coordinate Single Bench has passed the order dated 19-09-2011 in terms of sub-section (1) of Section 90-B, which definitely has an overriding effect over the other provisions of the Act of 1956. The pronouncement dated 19-09-2011 concludes that- “उपरोक्त वर्णित प्रावधान के अवलोकन से यह स्पष्ट है कि अधिनियम की धारा 90-बी की उपधारा (1) में सर्वोपरि खण्ड (non-obstante clause) का प्रयोग किया गया है जिसमें इस धारा का प्रभाव भूराजस्व अधिनियम के अन्य प्रावधानों के उपर है। इस प्रकार यह प्रावधान अधिनियम का एक विशेष प्रावधान है।” Thus the Hon’ble member has expressed his views only in the context of sub-section (1) and not in context of sub-section (3), for which it has been already opined by me, in para 18 hereinabove, that sub-section (3) does not have an overriding effect over the other provisions of the Act. Therefore with respectful agreement with the pronouncement dated 19<sup>th</sup> September, 2011 by the coordinate bench, I am of the view that it cannot be applied to treat the present case where the recorded khatedar has applied for getting his khatedari land converted in terms of sub-section (3) of the Act. In the case related to revision No.3523/2010 decided by another coordinate Bench also the Hon’ble member has interpreted the case in terms of sub-section (1) read with sub-section (5), (7) and (9) of section 90-B of the Act. As discussed above, this is not the correct prescription for treating cases under sub-section (3), therefore it cannot be applied to the present case. The Hon’ble coordinate Bench in Revision No.3625/2008 decided on 16-12-2011, dealing with case of sub-section (3) of Section 90-B has also concluded on the basis of sub-section (1) and its overriding effect over the Act, whereas **both these sub-sections (1) and (3), as I have observed hereinabove, are independent of each other and cases of sub-section (3) cannot be treated in terms of provisions of sub-section (1).** The learned counsel for non-petitioners has also relied upon 2011 (2) RRT 1110. In this case, during the pendency of an appeal before the Divisional Commissioner, an application was filed by the applicant/petitioner under Order 1 Rule 10 of the Civil Procedure Code, 1908 to be impleaded in the appeal on the ground that he is

recorded khatedar of the land in question and thus necessary party to the litigation. The Divisional Commissioner rejected the application and a revision was filed by the petitioner in the Board. Revision was rejected on the pretext that appeal before the Divisional Commissioner is under sub-section (7) of Section 90-B, so the Board cannot interfere in such an order. Thus the case is quite different from the present case before me. It is not clear from the citation whether order, against which appeal was pending before the Divisional Commissioner, was passed under sub-section (3) or sub-section (5) by the Authorized Officer? Therefore, this authority cannot be relied upon in the present case. Thus, I am inclined to conclude that citations quoted by the learned counsel for the non-petitioners do not help to establish his plea that revision is not maintainable before the Board in case of disputes arisen out of proceedings under sub-section (3) of Section 90-B of the Act.

21. The Board of Revenue is the highest court of appeal, revision and reference in the matters of cases under the Rajasthan Land Revenue Act, 1956 and the Rajasthan Tenancy Act, 1955.

Section 8 (1) of the Rajasthan Land Revenue Act, 1956 is as under:-

***“8. Powers of the Board.- (1) Subject to the other provisions of this act or to the provisions of the Rajasthan Tenancy Act, 1955 (Rajasthan Act 3 of 1955) or of any other law in force, the Board shall be the highest revenue court of appeal, revision and reference in Rajasthan;”***

