

Court No. - 19

Case :- WRIT - B No. - 368 of 2022

Petitioner :- Mahendra Singh And 6 Others

Respondent :- Board Of Revenue U.P. And 8 Others

Counsel for Petitioner :- Harsh Vikram,Dharm Vir Jaiswal

Counsel for Respondent :- C.S.C.,Arun Kumar Pandey

Hon'ble Dr. Yogendra Kumar Srivastava,J.

1. Heard Sri Harsh Vikram, learned counsel for the petitioners, Sri Neeraj Tripathi, learned Additional Advocate General assisted by Sri Shashank Shekhar Singh, learned Additional Chief Standing Counsel and Sri Surya Bhan Singh and Sri Devesh Vikram, learned Standing Counsel appearing for the State respondents.

2. The instant writ petition has been filed praying for quashing of the order dated 23.09.2021 passed by the court of Additional Sub-Divisional Magistrate Sadar, Moradabad in Case No. 04080 of 2018, Computerized Case No. T201813540104080 (Mahendra Singh and others Vs. State of U.P.) in proceedings under Section 144 of the U.P. Revenue Code, 2006¹ and the order dated 23.11.2021 passed by the Member Board of Revenue, U.P. Allahabad in Case No. Rev/2396/2021/Moradabad, Computerized Case No. AL20211354002396 (Mahendra Singh and others Vs. Smt.Sharda Devi and others) in proceedings under Section 210 of the Revenue Code. A further direction is sought to the private respondent nos. 3 to 8 not to interfere in the peaceful possession of the petitioners on land bearing Gata No. 251Aa situate at Bhaypur Tehsil and District Moradabad.

1 Revenue Code

3. The case as set up in the writ petition is that the land bearing Gata No. 521 Ka area 3.2380 acre situate at village Bhaypur Tehsil and District Moradabad was allotted to the predecessors-in-interest of the petitioners; however due to mistake of revenue authorities, their names were wrongly recorded as class III tenure holder and treating them to be *asami*, proceedings under Rule 176-A (2) of the U.P. Zamindari Abolition and Land Reforms Rules, 1952² were initiated and an exparte order dated 07.03.2003 was passed directing their names to be expunged from the revenue records. The land in question was thereafter allotted to the respondent nos. 3 to 8. Upon an application filed by the petitioners, the aforesaid order was recalled by an order dated 04.12.2003 and the proceedings were thereafter dropped with the passing of an order dated 23.03.2006 under Rule 176-A (2). The order dated 23.03.2006 was put to challenge by the subsequent allottees as also the State of U.P. by filing a revision before the Additional Commissioner (Administration), Moradabad and in terms of an order dated 31.03.2010, the revisions were allowed and the order dated 23.03.2006 was set aside. The earlier order dated 07.03.2003, whereby the names of the predecessors-in-interest of the petitioners had been expunged, was affirmed. The petitioners thereafter preferred a revision before the Board of Revenue being Revision No. 13 of 2010-2011, which is stated to be pending.

4. It is further stated that the predecessors-in-interest of the petitioners died in the meantime and the petitioners thereafter instituted a suit for declaration under Section 144 of the Revenue Code and also moved an application seeking temporary injunction against the respondents under Section 146 of the Revenue Code. The aforesaid application seeking temporary injunction was

2 UPZA & LR Rules

rejected by the trial court by means of an order dated 23.09.2021, which was subjected to challenge in a revision being Revision No. 2396 of 2021 before the Board of Revenue, which was also dismissed at the stage of admission. Aggrieved against the aforestated order, the present writ petition has been filed.

5. Learned counsel for the petitioners has made his submissions as under :-

5.1 The revisional court erred in dismissing the revision on the ground of maintainability. The provision for grant of injunction having been separately provided for under Section 146 of the Revenue Code any order passed thereon disposing the application, either by granting or refusing to grant the injunction, would have the effect of terminating the proceedings under Section 146 and therefore the order would be revisable.

5.2 Section 209 creates a bar in respect of certain appeals and in terms of clause (d) thereof, an appeal is barred against an order granting or rejecting an application for stay.

