

(1972) 09 MP CK 0021
In the Madhya Pradesh High Court
Case No : M.P. No. 480 of 1968

Ravishanker Dube and others

APPELLANT

Vs

Board of Revenue, M.P. and others

RESPONDENT

Date of Decision : 22-09-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 104, 109, 110, 115
Constitution of India, 1950 — Article 133, 136, 226, 227
Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 — Section 10, 11, 11(1), 11(3), 11(5)
Madhya Pradesh Land Revenue Code (Amendment) Act, 2011 — Section 12, 21
Madhya Pradesh Land Revenue Code, 1959 — Section 11, 12, 21, 210, 41
Provincial Insolvency Act, 1920 — Section 4(1), 4(2), 73

Citation : (1972) J LJ 934

Hon'ble Judges : Shiv Dayal Shrivastava, J; G.P. Singh, J; A.P. Sen, J

Bench : Full Bench

Advocate : R.K. Pandey, for the Appellant; J.P. Bajpai ; D.A.G., for the Respondent

Final Decision : Allowed

Judgement

Shivdayal, J.—This Full Bench has been constituted to decide this petition under Articles 226 and 227 of the Constitution for quashing the order of the Board of Revenue, holding that no second appeal, or revision u/s SO of the M.P. Land Revenue Code, 1959 (hereinafter called "the Code" or "the Revenue Code") lies from an order passed under the M.P. Ceiling on Agricultural Holdings Act, 1960 (hereinafter called "the Act" or "the Ceiling Act").

2. The Division Bench, which referred to the larger Bench this case for decision, found conflicting views expressed by earlier Division Benches.

3. The questions arising for our decision, which have to be determined on a true construction of sections 41 and 42 of the Ceiling Act and sections 44 and 50 of the Revenue Code, are :-

(i) Whether a second appeal lies u/s 44 (2) of the M.P. Land Revenue Code, 1959, from an order passed in an appeal u/s 41 of the M.P. Ceiling on Agricultural Holdings Act, 1960.

(ii) Whether the powers of revision u/s 50 of the Revenue Code can be invoked and exercised against an order passed under the Ceiling Act.

4. The Ceiling Act provides for the imposition of ceiling on agricultural holdings, acquisition and disposal of surplus land and matters ancillary thereto. Section 7 of that Act prescribes the maximum extent of land to be held by a person. Section 3 exempts certain lands from the provisions of the Act. Section 4 deals with the effect of transfers or partitions made after the publication of the M.P. Ceiling on Agricultural Holdings Bill, 1959, but before the commencement of the Act. Section 5 enacts restrictions on transfers or sub-division of land and the consequences of the contravention thereof. Section 9 casts a duty on a person holding land in excess of ceiling to submit a return to the competent authority containing the prescribed information. Section 10 empowers the competent authority to collect information. Section 11 provides for preparation of statement of land held in excess of the ceiling area, for hearing objections and for declaring the surplus land held by each holder. First a draft statement is prepared and thereafter decision of the objections and declaration of the surplus land, a final statement is published. u/s 12, the surplus land vests in the State. Section 13 enacts the consequences of vesting. Sections 16 to 21 deal with payment of compensation and sections 22 to 34 with encumbrances on surplus land, while sections 35 to 37 provide for the disposal of surplus land. Section 39 empowers the Tahsildar to take possession of the land which vests in the State and empowers the Collector to manage it until it is disposed of.

5. The Ceiling Act constitutes a special authority, called "competent authority" and defined as follows in section 2(e) of that Act :-

"competent authority" means-

(i) in respect of a holder whose entire land is situate within a sub-division, the Sub-Divisional Officer;

(ii) in respect of a holder whose entire land is situate in more than one sub-division of the same district, the Collector; and

(iii) in respect of a holder whose land is situate in more than one district, such authority as may be appointed by the State Government.

It will be seen from this definition that there are three categories of competent authorities, varying according to the three categories of holders of land. Thus a competent authority is to be determined in respect of every particular holder. (1) The Sub-Divisional Officer is the competent authority in respect of a particular holder whose entire land is situate within one and the same sub-division. (2) The Collector is the competent authority in respect of a particular holder whose entire land is situate in more than one sub-division, but in one and the same district.

(3) A competent authority has to be appointed by the State Government in respect of a particular holder whose land is situate in more than one district.

6. The competent authorities in the first and the second categories are "Revenue Officers" within the meaning of section 11 of the Revenue Code, but under the third category it is left entirely in the discretion of the State Government whether to appoint a Revenue Officer as the competent authority or not. For instance, in respect of a particular holder, whose land is situate in more than one district, but in the same Commissioner's division, if the State Government appoints the Commissioner of that division as the competent authority, this will be a case of a Revenue Officer being appointed the competent authority, just as in categories (1) and (2). However, the competent authority of the last mentioned category may not be a Revenue Officer. For instance, he may be the Chief Conservator of Forests or the Excise Commissioner, or an Officer on Special Duty, which Officers are not Revenue Officers within the meaning of section 11 of the Revenue Code. Since "Revenue Officer" is not defined in the Ceiling Act, that expression has the meaning assigned to it in the Revenue Code. See section 2(g) of the Ceiling Act which runs thus:-

"Words and expressions used but not defined in this Act, and defined in the Madhya Pradesh Land Revenue Code, 1959 (20 of 1959), shall have the meaning respectively assigned to them in that Code."

Thus, in short, a competent authority under the Ceiling Act may or may not be a Revenue Officer within the meaning of section 11 of the Revenue Code.

7. On a survey of the Ceiling Act, it appears that original jurisdiction is exercised by three kinds of Officers : (1) A Revenue Officer who acts as a competent authority. (2) A Revenue Officer who acts otherwise than a competent authority. (3) A competent authority who is not a Revenue Officer. Now, section 41 of Ceiling Act provides for an appeal from "every order" passed by a Revenue Officer or a competent authority as follows:-

(1) Under clause (i) from an order passed by a Revenue Officer, who acts otherwise than as a competent authority.

(2) Under clause (i) from an order passed by a Revenue Officer acting as competent authority.

(3) Under clause (ii), from an order passed by a competent authority who is not a Revenue Officer.

8. Under clause (i) of section 41 of the Ceiling Act, appeals lie to Revenue Officers by reference to section 44 (1) of the Revenue Code. Clause (i) of section 41 provides for an appeal from an order passed by a Revenue Officer, whether exercising powers as a competent authority or otherwise. Appeals under this clause lie to those authorities, which are enumerated and described in section 44(1) of the Revenue Code, as authorities competent to hear appeals. That clause reads as follows :-

"41. Except where the provisions of this Act provide otherwise, against every order of a Revenue Officer or competent authority under this Act, or the rules made thereunder, an appeal shall lie-

(i) if such order is passed by a Revenue Officer either as competent authority or otherwise-to the authority competent to hear appeals under sub section (1) of section 44 of the Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1958) from an order passed by a Revenue Officer of the same rank under the said Code."

(It must be observed that in Pandey's M.P. local Acts, the expression "the authority competent to hear appeals" has been mis-printed as "the competent authority to hear appeals").

9. Clause (ii) of section 41 of the Ceiling Act provides for an appeal from an order passed by a competent authority, where such authority is not a Revenue Officer. Such an appeal lies direct to the Board of Revenue.

10. u/s 41 of the Ceiling Act, an appeal is provided "against every order of a Revenue Officer or competent authority under this Act, or the rules made thereunder". This section is comprehensive enough. However, the expression "every order" in the section necessarily means an order which affects a right or liability of the appellant. It does not include interlocutory orders which are merely procedural and do not affect the rights or liabilities of the parties. In Central Bank of India Vs. Shri Gokal Chand, their Lordship considered an analogous provision contained in section 38 (1) of the Delhi Rent Control Act, 1950, which is in these words :-

"An appeal shall lie free every order of the Controller made under this Act to the Rent Control Tribunal.....

Their Lordship said :-

"The object of S. 38 (1) is to give a right of appeal to a party aggrieved by some order which affects his right or liability. In the context of S. 38 (1) the words "every order of the Controller made under this Act" though very wide, do not include interlocutory orders, which are merely procedural and do not affect the rights or liabilities of the parties In a pending proceeding, the Controller may pass many interlocutory orders under Ss. 36 and 37, such as orders regarding the summoning of witnesses, discovery production and inspection of documents, issue of a commission for examination of witnesses, inspection of premises, fixing a date of hearing and the admissibility of a document or the relevancy of a question. All these interlocutory orders are steps taken towards the final adjudication and for assisting the parties in the prosecution of their cases in the pending proceeding; they regulate the procedure only and do not affect any right or liability of the parties. The legislature could not have intended that the parties would be harassed with endless expenses and delay by appeals from such procedural orders."