Section 9 of the Act is as under:-

***“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.***

The words “subject to the other provisions of this Act” in both these Sections, have been used to limit the jurisdiction

of the Board and therefore, where alternative remedy by way of appeal, or revision etc. is available, the extraordinary powers of the Board under section 8 and 9 of the Act cannot be invoked. In 1993 RRD 446, it has been held that:- जहां अपील या निगरानी के माध्यम से वैकल्पिक रेमेडी उपलब्ध है, वहां सामान्य तौर पर धारा 9 राजस्थान भूराजस्व अधिनियम की असाधारण शक्तियों का उपयोग नहीं करना चाहिये। From the perusal of section 8 (1) and section 9 of the Act, it is evident that where any provisions are there for appeal, revision or reference, the Board should not invoke its powers under section 8 and 9 of the Act, as held in 1993 RRD 446. But the implied meaning is also that when no provision exists in the Act for alternative remedy of appeal or revision, the Board can exercise its extraordinary powers under Section 9 of the Act to deal with situation. Section 221 of the Rajasthan Tenancy Act, 1955 is akin to section 9 of the Rajasthan Land Revenue Act, 1956. It has been held in 1993 RRD 683 that:-

***“This Section confers on the Board, the powers of general superintendence 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 right, has failed to secure the desired relief.”***

22. Sub-section (1) of Section 90-B of the Act is covered by notwithstanding clause and provision for appeal against any order made under sub-section (1) read with sub-section (5) of the Section 90-B, is there in sub-section (7), so it is undisputed that revision in the Board is not maintainable in the matters pertaining to sub-section (1) read with sub-sections (5) (7) and (9) of Section 90-B of the Act. But, since

there is no such provisions for the matters pertaining to sub-section (3) of Section 90-B of the Act, it is my considered view that the Board should not restrain from invoking its extraordinary powers under Section 8 and 9 of the Act, as sub-section (3) is not covered by notwithstanding clause and it is well within the domain of other provisions of the Act. **If the Divisional Commissioner, having no jurisdiction to do so, entertains an appeal and passes an order in the matters pertaining to sub-section (3) of Section 90-B of the Act, then such an order cannot be said to have been passed by the competent appellate authority under Section 90-B of the Act. Such an order would have to be treated as an order passed by the Divisional Commissioner without jurisdiction. Therefore, the Divisional Commissioner, being a subordinate Court/Officer to the Board, the Board cannot restrain from interfering in such an order passed by the Divisional Commissioner without jurisdiction.** In the present case, it has been established that the order dated 23-08-2011 passed by the Divisional Commissioner, Ajmer setting aside order dated 25-01-2010 passed by the Authorized Officer under sub-section (3), is without jurisdiction, therefore in view of the discussions, hereinabove, I am of the view that the Board is empowered to entertain the present revision.

23. Though arguments were heard on maintainability and admission of the revision, but on the basis of objections taken by the non-petitioners in their application dated 8<sup>th</sup> December 2011 and arguments advanced by learned counsels from both the sides, basic issues have been discussed and it has been observed hereinabove:-

- (i) That the impugned order in the present case, passed by the Divisional Commissioner Ajmer setting aside Authorised Officer's order dated 25-01-2010 is without jurisdiction and it is not an order by a competent appellate authority under sub-section (7) of Section 90-B of the Act.
- (ii) That the Board has powers to entertain a revision filed against the order passed the Divisional

Commissioner in the matter of sub-section (3) of Section 90-B of the Act, as such an order is without jurisdiction.

- (iii) That non-petitioners are not 'aggrieved person' against the order dated 25-01-2010 of the Authorized Officer.
- (iv) That in spite of the fact that Authorized Officer has passed the order dated 25-01-2010 after inviting objections, the order is under sub-section (3) of Section 90-B of the Act.

After having observing as above, I am of the view that nothing is now left in this revision for which it can be placed for further hearing. The revision deserves to be disposed of finally.

24. In view of the observations in para(s) 8 to 23, hereinabove, it is my considered view that the application dated 8<sup>th</sup> December, 2011 filed by non-petitioners is without any substance, and as such deserves to be rejected. The revision in hand deserves to be accepted at the level of admission itself, and impugned order dated 23-08-2011 passed by the Divisional Commissioner, Ajmer in case No. 12/2010 deserves to be quashed.

24. Consequently, the application dated 8<sup>th</sup> December, 2011 filed by non-petitioners is hereby rejected and the revision in hand is admitted and allowed. The impugned order is quashed hereby.

Pronounced in the open court.

(Moolchand Meena)  
Member