5.3 Section 210 provides for a revision before the Board or the Commissioner in respect of any suit or proceeding decided by any subordinate revenue court in which no appeal lies. In the instant case, the application for injunction filed under Section 146 having been finally decided and an appeal thereagainst being barred as per Section 209, the order rejecting the application for injunction would be revisable under Section 210. Reliance in this regard has been placed on the decision in the case of **Talib Khan Vs. Additional Commissioner (Administration) Moradabad Division, Moradabad**³

³ 2008 (104) RD 458

6. Learned Additional Advocate General has refuted the aforestated contentions raised on behalf of the petitioners by submitting as under :-

6.1 The provision for injunction available under Section 146 is during the course of a suit under Section 144 and accordingly an order rejecting the application seeking injunction cannot be said to be "case decided" so as to be amenable to a revision under Section 210.

6.2 The remedy of first appeal under Section 207 of the Revenue Code, apart from being available against a final order or decree passed in a suit, is also available against an order of the nature specified in Order XLIII Rule 1 of the First Schedule of the Code of Civil Procedure, 1908⁴. Order XLIII Rule 1 (r) provides for an appeal against an order under Rule 1, Rule 2 of Order XXXIX which is with regard to grant of temporary injunctions in a suit. The provision with regard to grant of injunction under Section 146 being similarly worded as the Order XXXIX Rule 1, an order rejecting the application seeking injunction in a pending suit under Section 144, would be appealable as per clause (c) of sub-section (2) of Section 207 of the Revenue Code.

6.3 The bar under Section 209 against filing an appeal against an order rejecting an application for stay would not be attracted inasmuch as in the present case, in terms of the order in question the injunction sought by the petitioners has been refused and the same cannot be said to be an order rejecting an application for stay. Placing reliance upon the judgment in the case of **Mulraj vs Murti Raghonathji Maharaj**⁵, it has been contended that there

4 CPC

5 AIR 1967 SC 1386

is a distinction between an order of an injunction and an order of stay.

7. Rival contentions now fall for consideration.

8. The provision with regard to declaratory suits finds place under Chapter IX of the Revenue Code. Section 144 is with regard to declaratory suits by the tenure holders and the same reads as follows :-

"144. Declaratory suits by tenure holders.— (1) Any person claiming to be a bhumidhar or *asami* of any holding or part thereof, whether exclusively or jointly, with any other person, may sue for a declaration of his rights in such holding or part.

(2) In every suit under sub-section (1) instituted by or on behalf of—

(a) a Bhumidhar, the State and the Gram Panchayat shall be necessary parties;

(b) an *asami*, the land-holder shall be a necessary party."

9. The corresponding provisions with regard to declaratory suits under the U.P. Zamindari Abolition and Land Reforms Act, 1950⁶ (now repealed) was contained under Section 229-B of the said enactment, and the same was as follows :-

"229-B. Declaratory suit by person claiming to be an asami of a holding or part thereof.— (1) Any person claiming to be an asami of a holding or any part thereof, whether exclusively or jointly with any other person, may sue the landholder for a declaration of his rights as asami in such holding or part, as the case may be.

(2) In any suit under sub-section (1) any other person claiming to hold as asami under the land-holder shall be impleaded as defendant.

(3) The provisions of sub-sections (1) and (2) shall *mutatis mutandis* apply to a suit by a person claiming to be a bhumidhar with the amendment that for the word "landholder" the words "the State Government and the Gaon Sabha are *substituted* therein."

10. Section 144 contains the provision for declaratory suits by tenure holders and in terms thereof any person claiming to be a bhumidhar or *asami* of any holding or part thereof, whether

6 UPZA and LR Act

exclusively or jointly with any other person, may sue for a declaration of his rights in such holding or part thereof. The State and the Gram Panchayat shall be necessary parties in every such suit instituted by or on behalf of the bhumidhar, and in the case of a suit instituted by an asami, the landholder shall be a necessary party.

11. Section 146 contains the provision for injunction, and the same reads as follows :-

"146. Provision for injunction.— If in the course of a suit under Section 144 or 145, it is proved by affidavit or otherwise —

(a) that any property, trees or crops standing on the land in dispute is in danger of being wasted, damaged or alienated by any party to the suit; or

(b) that any party to the suit threatens or intends to remove or dispose of the said property, trees or crops in order to defeat the ends of justice, the Court may grant a temporary injunction, and where necessary, also appoint a receiver."

