

MANU/BH/0038/1980

Equivalent Citation: AIR1980Pat163

**IN THE HIGH COURT OF PATNA
FULL BENCH**

Civil Writ Jur. Case No. 1757 of 1976

Decided On: 19.11.1979

Appellants:**Dorik Mahto and Ors.**
Vs.

Respondent:**State of Bihar and Ors.**

Hon'ble Judges/Coram:

H.L. Agarwal , S. Ali Ahmad and Shiv Anugrah Narain , JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: Gorakh Nath Singh, S.P. Singh and M.M. Chaturvedy, Advs.

For Respondents/Defendant: Naseem Ahmed, Standing Counsel No. 2 and H. Anzar, Jr. Counsel to Standing Counsel No. 2 For Respondent No. 1, Ras Behari Singh, Narbadeshwar Pandey and Ashok Kumar Singh, Advs. for Respondent Nos. 5 and 6

JUDGMENT

H.L. Agarwal, J.

1. The petitioners have obtained a rule from this Court as to why the order passed by the respondent Deputy Collector, Land Reforms, Samastipur, dated 10-7-1976, (Annexure 1) under Section 12 of the Bihar Money Lenders Act, 1975, be not quashed and cancelled. The said order was passed on an application of respondents Nos. 4 to 6 who are the purchasers of the equity of redemption of the usufructuary mortgage bond dated 5-3-1915, executed by the original owner of the lands in question, namely, Nirsu Chamar. The said mortgage bond was executed in favour of the ancestors of the two petitioners, namely, Bhabi Mahto and Bikan Mahto, for a sum of Rs. 794/-. A copy of the mortgage bond has been made Annexure 2 to the writ application.

2. When the matter was placed earlier before a Division Bench of this Court consisting of B. P. Jha and V. Mishra, JJ., it was contended on behalf of the petitioners that since the mortgage itself was not subsisting, and the right of redemption having been lost to the mortgagor by lapse of time, the application under Section 12 of the Money Lenders Act was not maintainable. Reliance was placed in support of this contention on a Bench decision of this court in the case of Ram Rup Kuer v. State of Bihar, 1978 BBCJ (HC) 282 The learned Judges expressed doubts regarding the correctness of the aforesaid Bench decision in 'Ram Rup Kuer's case and accordingly referred the case to a larger Bench for consideration of the correctness of the said decision. In the opinion of the learned Judges the "provisions of the Limitation Act do not apply in such cases" as nowhere in the Act or the Rules it is stated that the provisions of the Limitation Act shall apply for recovery of possession of the mortgaged lands. They were further of the opinion that even if a suit was barred under the Limitation Act, then also the special provisions of Section

12 of the Money Lenders Act would apply for the benefit of the mortgagors.

3. With great respect to them, I must at the very outset express my inability to appreciate their reasonings for doubting the correctness of Ram Rup Kuer's case, particularly when on the facts of this case there was no question of applying the said case, and I also must state that the learned counsel appearing for, neither party supported the views expressed by the learned Judges. Nonetheless, I would discuss this case in brief. There, on reference to some authorities of different High Courts, it was held that after the expiry of the period of limitation for redemption of a mortgage, the remedy of the mortgagor to recover possession of the mortgaged property was extinguished as well as his right and interest in the said property.

4. Now I may refer to the relevant provisions of the Transfer of Property Act, the Limitation Act and the Bihar Money Lenders Act. Section 60 of the Transfer of Property Act gives the mortgagors the right to redeem the mortgage generally and Section 62 deals specifically with usufructuary mortgages. The right to redeem is conferred upon the mortgagor by statute of which he can be deprived only by means of and in the manner laid down for that purpose being strictly complied with, as was held by the Judicial Committee in the case of Raghunath v. Mt. Hansraj (MANU/PR/0038/1934 : AIR 1934 PC 205). The Judicial Committee again in the case of Shah Ram Chand v. Prabhu Dayal, (MANU/PR/0014/1942 : AIR 1942 PC 50) reiterated that the right to redeem was available only upon the terms stated in Section 60. Kania, C. J., speaking for the Federal Court in the case of Thota China Subba Rao v. Matapalli Raju AIR 1950 FC 1, observed that it was obvious that the right to redemption was an incident of a subsisting mortgage and subsisted so long as the mortgage itself subsisted. This right could be extinguished only as was provided in Section 60. According to Section 60 of the T. P. Act the mortgagor has right on payment or tender of the mortgage money at any time after the principal money has become due, to require the mortgagee to return the necessary documents and deliver possession to him. Right of redemption, therefore, arises when the principal money secured by the mortgage has become due and may be exercised at any time thereafter, subject, of course, to the law of limitation. Article 61 of the new Limitation Act now provides a period of 30 years to a mortgagor "to redeem or recover possession of Immovable property mortgaged", by him and it is well settled that the period of limitation under Clause (a) of Article 61 noticed above begins to run from the time when the right to redeem or to recover possession accrues. It is also equally well settled that where no date is fixed in the mortgage deed for payment of the mortgage money, the money becomes due immediately on execution of the deed and consequently the right to redeem also accrues immediately on the execution of the deed.