11. There is no provision in the Ceiling Act for a second appeal. Section 41 of the Ceiling Act provides for only one appeal. But it would not be right to say that such an appeal lies u/s 44 of the Revenue Code. No doubt, in section 41 (i) of the Ceiling Act, there is a mention of section 44 (1) of the Revenue Code, but that is only for economy of words. Instead of reproducing in section 41 (i) the enumeration of authorities competent to hear appeals, the legislature thought it sufficient to refer to section 44 (1) of the Revenue Code. Truly speaking, an appeal lies u/s 41 (i) of the Ceiling Act itself, and not u/s 44 of the Revenue Code. Nor is it an appeal against an order "under the Land Revenue Code", or the rules made thereunder.

12. As soon as this is clearly understood, it follows that a second appeal, from an order passed u/s 41 (i) of the Ceiling Act. will not lie u/s 44 (2) of the Revenue Code. The scheme and provisions of section 44 of the Revenue Code leave no manner of doubt that a second appeal u/s 44 (2) lies only against an order passed in first appeal under sub-section (1) of that section. No other meaning is possible in that context. Sub-section (2) of section 44 cannot be read as divorced from or independent of sub-section (1) of that section. Section 44 (2) is not an independent section; it is part and parcel of section. 44 The words "against any order passed in first appeal" in sub-section (2) necessarily refer to the "first appeal" under sub-section (1) of that very section. To hold otherwise, would not be consistent either with the language of the section or its scheme.

13. It is said that it makes no difference that sub-section (2) of section 44 is not assigned a separate number and that it should be read at an independent section. It is stated in Craies on Statute Law (5th edition) at page 216, that whether an enactment be printed as part of one section, or contained in another section, it can make no difference in the construction of the statute. The case of *Cohen v. S.E. Railway* (1877) 2 ExD 253 (26) also reported in Law Journal Reports, (1877) 46 OBCP Exch PC 417 is cited. In that case, the son of the plaintiff's wife took a tickets at Boulogne for her to travel by the South-Eastern Railway Company's steam-boat from Boulogne to Folkestone, and on by their railway to London. On the back of the ticket there was printed a condition excluding the Company from liability for the loss of passengers' luggage above a certain value. The lady's box was carelessly dropped by the defendants' servant into the harbour at Folkestone, and was with its contents of course much damaged. Section 7 of the Railway and Canal Traffic Act enacted :-

"Every such company shall be liable for the loss of or injury done to any horses, cattle or other animals, or to any articles, goods or things, in the receiving, forwarding or delivering thereof, occasioned by the neglect or default of such company or its servants, notwithstanding any notice, condition or declaration made and given by such company contrary thereto, or in anywise limiting such liability."

It was held that "passengers" luggage" comes directly within the words "articles, goods or things" "and directly within the mischief and section 7 ought to be

construed to include it. The question then arose whether section 16 of the Regulation of Railways Act, 1968 (31 and 32 Vict. C. 119) includes that provision of the Railway and Canal Traffic Act, so as to apply it not only to the carriage by railway but also to carriage by steamer. Section 16 provided :-

"The provisions of the Railway and Canal Traffic Act, 1854, so far as the same are applicable, shall extend to the steam vessels and to the traffic carried on thereby".

It was argued that as these words stood at the end of and formed part of section 16, and were not contained in a separate section, they only applied to subject-matter to which the previous parts of section 16 related. Why that argument was rejected is to be found in the observations of Mellish, L.J., who delivered the principal judgment. He said :-

"If some absurdity or inconvenience followed from holding it to apply to the whole Act, it might be reasonable to confine the incorporation to clauses relating to some particular subject matter; but if there is no inconvenience from holding that the incorporation includes section 7 as well as the other sections, we ought to hold that it does. For my own part, so far from thinking there is any inconvenience, I think the direct contrary; because, inasmuch as the passenger takes one ticket, and the company enter into one bargain for the carriage both by railway and by steam boat, it would be most inconvenient that the company should be at liberty to put conditions of this kind qua the steam-boat, and not be able to put conditions qua the railway. The consequence would be that if a passenger started and delivered his luggage to the railway Company, and then arrived at the end of the journey and the luggage was not forthcoming, and nobody knew where it was lost, he would not be able to recover, because he could not prove whether it was lost during the sea passage. Nothing can be more convenient, as it appears to me, than that the section should apply to both."

It can thus be seen clearly that that case and consequently the passage in *Caraie's* must be distinguished from a case where there is no absurdity or inconvenience in treating a part of a section as not divorced from or independent of its earlier part.

14. So far as our (Indian) enactments are concerned, can clearly see that where a section is composed of several parts, they together constitute an integral whole. A section is sub-divided into sub-section merely for (sic) of clarity and to obviate any confusion in its reading. I should require a forceful and compelling reason to say that one sub-section is quite independent or divorced from another sub-section of the same section; for, otherwise why would not the legislature number them separately ? I do not say that it is impossible to construe one part of a section as independent of another, but what I say is that that course can be adopted only when not to do so would lead to absurdity. In the view I take, I feel fully fortified by their Lordships' decision in *Sardar Gurmej Singh Vs. Sardar Partap Singh Kairon*, where Mr. Justice Subba Rao speaking for the Court laid

down :-

"It is an elementary rule that construction of a section is to be made of all the parts together and not of one part only by itself and that phrases are to be construed according to the rules of grammar."

Speaking for the Court, what Mr. Justice Gajendragadkar laid down, in *Madanlal Fakirchand Dudhediya Vs. Shree Changdeo Sugar Mills Ltd.*, clinches the issue :-

"Since we are dealing with two sub-sections of section 76 it is necessary that the said two sub-sections must be construed as a whole each portion throwing light, if need be, on the rest. The two sub-sections must be read as parts of an integral whole and as being interdependent; an attempt should be made in construing them to reconcile them if it is reasonably possible to do so, and to avoid repugnancy. If repugnancy cannot possibly be avoided, then a question may arise as to which of the two should prevail. But that question can arise only if repugnancy cannot be avoided."

See also *Ram Singh and Others Vs. Ramkaran and Others*, , In that light, let us search for an absurdity or inconvenience, if sub-section (2) of section 44 of the Revenue Code is read as an integral part and necessarily connected with sub section (1) of the same section. 1 for one, see neither any absurdity nor inconvenience. Far from there being an absurdity or inconvenience, the true construction of sub-section (2) of section 44 is in accord with the policy to curtail plurality of appeals from orders passed under special enactments. I shall chose presently that every order passed under the Ceiling Act can be taken upto the highest Revenue tribunal (the Board of Revenue) in revision. And, it must be remembered that the powers of revision u/s 42 of the Ceiling Act and u/s 50 of the Revenue Code are wide enough to examine the legality, propriety, and regularity of any order. There are no fetters like those provided in section 115 of the Code of Civil Procedure. Then where is absurdity or inconvenience? It can be seen that the dictum of Melish, L.J., in *Cohen v. S.E. Railway* (supra), does not ran counter to the view I take; that decision was rendered because to construe otherwise, section 16 of the Regulation of Railways Act, 1868 (31 And 32 Vic C. 119), would have been "most inconvenient". But, that apart, the decisions of cur Supreme Court must prevail, and the law must be taken as settled.

15. A flood of light is thrown by the Privy council decision in AIR 1927 242 (Privy Council) where their Lordships refused to give effect to a sub-section as detached and divorced from the preceding sub-section. There, a question arose whether an appeal lay to the Privy Council u/s 66-A of the income tax Act, 1922 (Amended 1926), without a certificate of fitness. That section enacted as follows :-

"66-A (1) Where any case has been referred to the High Court u/s 66, it shall be heard by a Bench of not less than two Judges of the High Court, and in respect of such case the provisions of section 98. Civil P.C., 1908, shall, so far as may be, apply, notwithstanding anything contained in the letters Patent of any High Court established by Letters Patent or any other law for the time being in force.

(2) An appeal shall lie to His Majesty in Council from any judgment of the High Court delivered on a reference made u/s 66 in any case which the High Court certifies to be a fit one for appeal to His Majesty in Council.

(3) The provisions of the Civil P.C., 1908 relating to appeals to His Majesty in Council shall, so far as may be, apply in the case of appeals under this section in like manner as they apply in the case of appeals from decrees of a High Court"

Their Lordships held as follows :-

"It is upon these sub-sections that the question now under discussion depends, and as to them it will be noticed that the appeal thereby given is by sub-section (2) confined to a case which the High Court certifies to be a fit one for appeal to His Majesty in Council."

It was, however, contended before the Privy Council that the reference to the Code in sub-section (3) was made in terms sufficiently comprehensive to include within the clause of appealable cases all that are defined in the provisions incorporated by reference. Their Lordships rejected this contention and held that the statutory right of appeal in sub-section (3) also was confined to the cases described in sub-section (2).