12. The corresponding provision with regard to grant of injunction during the course of a suit instituted under the provisions of Section 229-B and 229-C of the UPZA and LR Act, as then it stood, was contained under Section 229-D of the said enactment which reads as follows :-

"229-D. Provision for injunction.— (1) If in the course of a suit under the provisions of Sections 229-B and 229-C, it is proved by an affidavit or otherwise-

(a) that any property, trees or crops standing on the land in dispute is in danger of being wasted, damaged or alienated by any party to the suit; or

(b) that any party to the suit threatens or intends to remove or dispose of the said property, trees or crops in order to defeat the ends of justice, the Court may grant a temporary injunction and where necessary, also appoint a receiver.

(2) Nothing in sub-section (1) shall apply to a suit filed under sub-section (4-D) of Section 122-B."

13. Section 146 contains the provision for injunction and in terms thereof, if in the course of a suit under Section 144 or 145

it is proved by affidavit or otherwise : i.e. (i) that any property, trees or crops standing on the land in dispute is in danger of being wasted, damaged or alienated by any party to the suit; or (ii) that any party to the suit threatens or intends to remove or dispose of the said property, trees or crops in order to defeat the ends of justice, the Court is empowered to grant a temporary injunction, and where necessary, also appoint a receiver.

14. It would be relevant to notice that Section 214 of the Revenue Code provides for applicability of Code of Civil Procedure, 1908 to every suit, application or proceedings under the Code. For ease of reference Section 214 of the Revenue Code is being extracted below:-

"214. Applicability of Code of Civil Procedure, 1908 and Limitation Act, 1963.— Unless otherwise expressly provided by or under this Code, the provisions of the Code of Civil Procedure, 1908 and the Limitation Act, 1963 shall apply to every suit, application or proceedings under this Code."

15. Section 341 of the repealed UPZA and LR Act, provided for applicability of the provisions of the Code of Civil Procedure, to proceedings under the said Act, in similar terms.

16. The power to grant temporary injunction during the pendency of a suit has been conferred by Order XXXIX Rule 1 of the CPC, which reads as follows:-

"Order XXXIX 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 by 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 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."

17. The language and phraseology of Section 146 of the Revenue Code as also Section 229-D of the repealed UPZA and LR Act, are in terms which are similar to the language of Order XXXIX Rule 1, and therefore the provisions under Section 146 would be seen as being supplemental to Order XXXIX Rule 1 CPC, the applicability whereof is provided as per terms of Section 214 of the Revenue Code.

18. Section 207 of the Revenue Code provides for the remedy of a first appeal to any party aggrieved by certain orders specified in the section. Section 207 reads as follows:-

"207. First appeal.— (1) Any party aggrieved by a final order or decree passed in any suit, application or proceeding specified in Column 2 of the Third Schedule, may refer a first appeal to the Court or officer specified against it in Column 4, where such order or decree was passed by a Court or officer specified against it in Column 3 thereof.

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

- (a) in Section 47 of the Code of Civil Procedure, 1908; or
- (b) in Section 104 of the said Code; or
- (c) in Order XLIII Rule 1 of the First Schedule to the said Code.

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

19. It is relevant to notice that as per sub-section (2) of Section 207, a first appeal shall also lie against an order of the nature specified— (i) in Section 47 of the Code of Civil Procedure, 1908; or (ii) in Section 104 of the said Code; or (iii) in Order XLIII Rule 1 of the First Schedule to the said Code.

20. It would therefore be seen that apart from the remedy of a first appeal being available against final orders or decrees passed in a suit, application or proceeding specified in column 2 of the Third Schedule, the said remedy is also available against an order of the nature specified in Section 104 of the CPC or in Order XLIII Rule 1 of the First Schedule of the CPC.

21. Section 104 of the CPC and also the Order XLIII Rule 1 of the First Schedule of the CPC, which have been referred under sub-section (2) of Section 207 of the Revenue Code, and which would be relevant for appreciation of the controversy at hand are being extracted below :-

"104. Orders from which appeal lies.— (1) An appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force, from no other orders :—

(a) ***

(b) ***

(c) ***

(d) ***

(e) ***

(f) ***

(ff) an order under Section 35-A;

(ffa) an order under Section 91 or Section 92 refusing leave to institute a suit of the nature referred to in Section 91 or Section 92, as the case may be;

(g) an order under section 95;

(h) an order under any of the provisions of this Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree;

(i) any order made under rules from which an appeal is expressly allowed by rules:

Provided that no appeal shall lie against any order specified in clause (ff) save on the ground that no order, or an order for the payment of a less amount, ought to have been made.