Under Section 62 of the T. P. Act, however, where a usufructuary mortgagee is authorised to pay himself the mortgage money from the rents and profits of the property, the right of the mortgagor to recover possession of the property accrues when the mortgage money is so paid. In such cases, even where a term is fixed for the mortgage and a mortgage is discharged out of the usufruct of the mortgaged property before expiry of such term, the mortgagor can recover possession on the discharge of the mortgage debt and hence limitation under Article 61 begins to run from the date when the mortgage debt is so discharged. The period of limitation for both classes of suits, i.e. a suit for redemption or for possession, when it falls under Section 62(a) of the T. P. Act is now 30 years which was 60 years under Article 148 of the old Limitation Act of 1908.

5. Section 27 of the new Limitation Act lays down that at the determination of the period limited to any person for instituting a suit for possession of any property, his right to such property would stand extinguished. A suit for recovery of possession on redemption of a mortgage on the property is virtually a suit for possession and on the expiry of the period of limitation for such suit, the mortgagor's title to the property will be extinguished. The learned Judges who doubted the correctness of Ram Rup Kuer's case 1978 BCCJ (HC) 282 appear to have been misled, if I may say so with great respect to them by the maxim "once a mortgage always a mortgage ", without perhaps, appreciating that this maxim was not absolute and a mortgage can be terminated as between the parties to it, as held by this Court in the case of Sukhdeo Singh v. Lekha Singh, AIR 1957 Pat 502), by the act of the parties themselves, or by merger, or by an order of the court or by a special statute to debar it. In my view the failure of the mortgagor to institute a proceeding for redemption or recovery of possession of the mortgaged properties, as the case may be within the period of limitation is such an act which would terminate the mortgage itself and thereafter the mortgage ceases to be subsisting and no right of redemption can be exercised thereafter. I am tempted to refer to an observation of Sulaiman C. J., in the case of Jauhari v. Tunday, (MANU/UP/0178/1932 : AIR 1933 All 21),' where it was observed that "where a suit relates to possession of immovable property and limitation has expired, it is not only that the remedy is barred, but the right also extinguished under Section 28 Limitation Act. If therefore 60 years have expired the plaintiff's rights have been extinguished".

6. I could not come across any decision which has taken a different view and I need not elaborate and discuss this question any further. It is, therefore, not possible for me, as already said earlier, to agree with the doubts indicated by the learned Judges with regard to the correctness of Ram Rup Kuer's case and in agreement with the said view I must hold that in order to apply the mischief of Section 12 of the Bihar Money Lenders Act, 1975, to a mortgage, the mortgage in question must be subsisting on the relevant date and its provisions cannot apply to a mortgage which has ceased to exist in the eye of law. Section 12 reads as follows:

"Notwithstanding anything to the contrary contained in any law or anything having the force of law or in any agreement, the principal amount and all dues in respect of an usufructuary mortgage relating to any agricultural land, whether executed before or after the commencement of this Act, shall be deemed to have been fully satisfied and mortgage shall be deemed to have been wholly redeemed on expiry of a period of seven years from the date of the execution of the mortgage bond in respect of such land and the mortgagor shall be entitled to recover possession of the mortgaged land in the manner prescribed under the rules:

Provided that if the mortgage bond had been executed before the commencement of this Act, nothing in this section shall entitle the mortgagor to claim any accounts or profits from the mortgagee, by the reason of the benefit or redemption of the mortgage under this provision.