16. Now let me give one more reason in support of the construction I have put. When the Revenue Code was framed, the legislature had before it the provisions of sections 96 and 100 of the Code of Civil Procedure. This is proved when the words of clause (b) of section 44 (2) of the Revenue Code are placed side by side with the "grounds" on which section 100 C.P.C., permits a second appeal.

S. 100 C.P.C."

100. (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in an appeal by any Court, subordinate to a High Court, on any of the following grounds, namely:-

S. 44 (2) (J) L.R. Code

"41 (2) A second appeal shall lie against any order passed in first appeal -

X X

(b) on any of the following grounds and no other namely:-

(a) the decision being contrary to law or to some usage having the force of law;

(b) the decision having failed to determine some material issue of law or usage having the force of law;

(c) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon merits.

(2) An appeal may lie under this section from an appellate decree passed ex-parte.

(i) that the order is contrary to law or usage having the force of law; or

(ii) that the order has failed to determine some material issue of law or usage having force of law; or

(iii) that there has been a substantial error or defect in the procedure as prescribed by this Code, which may have produced error or defect in the decision of the case upon merits.

(Underlined-here italics-by me)"

But the framers of the Revenue Code did not provide for second appeals in the same section like section 100 C.P.C. At this stage, it is significant that the words of section 100 C.P.C. I have underlined above make its provisions wide enough and they necessarily contemplate an appeal from orders passed under other enactments, while those words are not found in section 44 (2) of the Revenue Code.

17. Let me now compare and contrast the words of section 96 (1) C P.C. with those of section 44 (1) of the Revenue Code.

"S. 96 (1)

Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.

44 (1) I.R, Code

Save where it has been otherwise provided, an appeal shall lie from every original order under this Code or the rules made thereunder:-

(a) If such order is passed by any Revenue Officer subordinate to the Sub-Divisional Officer, whether or not the Officer passing the order is invested with the powers of the Collector- to the Sub-Divisional Officer;

(b) If such order is passed by the Sub-Divisional Officer, whether or not invested with the power of the Collector - to the Collector;

(c) If such order is passed by any Revenue Officer subordinate to the Settlement Officer-to the Settlement Officer.

(d) If such order is passed by any Revenue Officer in respect of whom a direction has been issued under sub-section (3) of section 12 or sub-section (2) of section 21-to such Revenue Officer as the State Government may direct;

(e) If such order is passed by a Collector whether exercising the powers of Collector or Settlement Officer during the currency of the term of settlement-to

the Commissioner;

(f) If such order is passed by a Settlement Officer, whether exercising the powers of settlement Officer or the powers of a Collector in connection with any settlement operation unless otherwise expressly provided to the Settlement Commissioner;

(g) If such order is passed by the Commissioner or the Settlement Commissioner to the Board.

(Underlined-here italics-by me)

Here also, the words of section 96 (1) C.P.C. I have underlined are not only omitted in section 44 (1) of the Revenue Code; but also the legislature studiously inserted the words "under this Code or rules made thereunder" in the Revenue Code. This was deliberately done by the law makers so as to exclude any right of appeal under the Land Revenue Code, by virtue of section 44, from an order passed under any other enactment.

18. The above discussion itself brings out that the following observations of the Privy Council in *Secretary of State v. Rama Rao* ILR 39 Mad 617: 43 IA 192: AIR 1916 PC 21 which are reproduced in Note No, 5 in Chitale's Commentary on section 100 C.P.C. do not apply here:

"In their Lordship's opinion this objection is not well-founded. Their view is that when proceedings of this character reach the District Court, that court is appealed to as one of the ordinary courts of the country, with regard to whose procedure, orders, and decrees the ordinary rules of the CPC apply...If the ordinary Courts of the country are seized of a dispute of that character, it would require, in the opinion of the Board, a specific limitation to exclude the ordinary incidents of litigation."

The words in sections 96 and 100 C.P.C. connote that an appeal and a second appeal will lie (sic) from an order passed under any other enactment once it reaches the ordinary Court of civil jurisdiction, unless it is specifically excluded. The observations of the Privy Council were based on section 100 C.P.C.

19. Now, it is well settled that right of appeal is not a natural or inherent right attaching to the litigation. Unless a right of appeal is expressly given by the statute, it does not exist. The right of appeal cannot be assumed or imported by analogy. The right of appeal being a creature of the statute, its scope must be determined by reference to the provisions of the statute conferring it, (See *Meenakshi Naidoo v Subramanniya Sastri* 14 IA 160 and *Rangoon Botat-oung Company Ltd. v. The Collector Rangoon* 39 IA 197. The right of appeal again is a substantive right. It is not a mere matter of procedure. (See *The Colonial Sugar Refining Company Ltd. v. Irving* AIR (1905) AC 369; *Delhi Cloth & General Mills Company Ltd. v. Income Tax Commissioner Delhi* 54 IA 421: AIR 1927 PC 342) These principles are so well established that it is wholly unnecessary to cite any more decisions. It is true that sometimes the words like "the order shall be final"

are added to a section by the legislature but that is merely as a matter of abundant caution. It does not mean that in the absence of such words, the right of appeal can either be implied or borrowed by analogy.

20. The right of appeal to Supreme Court (and formerly to the Privy Council) provided in sections 109 and 110 of the Code of Civil Procedure, is a special right of appeal. It has been specifically given. It is the creature of the statute. As appeal under those sections does not lie as a part of the procedure merely because a case reaches the ordinary Court. This position is made very clear in *Delhi Cloth Mills v. I.T. Commissioner* (Supra). So also, Articles 133 and 136 of the Constitution contain specific provisions for appeals to the Supreme Court. In all those Articles, the right is specifically conferred. It is not borrowed by analogy. Appeals to the Supreme Court or formerly to the Privy Council lay when they were expressly provided in the Code of Civil Procedure, the Government of India Act or the Constitution of India. It is a matter beyond doubt and dispute that where the right of appeal is expressly conferred, an appeal will lie.

21. I, therefore, hold that from an order passed in appeal under the Ceiling Act, no second appeal lies u/s 44 (2) of the Revenue Code.

22. This brings me to the provisions relating to revision, that is, (1) section 50 of the Revenue Code, the general law, and, (2) section 42 of the Ceiling Act, the special law. Section 50 of the Land Revenue Code is very wide in its scope and is subject only to such limitations as are contained in the section itself. It is not limited in its scope like section 115 of the CPC u/s 50 of the Land Revenue Code, the revisional authority may examine; (1) the legality or propriety of any order; and (2) the regularity of the proceedings of any Revenue Officer subordinate to the revisional authority. The explanation to section 50 makes it dear that for the purposes of that section, all Revenue Officers shall be deemed to be subordinate to the Board of Revenue. By virtue of section 56 of the same Code, as "order" means the formal expression of decision given by the Board of Revenue or a Revenue Officer in respect of any matter in exercise of its/his powers under this Code or any other enactment for the time being in force. Therefore, the combined effect of section 50, read with its explanation and section 56 of the Land Revenue Code, is that an order by any Revenue Officer under the Ceiling Act can be revised u/s 50 of the Code.

23. Learned Deputy Advocate General argued that the words "for the time being in force" in section 56 refer to the laws which had been enacted before the Land Revenue Code and not the laws which were to be enacted in future. Since the Ceiling Act is a subsequent enactment, it is not the law "for the time being in force" within the meaning of section 56 of the Land Revenue Code. We cannot accept this contention. The words "for the time being in force" are of well known connotation. They refer to the time when the question is raised, that is, when the order in question is passed, to which the section has to be applied, and not to the time when the particular enactment was made in which those words are used.

24. Therefore, from an order passed in appellate jurisdiction u/s 41 (i) of the Ceiling Act, a revision lies u/s 50 of the Land Revenue Code; the appellate authority under that clause being necessarily a Revenue Officer.

25. Since the appellate authority under clause (ii) of section 41 of the Ceiling Act is the Board of Revenue, which is the highest (authority under the Land Revenue Code, there is no question of a revision from an order passed by the Board of Revenue in its appellate jurisdiction under that clause.

26. From an interlocutory order also a revision will lie to the Board of Revenue u/s 50 of the Land Revenue Code if such order is passed by a "Revenue Officer" under the Ceiling Act, as distinguished from an order passed by a "competent authority" under the Ceiling Act. This is because section 50 of the Land Revenue Code provides for a revision from an order passed by "any Revenue Officer".