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

**"FIRST SCHEDULE
ORDER XLIII
APPEALS FROM ORDERS**

"1. Appeals from Orders.— An appeal shall lie from the following orders under the provisions of Section 104, namely :-

(a) an order under Rule 10 of Order VII returning a plaint to be presented to the proper Court except where the procedure specified in Rule 10-A of Order VII has been followed;

(b) ***

(c) an order under Rule 9 of Order IX rejecting an application (in a case open to appeal) for an Order to set aside the dismissal of a suit;

(d) an order under Rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed *ex parte*;

(e) ***

(f) an order under Rule 21 of Order XI;

(g) ***

(h) ***

(i) an order under Rule 34 of Order XXI on an objection to the draft of a document or of an endorsement;

(j) an order under Rule 72 or Rule 92 of Order XXI setting aside or refusing to set aside a sale;

(ja) an order rejecting an application made under sub-rule (1) of Rule 106 of Order XXI, provided that an order on the original application, that is to say, the application referred to in sub-rule (1) of Rule 105 of that Order is appealable.

(k) an order under Rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit;

(l) an order under Rule 10 of Order XXII giving or refusing to give leave;

(m) ***

(n) an order under Rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;

(na) an order under Rule 5 or Rule 7 of Order XXXIII rejecting an application for permission to sue as an indigent persons;

(o) ***

(p) orders in interpleader-suit under Rule 3, Rule 4 or Rule 6 of Order XXXV;

(q) an order under Rule 2, Rule 3 or Rule 6 of Order XXXVIII;

(r) an order under Rule 1, Rule 2, Rule 2-A, Rule 4 or Rule 10 of Order XXXIX;

(s) an order under Rule 1 or Rule 4 of Order XL;

(t) an order of refusal under Rule 19 of Order XLI to readmit, or under Rule 21 of Order XLI to rehear, an appeal;

(u) an order under Rule 23 or Rule 23A of Order XLI remanding a case, where an appeal would lie from the decree of the Appellate Court;

(v) ***

(w) an order under Rule 4 of Order XLVII granting an application for review."

22. It would be seen that sub-rule (r) under Rule 1 of Order XLIII contains reference to an order under Rule 1 of Order XXXIX which relates to the provisions for grant of temporary injunctions during the pendency of a suit.

23. A combined reading of the provisions contained under clause (b) and clause (c) under sub-section (2) of Section 207 together with the provisions under Section 104 of the CPC and Order XLIII Rule 1 of the First Schedule thereof in conjunction with Order XXXIX Rule 1 and also the provisions relating to injunction under Section 146 of the Revenue Code, would lead to the inference that an order with regard to injunction passed in exercise of powers under Section 146 during the course of a suit under Sections 144 or 145, would be amenable to the remedy of a first appeal under Section 207.

24. It would be relevant to notice that sub-section (3) of Section 331 of the UPZA and LR Act contained a similar provision with regard to the remedy of an appeal from an order of the nature mentioned in Section 104 of the CPC or in Order XLIII Rule 1 of the First Schedule thereof.

25. Having arrived at an inference that an order passed in exercise of powers under Section 146 would be subject to an appeal under Section 207, the contention raised on behalf of the petitioners with regard to an appeal against an order granting or rejecting an application for a stay being barred in terms of clause (d) of Section 209, would be required to be adverted to.

26. Section 209 of the Revenue Code which contains a bar

against certain appeals, is being extracted below :-

"209 Bar against certain appeals..—Notwithstanding anything contained in Sections 207 and 208, no appeal shall lie against any order or decree-

- (a) made under Chapter XI of this Code;
- (b) granting or rejecting an application for condonation of delay under Section 5 of the Limitation Act, 1963;
- (c) rejecting an application for revision;
- (d) granting or rejecting an application for stay;**
- (e) remanding the case to any subordinate Court;
- (f) where such order or decree is of an interim nature;
- (g) passed by Court or officer with the consent of parties; or
- (h) where order has been passed *ex-parte* or by default:

Provided that any party aggrieved by order passed *ex-parte* or by default, may move application for setting aside such order within a period of thirty days from the date of the order:

Provided further that no such order shall be reversed or altered without previously summoning the party, in whose favour order has been passed to appear and be heard in support of it."