Explanation:-- Nothing in this section shall be construed to confer a right of effecting usufructuary mortgage of land on persons who do not possess transferable rights in such land".

The scheme of Section 12, therefore, fixes a terminus a quo of seven years for the

redemption of the mortgage bond from the date of the execution of the mortgage. The object of this provision is to abrogate the provisions contained in Sections 60 and 62 of the Transfer of Property Act by providing a non obstante clause and contemplates a new ground of redemption of the mortgage by application of the principle contained in clause (a) of Section 62 of the T. P. Act, namely, that the mortgagee would be deemed to have paid himself the entire mortgage money from the rents and profits of the property in question within a period of seven years from the date of the mortgage. The Legislature, however by use of the words "mortgagor", "mortgagee" and "mortgage" must be deemed to have used them in the context of a subsisting relationship of mortgagor and mortgagee between the parties in the background of a subsisting mortgage. At this stage I may usefully refer to the case of Sita Ram Singh v. Gaya Prasad (MANU/UP/0310/1953 : AIR 1953 All 620). That was a case under the U. P. Agriculturists Relief Act (27 of 1934) and U. P. Debt Redemption Act (13 of 1940), where it was observed that the provisions of the above Act cannot affect the rights of mortgagees who had before their commencement ceased to be mortgagees, and had become owners of the property in their possession.

7. Having cleared the ground, now I proceed to examine as to whether the application filed by respondents 4 to 6 under Section 12 of the Money Lenders Act, was competent and maintainable in law. The period of limitation for the redemption of the mortgage bond in this case would be 30 years + 7 years as laid down under Section 30 of the Limitation Act. Therefore, in all it would be 37 years. The mortgage bond having been executed in the year 1915, had there been no time fixed in the mortgage bond for payment of the mortgage debt, then the right of redemption would have come to an end in the year 1952. But unfortunately for the petitioners, the mortgage bond contemplates a long term of redemption in this case, namely, a period of 63 years. It is stated that the mortgagor would pay the mortgage dues on the purnamashi day of Baishakh, 1385 Fasli, which corresponds to the year 1978. In my view, this would be the date when the mortgage money fell due and the right to redeem accrued to the mortgagors. Computing the period of limitation, therefore, from this date the application under Section 12 of the Money Lenders Act was not barred by limitation.

8. In order to wriggle out from this situation, Mr. Gorakh Nath Singh, learned counsel for the petitioners advanced two contentions. Firstly, he contended that the long term of 63 years was a clog, and secondly the respondents 4 to 6 being purchasers of the equity of redemption and being not the original mortgagors themselves, were not entitled in law to take the advantage of the provisions of Section 12 of the Money Lenders Act, being not indigent persons.

Point no. 1 -- This contention has got no substance as it is well settled that a long term of redemption is not necessarily a clog; whether a particular term of redemption operates as a clog is to be considered having regard to the circumstances of the case, as a long term might suit both the parties relieving the mortgagor of the necessity of finding another creditor -- and being a long term investment for the mortgagee. Terms of much greater duration have been upheld in our country. Agarwala, J., in Hasar Ali v. Ajodhaya Sah (MANU/BH/0035/1950 : AIR 1950 Pat 173) observed that in India a long term is not by itself a clog on the equity of redemption entitling the mortgagor to redeem before the expiry of the period agreed upon. In this case the term of the mortgage stated in the bond was 98 years.

Then again, this principle has been affirmed by the Supreme Court in Ganga Dhar v.

Shankar Lal, (MANU/SC/0118/1958 : AIR 1958 SC 770). In that case the period of redemption was six months after the expiry of the period of 85 years. It was observed by the Supreme Court that the bargain was a reasonable one as the mortgagee had not taken any unfair advantage of his position as the lender, nor it was established that the mortgagor was under any financial embarrassment to agree to the said long term. The dismissal of the suit as being premature was accordingly affirmed.

9. Apart from the above authorities, in my view, the grievance on this score, if at all, can be raised by the mortgagor as the clog, if any, was to his detriment, and not by the mortgagee who was the beneficiary and was taking advantage of the said term. I, therefore, do not find any substance in the first contention.