27. Adverting now to section 42 of the Ceiling Act, we clearly see that it has a limited scope. It confers revisional jurisdiction on the Board of Revenue and the Commissioner in respect of (1) legality or propriety of any order passed by, and (2) regularity of the proceedings of any competent authority subordinate to it/him. We have already seen that against every order of a competent authority, an appeal lies u/s 41, and the second provision to section 42 is an impediment to an application for revision against an order against which an appeal is provided under the Act. Therefore, an application for revision will lie u/s 42 of the Ceiling Act only against an interlocutory order of a competent authority subordinate to the Board of Revenue or the Commissioner, as the case may be. However, the Board of Revenue or the Commissioner may suo motu exercise revisional jurisdiction in matter dealt with by any competent authority subordinate to it and may pass appropriate order, even if an order to be revised is appealable.

28. It is quite other that since the Ceiling Act has specially constituted the "competent authority" for the purposes of that special Act and has consistently maintained the identity of "competent authority" separately from a "Revenue Officer" irrespective of whether a competent authority may be a Revenue Office a separate and independent provision had to be made in this special Act itself for a revision against an order of a competent authority. For instance, u/s 5 (2), it is the "Collector" who has been empowered to grant or refuse permission for transfer of sub-division. Here, the "Collector" is a Revenue Office and not a competent authority. Similarly, u/s 39 of the Ceiling Act, it is the "Tahsildar" who is authorised to take possession and it is the "Collector" whose duty it is to manage the land, of which possession has been taken by the Tahsildar. Here the "Tahsildar" and the "Collector" are "Revenue Officers", not competent authorities under the Act. In this context, it may be noticed that in Chapter V of the Ceiling Act, although a competent authority may be a Revenue Officer, an appeal is provided in section 13 of the Act to the District Judge or the High Court according to the amount of the secured debt. It must, however, be mentioned at this juncture that only such competent authority is amenable to revisional jurisdiction of the Board of Revenue or the Commissioner, as it is subordinate to it/him, but

not otherwise.

29. It can also now be seen that section 42 does not provide for a revision from an order passed in appeal u/s 41 of the Act, because under clause (i), the authority competent to hear an appeal is a Revenue Officer by reference to section 44 (1) of the Land Revenue Code. Therefore, the scope of section 42 of the Ceiling Act is tether circumscribed in its application to orders passed by a competent authority in exercise of its original jurisdiction.

30. The above discussion makes it abundantly clear that the provisions contained in section 42 of the Ceiling Act are complementary of and analogous to the provisions contained in section 50 of the Land Revenue Code. Where-as revision u/s 50 of the Land Revenue Code will lie from an order passed by a "Revenue Officer", if revision u/s 42 of the Ceiling Act with by from an order passed by a "competent authority". To put it differently, a revision from an order of a competent authority does not lie u/s 50 of the Land Revenue Code and a revision from an order of a Revenue Officer does not lie u/s 42 of the Ceiling Act. However, there is nothing either in section 42 or section 41 to take away the powers of revision u/s 50 of the Land Revenue Code. The maxim "expressio unius est exclusio alterius" (express mention of one person or thing is exclusion of another) is not attracted here. It has been said that this maxim is often a valuable servant but a dangerous master to follow in the construction of statutes. (Jowitt's Dictionary of English Law, page 768).

31. The learned Deputy Advocate General strenuously relied on section 49 of the Ceiling Act. That section reads thus : -

"The provisions of this Act and any rules made thereunder shall have effect, notwithstanding anything inconsistent therewith contained in any other enactment for the time being in force or any custom, usage or agreement or decree or order of a court or other authority."

The impact of this section is merely this that the Ceiling Act being a special Act, if any of its provisions or rules made thereunder are found inconsistent with the provisions contained in any other enactment, the provisions of the Ceiling Act will prevail. We have pointed out here that there is no inconsistency between section 50 of the Revenue Code and section 42 of the Ceiling Act.

32. It was then argued that this is a case of inconsistency by omission. Reliance is placed on their Lordships' decision in *Vidyacharan v. Khubchand*, In my opinion, that decision does not apply here.

33. It was then urged that a Revenue Officer under the Ceiling Act is a persona designata. In my opinion this contention has no substance. I have already pointed out from the scheme and the provisions of the Ceiling Act that certain powers are conferred on "Revenue Officers" such as the Collector and the Tahsildar as such. Under that Act, they act as Collector and Tahsildar. In other words, they act as Revenue Officers as distinguished from a competent authority

pecially constituted under that Act. So also, the appellate authorities to whom appeals lie u/s 41 (i) of the Ceiling Act also act as "Revenue Officers". An appellate authority u/s 41 (i) is, by no stretch of the term, a "Competent Authority" under the Ceiling Act. It must be remembered that the powers which are conferred and the duties which are assigned to the Revenue Officers as such under the Ceiling Act, pertain to revenue matters. They are very much Revenue Officers while exercising those powers and functions. "Persona designata" means a person pointed out or described as an individual, as opposed to a person ascertained as a member of a class or as filling a particular character. In *The Central Talkies Ltd., Kanpur Vs. Dwarka Prasad*, their Lordships quoted Osborn's Concise Law Dictionary, 4th Edition page 253, and held that a persona designata is a person selected as an individual in his private capacity and not in his capacity as filling a particular character or office. In the present case, it cannot be legitimately argued that the Ceiling Act confers powers on the Tahsildar and the Collector, etc., not as filling the particular character of a Revenue Officer. They function in their official capacity as Revenue Officers, although special powers are conferred on them under the special Act. See also *Ram Milan and Another Vs. Bansilal Tej Singh and Another*, . The question in that case was whether the Deputy Commissioner, acting u/s 13(3) of the C.P. and Berar Relief of Indebtedness Act (24 of 1939) was a persona designata. It was held that the Deputy Commissioner acted as a Revenue Officer and was not a persona designata.

34. It was also urged by the learned Deputy Advocate General that section 42 of the Ceiling Act must be read as an exclusive provision for revision under the Ceiling Act, because the Legislature intended to curtail litigation: I am unable to accept this argument. The intention of the legislature is deposited in the words of the statute and it is not permissible to call in aid outside consideration to find another supposed intention. (See *The New Piecegoods Bazar Co. Ltd., Bombay Vs. The Commissioner of Income Tax, Bombay*,

35. I have no doubt that there is no ambiguity about the meaning and scope of sections 42 and 49 of the Ceiling Act. However, I may recall the observation of the Supreme Court in *N.T. Veluswami Thevar Vs. G. Raja Nainar and Others*, where it has been laid down that where two views are possible, one resulting in anomaly and the other not, it is the duty of the Court to adopt the latter, and not the former, seeking consolation in the thought that the law bristles, with anomalies, Take for instance, a case where a person has 100 acres of land in different divisions and a competent authority is appointed by the State Government u/s 2(e)(iii) of the Ceiling Act, who is not a Revenue Officer. Now in that case, from the decision of the competent authority, an appeal will lie to the Board of Revenue. But where a holder has 1000 acres of land in one and the same sub-division, an appeal, from the order of the Sub Divisional Officer (competent authority) will lie to the Collector and the matter will stop there and not reach the Board of Revenue at all. This will be anomalous.

36. The powers of revision u/s 50 of the Revenue Code are in the nature of supervisory powers. In the absence of clear language to the contrary it is too much to suppose that the legislature intended to shut out the supervisory authorities from satisfying themselves as to the legality or propriety of any order passed by, or as to the regularity of the proceedings of revenue officers subordinate to them.

37. I must now point out the conflicting decisions for which this case was referred to this Bench. In 1970 MPLJ 917 it was held that a revision against an order of a Revenue Officer under the Ceiling Act, is maintainable u/s 50 of the Revenue Code. A contrary view was taken in *Satyanarayan v. Board of Revenue* M.P. No. 457 of 1968; decided on August 5, 1970; and in *Balmukund v. Board of Revenue* 1972 RN 51: 1972 JLI SN 33: 1972 PLJ 53 the decision in *Kale Khan's* case (supra) was followed. It must be mentioned that although *Kale Khan v. Board of Revenue* (supra) had been decided on December 3, 1969, and had been reported in 1970 MPLJ 917 Also in December, 1969 issue of the RN (Ed.), that decision does not appear to have been brought to the notice of the Division Bench which heard *Satyanarayan v. Board of Revenue* (supra). Likewise, the decision in *Satyanarayan v. Board of Revenue* (supra) was not brought to the notice of the Division Bench which heard *Balmukund v. Board of Revenue* (supra), (decided on December 22, 1971).

38. I may now sum up the conclusions I have reached :

(1) Those who exercise original jurisdiction under the M.P. Ceiling on Agricultural Holdings Act, 1960, are of three categories.

No. 1. A "Revenue Officer" within the meaning of section 11 of the M.P. Land Revenue Code acting at a "competent authority" (as defined in section 2(e) of the Ceiling Act).

No. 2. Such "Revenue Officer", acting otherwise than as such "competent authority".

No. 3. Such "competent authority" who is not such Revenue Officer.