27. Section 209 provides that certain orders or decrees are not appealable, and clause (d) thereof refers to an order granting or rejecting an application for a stay.

28. An appeal against order granting or rejecting an application for stay would therefore be barred notwithstanding anything contained under Sections 207 and 208.

29. The question which thus falls for consideration is as to whether an order passed under Section 146 of the Revenue Code granting or refusing to grant a temporary injunction can be held to be an order granting or rejecting an application for stay so as to attract the bar under Section 209 and to hold such order to be non-appealable.

30. The question with regard to the effect of a stay order and its distinction from an order of injunction fell for consideration in the case of **Mulraj vs Murti Raghonathji Maharaj**⁴ wherein it was

4 AIR 1967 SC 1386

held that an order of injunction is generally issued to a party by which it is forbidden from doing certain acts whereas a stay order is addressed to a court which prohibits it from proceeding further. The distinction between a stay order and an order of injunction was drawn by observing as follows :-

"8...In effect therefore a stay order is more or less in the same position as an order of injunction with one difference. An order of injunction is generally issued to a party and it is forbidden from doing certain acts. It is well settled that in such a case the party must have knowledge of the injunction order before it could be penalised for disobeying it. Further it is equally well settled that the injunction order not being addressed to the court, if the court proceeds in contravention of the injunction order, the proceedings are not a nullity. In the case of a stay order, as it is addressed to the court and prohibits it from proceeding further, as soon as the court has knowledge of the order it is bound to obey it and if it does not, it acts illegally, and all proceedings taken after the knowledge of the order would be a nullity. That in our opinion is the only difference between an order of injunction to a party and an order of stay to a court. In both cases knowledge of the party concerned or of the court is necessary before the prohibition takes effect. Take the case where a stay order has been passed but it is never brought to the notice of the court, and the court carries on proceedings ignorance thereof. It can hardly be said that the court has lost jurisdiction because of some order of which has no knowledge...

...

10. As we have already indicated, an order of stay is as much a prohibitory order as an injunction order and unless the court to which it is addressed has knowledge of it, it cannot deprive that court of the jurisdiction to proceed with the execution before it. But there is one difference between an order of injunction and an order of stay arising out of the fact that an injunction order is usually passed against a party while a stay order is addressed to the court. As the stay order is addressed to the court as soon as the court has knowledge of it, it must stay its hand; if it does not do so, it acts illegally. Therefore, in the case of a stay order as opposed to an order of injunction, as soon as the court has knowledge of it, it must stay its hand and further proceedings are illegal; but so long as the court has no knowledge of the stay order it does not lose the jurisdiction to deal with the execution which it has under the Code of Civil Procedure."

(emphasis supplied)

31. The difference between an injunction and an order of stay were noticed in the decision of United States Supreme Court in **Jean Marc Nken, petitioner Vs. Eric H. Holder, Jr., Attorney**

General⁷, wherein it was held that a stay and an injunction were not synonymous since an injunction refers to an order requiring a person to act or refrain from acting and a stay is a temporary suspension of legal proceedings. It was observed as follows :-

“An injunction and a stay have typically been understood to serve different purposes. The former is a means by which a court tells someone what to do or not to do. When a court employs “the extraordinary remedy of injunction,” **Weinberger v. Romero-Barcelo**⁸, it directs the conduct of a party, and does so with the backing of its full coercive powers.”

32. It would therefore be seen that an order of injunction and an order of stay have been held to be distinct and to serve different purposes. An injunction order is generally issued to party and operates *in personam* whereas a stay operates upon the judicial proceedings itself by halting or postponing the same wholly or in part, or by temporarily divesting an order of its enforceability.

33. An order of stay in a pending review before a higher forum or Court may have some overlap with injunction, in the sense that both have the effect of preventing further action before the legality of the same has been conclusively determined. A stay order achieves this result by temporarily suspending the source of authority to act — the order or the judgment in question, while an order of injunction has the effect of commanding or forbidding the action and is a mandate operating *in personam*.