10. Point no. 2 -- The second contention is also unfounded. Section 59A of the T. P. Act, which was inserted in the year 1929, specifically provides that "mortgagors and mortgagees, shall be deemed to include persons deriving title from them respectively". Respondents 4 to 6 in the present case acquired the interest of the mortgagors by a sale deed dated 12-4-1943 (Annexure 3) executed by Nirsu Chamar, which was a transfer of their title and interest in the properties in question besides some other properties. The said respondents, therefore definitely will be deemed to be mortgagors. Whether a mortgagor is an indigent person or not, is not a matter relevant for, the making of an application under Section 12 of the Money Lenders Act. In the Full Bench case of Madho Singh v. State of Bihar, : (MANU/BH/0037/1978 : 1978 BBCJ (HC) 86 : AIR 1978 Pat 172), in which the constitutional validity of the Money Lenders Act was considered, one of the arguments which was advanced in challenge of Section 12 was that "many of the mortgagors come from rich class of the people who lead the life luxuriously and possess more lands than the mortgagees". Another argument was advanced that "there may be some money lenders who may not be doing unconscionable transactions or that there may be some cases where the mortgagors possessed more lands and are economically better placed than the mortgagees". Both these grounds were repelled for the reason that in determining such conditions it is a condition of the class as a whole which has to be taken into consideration and not only of a few of that class.

11. Mr. Singh also argued that the impugned order of the respondent Deputy Collector which is ex parte, was not passed after due notice to the petitioners, I do not feel impressed by this argument as the order itself indicates that the service of notice was duly effected. Even assuming that there might be some force in this contention, I would refuse to interfere with the order in the writ jurisdiction of this Court inasmuch as by the legal fiction of automatic redemption of the mortgage bond on the expiry of the period of seven years from the date of the execution of the mortgage bond contemplated under Section 12 of the Act, the respondents numbers 4 to 6 became entitled to get back possession of the mortgaged land. The Money Lenders Act came into force on 25-3-1975. The period of seven years, in question ended on that very day. The possession of the petitioners since then is unauthorised. The setting aside of the order and remitting the case back would simply amount to an empty formality. We, therefore, permitted learned counsel for the petitioners to advance all such arguments which were available to him at the initial stage of the proceeding, and heard him on all those points at full length which have already been noticed above.

12-13, For the reasons given above I do not find any merit in this application and would accordingly discharge the rule. In the circumstances, however, I shall not

make any order as to costs.

S. Ali Ahmad, J.

Nirsu Chamar executed the usufructuary mortgage bond on 5-3-1915, in favour of Bhabi Mahto and Bikan Mahto for a sum of Rs. 794/- and put them in possession of the land. The due date for redemption of the mortgage was Baisakh, 1385 Fs. which corresponds to sometime in the year 1978. Admittedly respondents Nos. 4 to 6 purchased equity of redemption of the lands in question along with other properties from Nirsu Chamar. Thereafter these respondents filed an application praying that possession of the land may be restored to them as the mortgage of 1915 stood redeemed under Section 12 of the Bihar Money Lenders Act (hereinafter to be referred to as the Act). The prayer was allowed by respondent No. 3 by his order dated 10th July, 1976, a copy of which has been marked as Annexure 1. The petitioners challenge the validity of this order through this application under Article 226 of the Constitution of India.

14. When the matter came up for hearing before B. P. Jha and V. Mishra, JJ., an argument was advanced on the assumption that no due date for redemption was mentioned in the mortgage deed and, as such, long before the enforcement of the Bihar Money Lenders Act, 1975, the mortgage ceased to exist. On the strength of the decision in the case of Ram Rup Kuer v. State of Bihar (1978 BBCJ (HC) 282), it was contended that the prayer for restoration made by respondents Nos. 4 to 6 should not have been allowed as the mortgage was not subsisting. The learned Judges seem to have accepted the fact that the mortgage was not subsisting. They, however, doubted the correctness of the decision in the case reported in 1978 BBCJ (HC) 282 (supra) and recommended to the Hon'ble the Chief Justice to place this case before a Full Bench,

15. From the facts that I have stated above, it will transpire that the question as to whether the case reported in 1978 BBCJ (HC) 282 (supra) was correctly decided or not does not arise in this case and, in fact, as has been observed by Hari Lal Agrawal, J., no attempt was made at the Bar to challenge that decision. In that view of the matter, I do not think it desirable to express any opinion about the correctness or otherwise of the decision reported in 1978 BBCJ (HC) 282 (supra).