(2) In case of No. 1 or No. 2 :-

(a) From every order (other than an interlocutory order) an appeal-lies u/s 41(i) of the Ceiling Act (not u/s 44 (1) of the Revenue Code) to the appellate authority competent to hear the appeal as specified in section 44 (1) of the Revenue Code. Besides the Board of Revenue, all such appellate authorities are "Revenue Officers" within the meaning of section 11 of the Land Revenue Code.

(b) From an order passed in appeal u/s 41 (i) of the Ceiling Act, a second appeal does not lie u/s 44 (2) of the Revenue Code [which has to be read along with sub-section (1)] in as much as the order is not "under that Code or the rules made thereunder".

(c) From an order passed in appeal u/s 41 (i) of the Ceiling Act, a revision lies u/

s 50 of the Revenue Code, read with section 56 of the Code.

(d) From an interlocutory order also, a revision lies in case of No. 2 u/s 50 of the Revenue Code, and in case of No. 1 u/s 42 of the Ceiling Act.

(e) Power of revision u/s 50 of the Code can be exercised suo motu by the competent revisional authority even when the order is appealable.

(3) In case of No. 3 :-

(a) From every order (other than an interlocutory order) an appeal lies u/s 41 (ii) to the Board of Revenue.

(b) From an order passed by the Board of Revenue in such appeal, the question of second appeal or revision does not arise.

(c) From an interlocutory order, revision lies u/s 42 of the Ceiling Act.

(d) Power of revision u/s 42 of the Ceiling Act can be exercised suo motu by the competent revisional Authority, even when the order is appealable.

(e) Since by virtue of section 2 (p) of the Ceiling Act, read with section 11 of the Revenue Code, the Commissioner, while exercising jurisdiction u/s 42 of the Ceiling Act, is a "Revenue Officer", a revision will lie from his order to the Board of Revenue u/s 50 of the Revenue Code, read with its explanation and section 56 of that Code.

(4) The expression "every order" in section 41 of the Ceiling Act means an order which determines the rights and liabilities of the parties; it does not include within its purview interlocutory orders which do not affect any right or liability of the parties, but are merely steps taken towards the final adjudication and for assisting parties in the prosecution of their case in the pending proceedings; they regulate the proceedings only.

(5) by virtue of section 56 of the Revenue Code, an order passed by a Revenue Officer under the Ceiling Act is revisable u/s 50 of the Land Revenue Code.

(6) The expression "for the time being in force" refers to the time when the order in question is passed; not to the date of the commencement of the enactment in which it occurs.

(7) The wider import bestowed upon the word "order" in section 56 of the Revenue Code is curtailed by the restrictive provision in section 44 (1) of the Code, so that an order passed "under any other enactment" is not appealable under the latter section.

(8) Sub-sections must be read as parts of an integral whole. No sub-section can be read as divorced from or independent of the others unless to do so results in absurdity *Sardar Gurmej Singh Vs. Sardar Partap Singh Kairon*, and AIR 1932 SC 1543. A second appeal under subsection (2) of section 44 of the Revenue Code lies only from an order passed in appeal under sub section (1) of that section.

(9) The right of appeal is a substantive right; it is a creature of the statute; it must be expressly conferred by the statute; it cannot be implied nor borrowed by analogy from another enactment.

(10) The impact of section 49 of the Ceiling Act is not to make the Act a self contained one; it merely gives overriding effect to the provisions of that act in case of inconsistency with the provisions of another enactment, etc.

(11) A Revenue Officer, while exercising powers under the Ceiling Act, is not "Persona designata", which expression refers to a person who is pointed out or described as an individual as opposed to a person ascertained as a member of a class or as filling a particular character.

39. In the present case, the Collector Hoshangabad, acting as the competent authority under the Ceiling Act, passed an order u/s 11 (3) of that Act, holding that the petitioner No. 1 held, as surplus land, 177.96, acres in villages Janaki, Peakhad and Barakhedi in that distict. He was declared to be holding, on the appointed day, 302.77 acres of land in villages Dabakhale Jamani, Teekhad, Barakhdi and Jhiri, in the Hoshangabad district. Certain sales had been effected. The petitioner No. 1 preferred an appeal to the Commissioner, Bhopal Division from the above order of the Collector. That appeal was dismissed. The petitioner No. 1 then preferred a second appeal to the Board of Revenue. That appeal was dismissed as untenable. The Board of Revenue further held that it could not be treated as a revision inasmuch as no revision u/s 50 of the Revenue Code lies from an order passed under the Ceiling Act. In this petition, the petitioners have prayed that the orders of the Collector, the Additional Commissioner and the Board of Revenue be quashed.

40. In this case, the order of the Collector was u/s 11(3) of the Ceiling Act. It was an interlocutory order and final order u/s 11 (5) was to be passed later on. It was not appealable u/s 41 (i) of the Ceiling Act. The appeal before the Commissioner was, therefore, not competent and a fortiori a second appeal before the Board of Revenue did not lie That apart, the second appeal before the Board of Revenue was wholly incompetent in as much as there is no provision at all for a second appeal from any order passed under the Ceiling Act. It follows that no revision lay from the order of the Commissioner, which was passed in an incompetent appeal. Thus the second appeal and the alternative prayer, before the Board of Revenue for hearing it as a revision, were both liable to be dismissed as not competent. However, the Board of Revenue was in error when it held that it had no power of revision u/s 50 of the Revenue Code. I have held that the Board has that power. The petitioner could have filed a revision against the order of the Collector to the Commissioner u/s 42 of the Ceiling Act and a further revision, before the Board of Revenue u/s 50 of the Revenue Code: But he did not do so. Nevertheless, the Board of Revenue had the power to revise even without appropriate application for revision, the Collector's order. Whether it would interfere or not is a different matter. On this short ground, the order of the Board of Revenue has to be quashed.

41. In the result, the petition is partly allowed. It is held that the appeal preferred by the petitioner before the Commissioner was not competent and that the second appeal preferred by him before the Board of Revenue was not competent. But the Board has power of revision u/s 50 of the Land Revenue Code. The case shall, therefore, go back to the Board of Revenue for proceeding with the matter in, the light of this order. There shall be no order for costs. The outstanding amount of the security deposit shall be refunded to the petitioners.

A.P. Sen, & G.P. Singh, JJ -42. The petitioners by this petition under Article 226 and 227 of the Constitution call into question an order of the Board of Revenue, passed on July 4, 1968, The Collector Hoshangabad on January 31, 1966, acting as Competent Authority under the Madhya Pradesh Ceiling on Agricultural Holding Act 1960, passed an order u/s 11(1) of the Act proposing to declare 177 96 acres of land, belonging to the petitioner Raviahanker, as surplus and directing publication of a draft statement as required by section 11 (3). Ravishankar filed an appeal against the order of the Competent Authority to the Additional Commissioner, Hoshangabad, u/s 41 of the Act which was dismissed on October 31, 1966. He then filed a second appeal against the order of the Additional Commissioner to the Board of Revenue which was dismissed on July 4, 1968. The Board of Revenue held that as there was no provision for second appeal in the Ceiling Act, the appeal filed by Ravishankar was incompetent. It was also held that the appeal could not be heard as a revision, as no revision was maintainable either under the Ceiling Act or the Madhya Pradesh Land Revenue Code, 1959, against the appellate order of the Commissioner passed under the Ceiling Act. It is this order of the Board of Revenue which has been challenged in this petition. As different views have been expressed by different division Benches of this Court on the questions involved, this petition along with two other similar petitions has been placed before this Full Bench.

43. Learned Counsel for the petitioners contends that the appeal filed to the Board of Revenue was competent u/s 44 (2) of the Land Revenue Code and alternatively the appeal could have been entertained as a revision u/s 50 of the Code. The learned Deputy Advocate General who appears for the State, on the other band, submits that the Ceiling Act is a complete Code and remedies not provided in the Act are not available by recourse to the Land Revenue Code.

44. To appreciate the rival contentions it is necessary first to notice the relevant provisions of the Land Revenue Code and the Ceiling Act.

The Land Revenue Code was enacted in 1959 and it bears the usual pattern of a revenue Code. Section 11 of the Code creates a hierarchy of Revenue Officers of the following classes:

"Commissioners (including Additional Commissioners);

Settlement Commissioner (including Additional Settlement Commissioners;

Collectors (including Additional Collectors);

Settlement Officers;
Sub-Divisional Officers;
Assistant Collectors;
Deputy Collectors;
Assistant Settlement Officers;
Tahsildars (including Additional Tahsildars);
Superintendents of Land Records;
Naib-Tahsildars;
Assistant Superintendents of Land Records "

All revenue officers in a Division are subordinate to the Commissioner and all revenue officers in a District are subordinate to the Collector (Section 12). Chapter II of the Code provides for the constitution of a Board of Revenue and its jurisdiction. The Board is the highest appellate and revisional authority and has powers of superintendence over all authorities in respect of all matters subject to its appellate or revisional jurisdiction.