34. In the case at hand the application seeking interim relief filed by the petitioners under Section 146 of the Revenue Code contains a prayer for issuance of a direction for maintaining status quo till the disposal of the declaratory suit filed under Section 144. The affidavit filed along with the application contains an

7. 556 U.S. 418 (2009)

8. 456 U.S. 305, 312 (1982)

assertion that the defendants in the suit were trying to forcibly take possession of the property in question and to destroy the same, and in view thereof an order directing status quo was required.

35. The order dated 23.09.2021 in terms of which the application under Section 146 was disposed contains specific reference to the prayer made on behalf of the petitioners for a direction to maintain status quo during the pendency of the suit and thereafter the court upon consideration of the material on record and the submissions made by counsel for parties drew a conclusion that there was no material to indicate any urgency in the matter which may require passing of an order directing for maintaining status quo and accordingly the application seeking temporary injunction was rejected.

36. The application filed under Section 146 was for a direction to the parties to maintain status quo during the pendency of the suit i.e. an injunctive relief, which was declined in terms of the order rejecting the application under Section 146. The application in question did not seek any relief for grant of a stay order to any court or authority and was not directed against any order passed by the court or authority.

37. It may be noticed that Section 146 contains a provision with regard to grant of a temporary injunction in the course of a suit under Section 144 or Section 145, and the terminology of the section does not cover orders granting stay. The marginal heading of the section is titled as "Provision for injunction" which clearly goes to show the scope of the section and its legislative intent.

38. The order dated 23.09.2021 passed by the respondent no. 2 before whom the suit is pending therefore cannot be held to be an

order rejecting an application for stay so as to attract the bar under Section 209 and to make the order non-appealable. The order in question, from its plain reading and also taking into consideration the contents of the application along with the affidavit filed by the petitioners seeking the prayer for interim relief, makes it clear that it is an order declining to grant a temporary injunction as was being sought under Section 146.

39. The temporary injunction which was sought under Section 146 during the pendency of the suit under Section 144 was as per terms of the provisions under Order XXXIX Rule 1 CPC and the said order being referable to sub-rule (r) under Rule 1 of Order XLIII, the same would be of the nature specified under clause (b) and clause (c) of sub-section (2) of Section 207 and in view thereof a first appeal under Section 207 would lie against the said order.

40. The order in question passed under Section 146 having been held to be appealable under Section 207 the said order would not be revisable under Section 210 in view of the condition contained under sub-section (1) of Section 210 which is to the effect that the revision would lie only in a case "in which no appeal lies".

41. The legal position can therefore be summarized by stating that an order passed upon an application seeking temporary injunction under Section 146 of the Revenue Code during the course of a suit under Section 144 or 145 would be amenable to a first appeal under Section 207, and would not be revisable under Section 210.

42. As regards the decision in the case of **Talib Khan** (supra) relied upon on behalf of the petitioners, it may be observed that

the specific provision contained under sub-section (3) of Section 331 of the UPZA and LR Act, as then it stood, which provided for a remedy of an appeal against an order of the nature mentioned in Section 104 of the CPC or in Order XLIII Rule 1 of the First Schedule, having not been taken note of the said decision cannot be held to be an authority for the proposition that an order rejecting an application for temporary injunction during the pendency of a declaratory suit under the Revenue Code or under the analogous provision of the repealed UPZA and LR Act, would be revisable.

43. The Board of Revenue in terms of an order dated 23.11.2021 has rejected the revision preferred by the petitioners against the order rejecting their application for temporary injunction under Section 146 after observing that the order of the trial court was based on merits and the application for temporary injunction had been rejected for the reason that there was no material to support the claim sought to be raised. Further, taking note of the fact that the case was pending before the trial court where the parties would have ample opportunity to adduce evidence in support of their case, the revision was rejected at the stage of admission.

44. The order rejecting an application seeking temporary injunction under Section 146 of the Revenue Code having been held to be not amenable to the remedy of a revision under Section 210, the order passed by the Board of Revenue rejecting the revision at the stage of admissibility therefore cannot be faulted.

45. The writ petition thus fails and is accordingly dismissed.

46. Counsel for the petitioners at this stage seeks liberty to invoke statutory remedy of an appeal against the order rejecting

their application for temporary injunction. In this regard, it is only required to be observed that dismissal of the writ petition would not preclude the petitioners from taking recourse to any appropriate legal remedy as they may be advised.

Order Date :- 31.5.2022

Pratima

(Dr.Y.K.Srivastava,J.)