16. I have had the advantage of reading the judgment prepared by my learned brother Hari Lal Agrawal, J., and I fully agree with him that the stand taken by the petitioners with respect to clog has no substance. I would however, only like to add that the petitioners, who are mortgagees cannot be allowed to take advantage of the clog (even if there was any) because that will amount to giving premium to the illegal advantage they wanted to derive on account of the clog.

17. An argument has also been advanced that the advantage given to mortgagors under Section 12 of the Act does not extend to purchasers of equity of redemption. It is said that respondents Nos. 4 to 6, who are purchasers of equity of redemption are, therefore, not entitled to maintain an application under Section 12 of the Act and, as such, the order passed thereon is without jurisdiction. This argument has been very rightly rejected by Hari Lal Agrawal, J. 'Mortgage' 'Mortgagee' or 'Mortgagor' has not been defined in the Act. A reference, therefore, naturally has to be made to the T. P. Act. It is not said that the expression 'mortgage' or 'mortgagee' as defined in the T. P. Act has a different meaning under the Act, The expression 'mortgagor', therefore, as defined under the T. P. Act should also be applicable for this Act unless otherwise

expressly provided in the Act or in any particular section of the Act. It has, therefore, to be seen as to whether respondents Nos. 4 to 6 were mortgagors within the meaning of the Transfer of Property Act, Undisputedly Nirsu Chamar was the mortgagor and respondents Nos. 4 to 6 are purchasers of equity of redemption from him. Section 59A of the T. P. Act provides that the expression 'mortgagor' for the purpose of the chapter relating to mortgage shall, unless otherwise expressly provided, include persons deriving title from him. Respondents Nos. 4 to 6 are purchasers of equity of redemption from Nirsu Chamar, the original mortgagor. They, therefore, are also mortgagors, for the purpose of the provision contained in the chapter relating to mortgage under the T. P. Act. The Bihar Money Lenders Act, 1975, or Section 12 of the Act does not expressly exclude purchasers of equity of redemption from becoming mortgagors. They, therefore, in my opinion, are mortgagors also within the meaning of the Act and, as such, the application filed by them before respondent No. 3 was maintainable. I, therefore, agree to the order passed by Hari Lal Agrawal, J. that the rule be discharged.

Shiv Anugrah Narain, J.

With respect, I am unable to agree.

18-19. By the impugned order, dated 10-7-1976, of the Deputy Collector, Land Reforms, Samastipur, copy whereof is Annexure 1 to the writ application, the learned Deputy Collector, who is respondent No. 3 to the writ application, has allowed the application under Rule 10 of the Bihar Money Lenders Rules, 1975 filed by respondent No. 5, Raj Kishore Jha, in respect of lands which were mortgaged by a deed of mortgage dated 5-3-1915, copy whereof is Annexure 2 to the writ application, executed by Nirsu Chamar, the original owner of the lands which were the subject matter of the mortgage, in favour of Bhabi Mahto and Bikan Mahto, for a consideration of Rupees 794/-. The impugned order runs as follows:--

"10-7-1976. Awedak ki ore se hajri di gayee hai.

O. P. did not turn up to dispute. S.R. of notice received and despite repeated call, Hence redemption is allowed".

The order, in substance, is an order to eject from the mortgaged lands Dorik Mahto, petitioner No. 1, and Sakunti Mahto, petitioner No. 2, who are the sons of the original mortgagees, Bhabi Mahto and Bikan Mahto, respectively, who are both dead. Raj Kishore Jha, respondent No. 5 along with respondents Nos. 4 and 6 claims to have purchased the equity of redemption in respect of the lands covered by the aforesaid mortgage from Nirsu Chamar in 1943 by a registered deed of sale dated 12-4-1943, copy whereof is Annexure 3 to the writ application, for a consideration of Rupees 1,000/-.