Chapter V of the Code deals with the subject of Appeal, Revision and Review This Chapter begins with section 44 which makes provision for first and second appeals and appellate authorities; it read as follows:

"Section 44.-Appeal and appellate authorities.-(1) Save where it has been otherwise provided an appeal shall lie from every original order under this Code or the rules made thereunder: -

(a) if such order is passed by any Revenue Officer subordinate to the Sub-Divisional Officer, whether or not the officer passing the order is invested with the powers of the Collector-to the Sub-Divisional Officer;

(b) if such order is passed by the Sub-Divisional Officer whether or not invested with the powers of the Collector-to the Collector;

(c) if such order is passed by any Revenue Officer subordinate to the Settlement Officer-to the Settlement Officer;

(d) if such order is passed by any Revenue Officer in respect of whom a direction has been issued under sub-section (3) of section 12 or sub-section (2) of section 21-to such Revenue Officer as the State Government may direct;

(e) If such order is passed by a Collector whether exercising the powers of Collector or Settlement Officer during the currency of the terms of settlement-to the Commissioner;

(f) if such order is passed by a Settlement Officer, whether exercising the powers of Settlement Officer or the powers of a Collector in connection with any

settlement operation unless otherwise expressly provided to the Settlement Commissioner;

(g) if such order is passed by the Commissioner or the Settlement Commissioner to the Board.

(2) A second appeal shall lie against any order passed in first appeal--

(i) by the Sub Divisional Officer or the Collector--to the Commissioner;

(ii) by the Settlement Officer to the Settlement Commissioner; (iii) by the Commissioner to the Board."

Section 46 enacts that there can be no appeal against certain orders e.g. an order of an interim nature. Section 47 provides the period of limitation within which appeals ought to be preferred. Section 48 requires that a certified copy of the order appealed against should accompany every petition of appeal, review or revision. Section 49 empowers the appellate authority to summarily reject an appeal and to confirm, vary or reverse the order appealed against after hearing the parties.

Section 50, which provides for revisions, reads as follows:-

"Section 50-(1). The Board or the Commissioner or the Settlement Commissioner or the Collector or the Settlement Officer may at any time on its/his motion or on the application made by any party for the purpose of satisfying itself/himself as to the legality or propriety of any order passed by or as to the regularity of the proceedings of any Revenue Officer subordinate to it/him call for and examine the record of any case pending before, or disposed of by, such officer and may pass such order in reference thereto as it/he thinks fit.

Provided that-

(i) no application for revision shall be entertained -

(a) against an order appealable under this Code;

(b) against an order of the Settlement Commissioner u/s 210;

(ii) no such application shall be entertained unless presented within sixty days to the Commissioner or the Settlement Commissioner; or the Collector or the Settlement Officer, as the case may be, or within ninety days to the Board of Revenue from the date of the order and in computing the period aforesaid, time requisite for obtaining a copy of the said order shall be excluded;

(iii) no order shall be varied or reversed in revision unless notice has been served on the parties interested and opportunity given to them of being heard.

* * * * *

Explanation.-for the purpose of this section all Revenue Officers shall be deemed to be subordinate to the Board."

Section 51 empowers the Board and any Revenue Officer to review any order. Section 56, which occurs at the end of Chapter V defines the word "order" as used in the Chapter as under :-

"Section 56--Construction of order.--In this Chapter the expression "order" means the formal expression of the decision given by the Board or a Revenue Officer in respect of any matter in the exercise of its/his powers under this Code or any other enactment for the time being in force."

45. Coming to the Ceiling Act, this Act was enacted in 1960 and the object of the Act as disclosed by its long title is "to provide for the imposition of ceiling on agricultural holdings, acquisition and disposal of surplus land and matters ancillary thereto." The essential powers for implementing the Act are entrusted to Competent Authorities constituted under the Act although some minor powers are also conferred on Revenue Officers. "Competent Authority" as defined in section 2 (e) means :

"(i) in respect of a holder whose entire land is situate within the sub-Division, the Sub-Divisional Officer;

(ii) in respect of a holder whose entire land is situate in more than one sub-division of the same district, the Collector; and

(iii) in respect of a holder whose entire land is situate in more than one district such authority as may be appointed by the State Government.

Chapter II of the Act deals with the subject of exemptions and restrictions on transfer of land. By section 4, which occurs in this Chapter, the competent authority is authorised to declare as void transfers and partitions made in anticipation of and to defeat the provisions of the Act. An order of the competent authority made under this section is appealable to the Board of Revenue; the section further declares that "the decision of the Board and subject to the decision of the Board in appeal the decision of the competent authority shall be final."

Chapter III of the Act deals with the topics of fixation of Ceiling area, determination of surplus land and acquisition thereof. Ceiling area is fixed by Sec. 7 of the Act. A holder of the land is required by section 8 to furnish a statement with particulars to the competent authority who then after collecting information prepares a draft statement u/s 11 (1) containing amongst other matters description of the land which the authority proposes to declare surplus. After receiving objections and deciding them the competent authority publishes a final statement u/s 11 (6) specifying therein the land to be retained by the holder and the land declared to be surplus. The land declared surplus vests in the State u/s 12.

Provision for payment of compensation for acquisition of surplus land is made under Chapter IV. The competent authority determines the compensation u/s 19 of the Act in accordance with the rules contained in Schedule II. Provision is then

made in Chapter V of the Act for determination of debts of the holder of surplus land and for distribution of compensation money amongst the creditors. Powers in that behalf are conferred on the competent authority and his orders under

Chapter V are appealable u/s 33 to the District Court or the High Court depending upon the valuation of the debt or claim Section 34 makes the decision of the competent authority under Chapter V final where no appeal is preferred. Chapter VI deals with disposal of surplus land vesting in the State under Sec. 12.

Chapter VII is the last Chapter in the Act and it deals with miscellaneous but some important matters. Section 41 in this chapter makes provision for an appeal against every order of a revenue officer or competent authority under the Act and section 42 provides for revision against any order of the competent authority or as to regularity of the proceedings of any competent authority. These sections read as follows : -

"S.41. Appeals.-Except where the provisions of this Act provide otherwise against every order of a Revenue Officer or competent authority under this Act or the rules made thereunder, an appeal shall lie-

(i) if such order is passed by Revenue Officer as competent authority or otherwise to the authority competent to hear appeals under sub-section (1) of section 44 of the Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959) from an order passed by a Revenue Officer of the same rank under the said Code;

(ii) if such order is passed by the competent authority where such authority is an officer other than a Revenue Officer appointed under Sub-Clause (iii) of clause (e) of section 2 to the Board of Revenue as if such Officer were an Additional Settlement Commissioner appointed u/s 65 of the said Code".

"S. 42. Revision.- The Board of Revenue or the Commissioner may on its/his motion or on the application by any party at any time for the purpose of satisfying itself/himself as to the legality or propriety of any order passed by or as to the regularity of the proceedings of any competent authority subordinate to it/him call for and examine the record of any case pending before or disposed of by such competent authority, and may pass such orders in reference thereto as it/he thinks fit :

Provided that it/he shall not vary or reverse any order unless notice has been served on the parties interested and opportunity given to them for being heard :

Provided further that no application for revision shall be entertained against an order against which an appeal is provided under this Act."Sections 43 and 44 respectively provide for court-fee and limitations relevant to the proceedings under the Act. Section 49 which gives an overriding effect to the Act reads;

"S. 49. -Act to override other enactments, contracts, etc.-The provisions of this Act and any rules made thereunder shall have effect, notwithstanding anything inconsistent therewith contained in any other enactment for the time being in

force or any custom, usage or agreement or decree or order of a Court or other authority."

46. A reading of section 41 of the Ceiling Act will go to show that it provides for an appeal against the orders of a revenue officer or a competent authority passed under the Act or the rules made thereunder and it also indicates the authorities who are competent to hear the appeals under that section. It has already been seen that a competent authority is either a Sub Divisional Officer or a Collector or, if the land of a holder is situate in more than one district any officer appointed by the State Government u/s 2 (e) (iii). In cases falling u/s 2 (e) (iii) the State (government may appoint a Revenue Officer or any other officer or authority to be the competent authority. The competent authority may therefore be either a Revenue Officer or any other officer appointed by the State Government. If the competent authority is not a revenue officer, the forum of appeal against the orders of such authority is the Board of Revenue. But if the competent authority is revenue officer appeals against the orders of such authority lie to the authority competent to hear appeals u/s 44 (1) of the Land Revenue Code from an order passed by a revenue officer of the same rack under the said Code. Now, the of Revenue and otter revenue authorities functioning u/s 44 (1) of the Land Revenue Code have been empowered to hear appeals u/s 41 of the Ceiling Act not as persona designata but as regular appellate authorities which ate constituted and function under the. Land Revenue Code. As defined in Osborn's Concise Law Dictionary, which definition has been approved by the Supreme Court, persona designata means" "a person who is pointed out or described as an individual as opposed to a person ascertained as a member of a class or as filling a particular character"; Central Talkies Ltd. v. Dwarka Prasad AIR 961 SC 606 pp. 603, 609; Ramchandra v. State of U.P. AIR 1966 SC 888 p. 1889. Tested on this definition, the appellate authorities constituted under the Land Revenue Code while deciding an appeal u/s 41 of the Ceiling Act cannot be said to function as persona designata. For the same reason, revisiohal authorities u/s 42 of the Ceiling Act are not persona designata but regular revenue authorities constituted under the Land Revenue Cade. In deed the learned Deputy Advocate General does not dispute this legal position.

The argument of the learned Deputy Advocate General is that although the aurnorities who hear appeals and Revisions under Sections 41 and 42 of the Ceiling Act are not persona designata but revenue authorities constituted and functioning under the Land Revenue Code, yet any further appeal or revision that may otherwise have been open under the Land Revenue Code is impliedly excluded because the Ceiling Act is a complete Code. It is pointed out that the Ceiling Act itself provides for appeal and revision against orders of the competent authority, prescribes court fee and limitation for such appeals and revisions and these provisions appear to be exhaustive. It is also argued that the Ceiling Act is a special and later Act and case of inconsistency with any other enactment has an overriding effect, and that omission to provide for fur-ther appeals or revisions in the Ceiling Act itself creates inconsistency which displaces the

application of the provisions of the Land Revenue Code.

47. The principles bearing upon the questions involved have been settled in a number of cases. In *Secretary of State for India v. Chellikani Raman Rao*. ILR 39 Mad 817 PC an appeal was taken to the District Court section 10 of the Madras Forest Act, 1882, against an order of the Forest settlement Officer rejecting a claim of title to certain lands declared as reserved forest. A second appeal was then filed in the High court u/s 584 of the CPC 1882, against the decision of the District Court. The Forest Act did not provide for any appeal to the High Court, but it also did not enact that the order of the District Court in appeal shall be final or that it shall not be called in question in further appeal. It was contended that the Forest Act was a complete Code and as no further appeal was provided against the decision of the District Court in that Act no appeal lay to the High Court. In rejecting this argument the Privy Council said : -

"When proceedings of this character reach the District Court, that Court is appealed to as one of the ordinary Courts of the country, with regard to whose procedure orders and decrees the ordinary rules of the CPC apply."

** ** *

"If the ordinary Courts of the country are seized of a dispute of that character (i.e., involving a legal right), it would require a specific limitation to exclude the ordinary incidents of litigation." (Page 624).

It will be seen that what the Privy Council stressed was that to exclude the ordinary incidents of litigation, i.e., appeals or revisions, under the general law a specific limitation has to be enacted in the special law under which the litigation arises. The case also showed that the argument that the special Act is a self contained Code so as to exclude, further appeals or revisions not specifically provided in it is not admissible unless a specific provision excluding appeals or revisions under the general law is made in the special Act.

Chellikani Rama Rao's case was followed in *Mating Ba Thaw v. Ma Pin* AIR 1954 PC 81 where an appeal to the Privy Council was sustained under sections 109 and 110 of the Civil Procedure Code, 1908, from a judgment of the High Court passed in an appeal u/s 73 of the Provincial Insolvency Act, 1920 against a decision of the District Court u/s 4 (1) of the same Act, although no further appeal is provided in the Act. It is interesting to notice that section 4 (2) of the Insolvency Act provides that subject to the provisions of the Act and notwithstanding anything contained in any other law for the time being in force every decision of the District Court u/s 4 (1) shall be final, yet, appeals to the Privy Council under sections 109 and 110 of the CPC were not held to be excluded, for there is no provision in the Insolvency Act which makes the decision of the High Court in appeal u/s 75 final.

Then in AIR 1936 93 (Privy Council) same principle was applied. In this case an appeal was taken to the Privy Council under sections 109 and 110 of the Civil

Procedure Code, 1908, against a judgment of the High Court passed in an appeal from an order of the tribunal under the Punjab Sikh Gurudwara Act which made no provision for further appeal. The Privy Council in entertaining the appeal rejected the argument that the Gurudwara Act was a complete Code and approved the passage that we have earlier extracted from Cheltikani Ram Rao's case. The principle was reaffirmed by the Privy Council in AIR 1948 12 (Privy Council)

These cases of the Privy Council were followed by the Supreme Court in *National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee)*, where it was held that the decision of a Single Judge of the High Court in an appeal preferred u/s 76 of the Trade Marks Act, 1940, is appealable under the Letters Patent to a Division Bench of the High Court. Again, in *Collector Varanasi v. Gauri Shankar* AIR 968 SC 384 the principles were restated and an appeal to the Supreme Court under Article 136 of the Constitution was held to be competent against the determination of the High Court in an appeal u/s 19 (1) of the Defence of India Act, 1939.

In all these cases which have so far been noticed, in the special statute, under which an appeal was provided to an established Court, no provision was made limiting any further right of appeal available under the general law and hence the judgment of the Court in appeal under the special statute was held to be appealable under the general law.

In contrast to these cases, in *South Asia Industries Private Ltd. Vs. S.B. Sarup Singh and Others*, it was held that no appeal under the Letters Patent was maintainable against the judgment of a Single Judge passed in an appeal u/s 39 of the Delhi Rent Control Act, 1958. This conclusion was reached on the ground that section 43 of the Delhi Rent Control Act contains an express limitation of any further appeal and makes the Act a self contained Code. Section 43 reads: "Save as otherwise expressly provided in the Act, every order made by the Controller or an order passed on an appeal shall be final and shall not be called in question in any original suit, application or execution proceeding." Similarly in *Ramchandra Aggarwal and Another Vs. State of Uttar Pradesh and Another*, it was pointed out that an appeal or revision against an order of a civil Court made in a reference u/s 146 of the Code of Criminal Procedure would have been competent but for Clause (1-D) of that section which expressly bars any appeal or revision.

Then in *Anandrao Laxmanrao Mandloi Vs. Board of Revenue and Others*, the question was whether a revision lay to the Board of Revenue u/s 39 of the M.B. Revenue Administration and Rayotwari Land Revenue and Tenancy Act, 1950, from an order of the Collector passed in an appeal against an order of the Tahsildar under Section 23 of the Madhya Bharat Abolition of Jagirs Act, 1951. A Full Bench of this Court, which considered that question, accepted the principle that in the absence of an express limitation an order passed by an established revenue authority in an appeal under a special Act concerning a legal right is open to normal appeals or revisions provided in the Land Revenue Code. But

express limitation of any further right of appeal or revision was found in sections 23 and 34(2) of the Abolition Act, and, therefore, it was held that the decision of the Collector was not revisable by the Board of Revenue. Section 23 provided that the Collector's decision in appeal "shall be final" and section 34 (2) enacted that except as otherwise provided in the Act, no order of the Tahsildar or the Collector under the Act "shall be called in question in any Court." These provisions were construed to completely bar any further challenge to the order of the Collector.

A review of the Case Law very clearly brings out that when a legal right is involved conferral of jurisdiction by a special Act on an existing Court will make available to the litigant further appeals or revisions that may be open under the general law against the order of the Court, unless the special Act contains a specific limitation to exclude "such appeals or revisions. This principle is applicable not only to a civil Court but also to a revenue Court or authority constituted under the general revenue law of the State.

48. There can be no doubt that the Ceiling Act is an Act which affects rights of a holder of land and the proceedings that commence under the Act before the competent authority involve determination of legal rights. Sections 41 and 42 of the Act confer appellate and revisional jurisdiction against the orders of the competent authority on the revenue authorities established under the Land Revenue Code. The Act in sections 43 and 44 also provides Court fee and limitation applicable to the appeal and revision under Sections 41 and 42. But for all subsequent stages the Act is silent and the future conduct and career of the appeal or revision becomes regulated by the Land Revenue Code. Therefore, any further appeal or revision provided in the Code becomes available to a litigant in a proceeding arising under the Ceiling Act.

The argument that the Ceiling Act is a self contained Code which bars any further appeal or revision under the Code cannot be accepted, for there is no specific provision in the Ceiling Act which makes the order passed in appeal or revision under Sections 41 and 42 final and conclusive and not open to any further appeal or revision. It is interesting to notice that the Act in Sections 4 (3) and 33 enacts finality clauses for appeals arising under those sections, but no similar provision has been made for appeals and revisions coming under sections 41 and 42. This omission supports the conclusion that the orders passed under sections 41 and 42 are not final and conclusive and are subject to such appeal and revision as may be open under the Land Revenue Code.