20. By the aforesaid mortgage bond for a consideration of a loan of Rs. 794/-, 1 B, 1 K, and 12 dhurs of Kast lands, including trees thereon, situate in village Saidpur in the former district of Dar-bhanga fully described in the mortgage bond were given in mortgage. Under the terms of the mortgage, the mortgagees obtained possession over the said lands and were entitled to remain in possession of the mortgaged lands during the term of the mortgage and till the repayment of the mortgage money and to appropriate the usufruct of the lands in lieu of interest on the mortgage money. The term of the mortgage was not specifically laid down in the mortgage deed, but the mortgage contained a promise by the mortgagor to repay the mortgage amount on Baisakh Purnima, 1385 Fasli corresponding to sometime in 1977. Under the terms of

the mortgage, the obligation to pay the rent of the mortgaged lands remained on the mortgagor. It was also stipulated in the mortgage bond that till such time as the mortgage money was repaid, the mortgagor shall not execute any deed of mortgage or sale or any other deed of transfer in respect of the properties and that any such deed if executed shall be null and void.

21. Section 12 of the Bihar Money Lenders Act, 1974 (hereinafter called 'the Act'), so far as is relevant, runs thus:--

"12. Usufructuary mortgages and their redemption -- Notwithstanding anything to the contrary contained in any law or anything having the force of law or in any agreement, the principal amount and all dues in respect of an usufructuary mortgage relating to any agricultural land, whether executed before or after the commencement of this Act, shall be deemed to have been fully satisfied and the mortgage shall be deemed to have been wholly redeemed on expiry of a period of seven years from the date of the execution of the mortgage bond in respect of such land and the mortgagor shall be entitled to recover possession of the mortgaged land in the manner prescribed under the rules"

The manner of recovery of possession is prescribed by Rules 9 and 10 of the Bihar Money Lenders Rules, 1975, framed under the Act, (hereinafter called 'the Rules'), which run thus:--

"9. Procedure in case of resumption of mortgaged property by a mortgagor from the mortgagee under Section 12 of the Act. -- (1) On the expiry of the period of mortgage as mentioned in Section 12 of the Act, the mortgagor shall send a notice in Form M. L.-4 requiring the mortgagee to deliver possession of the mortgaged property within twenty days from the date of notice and;

(2) A copy of the notice shall also be sent by registered post with acknowledgement due by the mortgagor to the Anchal Adhikari within whose jurisdiction the mortgaged property is situated.

10. Filing of application by mortgagor to eject the mortgagee in case of latter's failure to put the mortgagor in possession. -- (1) if on the expiry of the period of notice in Form M. L.-4, the mortgagee fails or refuses to deliver possession of the mortgaged property to the mortgagor, the mortgagor shall file an application in Form M. L.-5 to the Collector within whose jurisdiction the mortgaged property or any portion thereof is situated, to eject the mortgagee from the mortgaged property.

(2) The application shall bear a court-fee stamp of such value as may be payable for it under the Court-fees Act, 1870 (Act VII of 1870) for the time being in force for an application and shall be accompanied with the form of the notice in Form M. L.-6 in triplicate.

(3) On receipt of application from the mortgagor for ejecting the mortgagee the Collector shall issue a notice in Form M. L.-6 to the mortgagee or his legal representative to show cause by a date to be specified in the notice why the mortgagor should not be put in possession.

(4) If no cause is shown on or before the date specified in the notice or by

such other date as may be extended by the Collector or if the cause shown is, in the opinion of the Collector, not satisfactory, he shall pass an order in writing to eject the mortgagee from the mortgaged property and put the mortgagor in possession and for that purpose he may use such force as may be necessary.

(5) The delivery of possession will be effected in the manner prescribed for the purpose in the Civil P. C., 1908 (Act V of 1908)".

22. It is thus manifest that before the Collector can pass an order under Rule 10 (4) of the Rules putting the applicant in possession after ejecting another person from a certain land, it must be established -

- (i) that there is a mortgage in respect of the land;
- (ii) that the mortgage relates to agricultural land;
- (iii) that the mortgage is a usufructuary mortgage;
- (iv) that a period of seven years from the date of execution of the mortgage bond has elapsed;
- (v) that the applicant claiming possession is the mortgagor; and
- (vi) that the person in possession of the land is the mortgagee. And he can do so only in accordance with the procedure laid down under Sections 9 and 10 of the Rules. It is contended on behalf of the petitioners that the impugned order is null and void and without jurisdiction. Three main grounds have been urged for holding that the impugned order is null and void;--