It is true, as has been argued, that the Ceiling is a special and later Act and in case of inconsistency has overriding effect over the provisions of the Land Revenue Code, but there is no inconsistency in the matter of availability of further appeal or revision from orders passed under sections 41 and 42 of the Ceiling Act, because, as already stated, the Act is silent on that point. The various cases already noticed clearly show that unless specific limitation is made in the special Act the normal remedies of appeal and revision available against

the orders of an existing Court begin to apply when proceedings under the special Act reach that Court. Thus, according to the rule of construction applicable to the situation under consideration silence is not enough and if the intention is to exclude further appeal and revision under the general law the special Act must say so specifically.

Then it is argued that orders passed by a competent authority, who is a revenue officer and not a *persona designata*, would have been revisable u/s 50 of the Land Revenue Code yet a provision for revision was made in section 42 of the Ceiling Act which goes to show that the intention was to make the Act exhaustive. We will assume for the purpose of this argument that the competent authority is not a *persona designata* and that ordinarily if no provision had been made in the Ceiling Act a revision would have been competent against its orders u/s 50 of the Land Revenue Code. However, we do not accept the contention that simply because a provision for revision is made against the orders of the competent authority in section 42 of the Ceiling Act the Act should be construed to be so exhaustive as to bar any further appeal or revision. The Act is exhaustive only to the extent it provides or covers the field. Therefore, a provision for revision against the orders of the competent authority in the Ceiling Act excludes revisions u/s 50 of the Land Revenue Code against the orders of the competent authority. But a further revision u/s 50 of the Land Revenue Code against the order of the revising authority made u/s 42 of the Ceiling Act is not excluded, for the Ceiling Act is silent on that point and this area is not covered by it.

For these reasons we are of opinion that orders passed under sections 41 and 42 of the Ceiling Act are subject to such further appeal or revision as may be open under general provisions of the Land Revenue Code.

49. The next question is as to what are the appeals and revisions which are open under the Land Revenue Code against the orders passed by a revenue authority under sections 41 and 42 of the Ceiling Act.

For examining this question we have to turn to the provisions in Chapter V of the Land Revenue Code Section 44 in that Chapter, which we have already extracted, provides for appeals. The section is divided into two sub-sections. The first sub-section provides for a first appeal "from every original order under this Code or the rules made thereunder." This sub-section is, therefore, limited to appeals against original orders passed in exercise of the powers conferred by the Code or the rules made thereunder. The second sub-section which deals with second appeals is more general. It provides for a Second appeal from "any order passed in first appeal" by certain categories of officers. These words are wide enough to include any appellate order, whether passed under the first sub-section or under any other enactment. The conditions that give rise to a right of second appeal under the second sub-section are; first, that the order sought to be appealed against must be an order passed in first appeal; and secondly, that the order must have been passed by Sub-Divisional Officer, or Collector, or the Settlement

Officer, or the Commissioner. But the order appealed against may be an order passed in first appeal under the first sub-section or any other enactment which will include the Ceiling Act. This construction is supported by the definition of the word "order" given in section 56, which is the last section in Chapter V of the Code. By this section orders passed under any other enactment for the time being in force are brought in expressly within the meaning of the word "order". This definition must apply for construing the word "order" in the second sub-section of section 44. In our opinion, therefore, an order passed in appeal u/s 41 of the Ceiling Act by one of the officers mentioned in the second sub-section of section 44 of the Land Revenue Code will be appealable under that provision.

But then it is said that as sub-sections (1) and (2) of section 44 are parts of the same section, the subject-matter of the second sub-section must be held to be limited to the subject-matter covered by the first sub-section, and that we must read the words "any order passed in first appeal", as they occur in the second sub-section, as meaning "any order passed in first appeal under sub-section (1)". We do not find any justification for this interpretation. No rule of construction permits us to do so. The second sub-section is quite plain and unambiguous and by giving to it its ordinary natural meaning no injustice, absurdity or anomaly results. In the circumstances, it is impermissible to read the voids which are not there in it or to cut down its scope by recourse to the subject-matter of the first sub-section. "It is clear" states Craies "that whether an enactment be printed as part of one sub-section or contained in another section, it can make no difference to the construction of the statute; "[Craies on Statute Law, Seventh Edition, P. 217] In *Cohen v. The South Eastern Railway Company* 46 LJ QB 417 p. 420, the scope of the last clause of section 16 of the Regulation of Railways Act, 1868, was sought to be cut down by recourse to the subject-matter of the earlier clauses of the section and Mellish, L.J., in rejecting the contention said : "I am not aware that there is any such rule of construction of an Act of Parliament".

The point may be examined by looking at to the analogous sections of the Code of Civil Procedure, 1908. Section 100 of the Code has not been construed to be limited to the appeals arising from decrees passed in first appeal u/s 96 : [see *Secretary of State for India v Chellikani Rama Rao* ILR 39 Mad 617 , PC. Similarly, sections 109 and 110 are not limited to appeals arising under the preceding sections of the Code, viz., Sections 96, 100 and 104; [see the cases of AIR 1934 81 (Privy Council) ; and AIR 1936 93 (Privy Council) . Now, will it make any difference if the enactments contained in sections 96, 100, 104, 109 and 110 instead of figuring as different sections are grouped together in one section ? The answer to this question must be in the negative, because what is controlling is the language of the enactment and not the consideration that the enactment occurs as a section by itself or is contained in another section. On the same reasoning the second sub-section of section 44 of the Land Revenue Code must be construed as an independent provision and not limited to the subject-matter covered by the first sub-section.

In our opinion, therefore, an order passed in appeal u/s 41 of the Ceiling Act by one of the officers mentioned in the second sub-section of section 44 of the Land Revenue Code will be appealable under that provision. However, no appeal will lie from an order passed in revision u/s 42 of the Ceiling Act, for, as already seen, the second sub-section of section 44 of the Land Revenue Code permits an appeal only from an order passed in first appeal and not from an order passed in revision.

But an order passed in revision u/s 42 of the Ceiling Act will be revisable u/s 50 of the Land Revenue Code, for the power of revision under that section extends to any order passed by any revenue officer. By reading the definition of "order" as given in section 56 for construing section 50, it is clear that revision under that section is available against any order passed under the Code or against any order passed under any enactment for the time being in force, which will include an order passed u/s 42 of the Ceiling Act. The Commissioner and the Board of Revenue are the only two authorities which can pass an order in revision u/s 42. There can be no question of any revision against an order passed by the Board of Revenue, for it is the highest revenue authority. But the order of the Commissioner passed in a revision u/s 42 of the Ceiling Act will be revisable by the Board of Revenue u/s 50 of the Land Revenue Code.

The learned Deputy Advocate General submitted that in section 56 of the Land Revenue Code the words "enactment for the time being in force" should be limited in the context to the enactments that were in force at the time when the Code was enacted and not to later enactments. It is not disputed that these words in their normal connotation are capable of embracing all later enactments that may be in force at the time when the question of filing an appeal or revision arises. We do not find anything in the context to depart from the natural meaning of the words and to limit their operation to the enactments in force at the time when the Code was enacted. Had that been the intention of the legislature, it could have very easily used the words "enactment at present in force" instead of using the words "enactment for the time being in force".

50. Our conclusions on the points material for the disposal of this petition and the two other connected petitions are :-

(a) A second appeal lies u/s 44 (2) of the Land Revenue Code from an order passed in appeal u/s 41 of the Ceiling Act.

(b) A revision lies to the Board of Revenue u/s 50 of the Land Revenue Code from an order passed in revision by the Commissioner u/s 42 of the Ceiling Act.

51. The Board of Revenue was in error in refusing to entertain the appeal presented in the instant case against the order of the Commissioner. That appeal lay u/s 44 (2) of the Land Revenue Code and should have been entertained. The learned Deputy Advocate General contended that the original order of the competent authority was of an interim nature and the appeal from that order to the Commissioner was itself incompetent. It is not necessary to decide this point

and the State can raise it in the Board of Revenue in support of the order of the Commissioner.

52. After seeing the judgment prepared by us our learned brother Shiv Dayal, J. has re cast his earlier judgment, giving additional reasons for the view taken by him. We have, with interest, perused the revised judgment of our learned brother, but we find no adequate reasons to change the view taken by us.

53. The petition is allowed. The order of the Board of Revenue is quashed and the Board is directed to entertain the appeal and decide it according to law. There shall be no order as to costs of this petition. The security amount shall be refunded to the petitioners.

By the Court.-54. In accordance with the order of majority, this petition is allowed. The order of the Board of Revenue is quashed and the Board is directed to entertain the appeal and decide it according to law. There shall be no order as to costs of this petition. The outstanding security amount shall be refunded to the petitioners.