(i) That the applicant before the learned Deputy Collector, respondent No. 5, or respondents 4 to 6 were not the 'mortgagor' within the meaning of the expression as used in Section 12 of the Act or Rules 9 and 10 of the Rules and, therefore, the application under Rule 10 before the learned Deputy Collector was not maintainable:

(ii) that there was no mortgage relating to the lands in respect of which the order of redemption which amounts to an order for ejecting the mortgagee and putting the mortgagor in possession has been passed; the right to redeem having become barred by limitation, the mortgage dated 5-3-1915 was extinguished and

(iii) that the order contravenes the provisions of Rule 10 of the Rules and the principles of natural justice inasmuch as no notice of the application under Rule 10 was served on the petitioners mortgagees and they were deprived of the opportunity of showing cause against the application for ejecting them from the mortgaged property.

23. In my opinion, the first ground put forward by the petitioners for impugning the order as null and void well founded, and must prevail. Before, however, I proceed to give my reasons for the aforesaid conclusion, I should mention that this ground was not taken in the writ application. As, however, the ground involved a question of law arising upon admitted facts, we permitted the learned counsel for petitioners to urge this ground, and heard arguments of the petitioners as well as the respondents in this

regard.

24. I have already quoted the relevant provisions of Section 12 of the Act and Rules 9 and 10 of the Rules and as I have already pointed out, it is manifest that under Section 12 of the Act, the only person entitled to recover possession is the 'mortgagor' within the meaning of the expression as used in Section 12 of the Act and no one else. Respondents 4 to 6 claim to be mortgagors within the meaning of the expression on the ground that they are the purchasers of the equity of redemption from the original mortgagor, Nirsu Chamar, under the registered sale deed, dated 12-4-1943. It is urged on behalf of the petitioners that the sale in their favour is null and void in view of the stipulation in the mortgage deed that any sale of the mortgage property to a person other than the mortgagees during the time the mortgage money remained unpaid shall be null and void. For the purposes of this case, however, I will assume that the aforesaid sale deed is valid and respondents 4 to 6 are the purchasers of the equity of redemption in respect of the lands covered by the mortgage. The question for consideration, however, is whether the expression 'mortgagor' in Section 12 of the Act includes the purchaser of the equity of redemption. Shri Gorakhnath Singh, appearing on behalf of the petitioners, contends that it does not and Shri Rash Behari Singh, appearing on behalf of the respondents, contends that it does.

25. Now it is well settled that "the words of a statute are first understood in their natural, ordinary or popular sense..... unless that leads to some absurdity or unless there is something in the context or in the object of the statute to suggest the contrary" -- *Craw-ford v. Richard Spooner* ((1846) 4 MIA 179 at p. 181 (PC)). The principle was recently reiterated by Iyer, J., speaking for the Supreme Court, in these words

"The current and correct view of the interpretative process is that words must be given their 'literal' or 'ordinary' meaning unless there are -compelling reasons, recognised by canons of construction, to the contrary" -- *Thanjavur v. Naganatha Ayyar* (MANU/SC/0402/1979 : AIR 1979 SC 1487 at p. 1492).

Now what is the literal ordinary meaning of the word 'mortgagor'? The subject matter of Section 12 is law relating to a special kind of loan, namely, a loan advanced upon an usufructuary mortgage which is a species of transfer of interest in land. We are, therefore, led to enquire what does the expression 'mortgagor' mean in the law relating to transfer of property by a mortgage. The Indian law regarding mortgage of immovable property is contained in Chapter IV of the T. P. Act, 1882 and the terms 'mortgage, mortgagor, mortgagee' etc. are defined by Section 58 of the T. P. Act which runs thus:--

"58. 'Mortgage', 'Mortgagor', 'Mortgagee', 'Mortgage-money' and 'Mortgage deed' defined -- (a) A Mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

The transferor is called a mortgagor, the transferee a mortgagee;....."

A mortgagor, according to Section 58, therefore, is the transferor, that is to say, the person who transfers an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan etc. The

definition of 'mortgage', 'mortgagor' and 'mortgagee' in Section 58 of the T. P. Act is not an artificial statutory definition. It embodies the ordinary natural meaning of the terms as understood by lawyers. As observed by Mahmood, J. regarding the definition of 'mortgage' in Section 58 of the T. P. Act in *Gopal v. Parsotam* MANU/UP/0081/1882 : ILR (1883) 5 All 121 at p. 137 (FB) "that definition has not in any way altered the law but, on the contrary, has only formulated in clear language the notions of mortgage as understood by all the writers of the text books on Indian Mortgages". Thus, it is obvious that the definition of mortgagor in Section 58 gives the literal ordinary meaning of the expression "mortgagor". It is also obvious that it does not include within its ambit, the "purchaser of the equity of redemption" for he does not transfer any interest in property. Giving to the expression its literal ordinary meaning, the word "mortgagor", therefore, does not include the purchaser of the equity of redemption.

26. Section 59A of the T. P. Act on which reliance has been placed on behalf of the respondents not only does not support the contention that the expression "mortgagor" in its plain, natural, ordinary meaning includes the purchaser of the equity of redemption, but negatives it. Section 59A runs as follows :--

"59A. Unless otherwise expressly provided, references in this chapter to mortgagors and mortgagees shall be deemed to include the reference to persons deriving title from them respectively."

Thus, according to Section 59A persons deriving title from the mortgagor, the purchaser of the equity of redemption is one of such persons, are deemed to be included within the expression 'mortgagor' occurring in the chapter in which Section 59A is comprised, that is to say, Chapter IV of the T. P. Act. Section 59A thus gives an extended or inclusive definition of the expression 'mortgagor' or 'mortgagee'. Now, as pointed out by Justice G. P. Singh in his "Principles of Statutory Interpretation" (2nd Edn. p. 110) the definition section worded in the form 'is deemed to include' is an inclusive or extensive definition and such a form is used to bring in by a legal fiction something within the word defined which according to its ordinary meaning is not included within it. This statement is supported by high authority. In *Commr. of I.-T. v. Bombay Corporation* (MANU/PR/0227/1929 : AIR 1930 PC 54) speaking for their Lordships of the Judicial Committee, Viscount Dunedin, observed "now when a person is 'deemed to be' something, the only meaning possible is that whereas he is not in reality that something, the Act of Parliament requires him to be treated, as if he were". Section 59A, therefore, shows that while in its plain ordinary meaning, the expression 'mortgagor' does not include persons claiming under him, by the statutory legal fiction they, including a purchaser of the equity of redemption, are included within the expression 'mortgagor' occurring in Chapter IV of the T. P. Act.

27. Though it is undoubtedly a rule that "full effect must be given to the statutory fiction and it should be carried to its logical conclusion" -- *State of Bombay v. Pandurang Vinayak* (MANU/SC/0025/1953 : AIR 1953 SC 244 at p. 246), in construing the fiction it is not to be extended beyond the purpose for which it is created. The fiction enacted by the Legislature must be restricted by the plain terms of the statute -- *Commr. of I.-T. Bombay v. Shakuntala* (MANU/SC/0175/1961 : AIR 1966 SC 719 at p. 722). As S. R. Das, C. J. pointed out in the *Bengal Immunity case* (MANU/SC/0083/1955 : AIR 1955 SC 661) "legal fictions are created only for some defined purpose" and "a legal fiction is to be limited to the purpose for which it was created and should not be extended beyond that legitimate field" (at page 680 of the

report). Now Sec, 59A clearly confines the statutory fiction of mortgagors and mortgagees including persons deriving title from them to "references in this chapter to mortgagors and mortgagees". Or in other words, the fictional meaning of mortgagors or mortgagees contained in Section 59A is to be confined only to these expressions occurring in Chapter IV of the T. P. Act. If we use the artificial extended definition of the expression 'mortgagors' and 'mortgagees' contained in Section 59A for interpreting the expression 'mortgagor' occurring in Section 12 of the Act, we will be extending the statutory fiction, "beyond the defined purpose" for which it was created by Section 59 of the T. P. Act. It is, therefore, plain that the expression 'mortgagor' in its ordinary natural meaning does not include the purchaser of the equity of redemption.

28. Are there any "compelling reasons recognised by canons of construction to the contrary"? The canons of construction permit us to depart from plain literal meaning "if there is something in the context or in the object of the statute to suggest the contrary". It is manifest that there is nothing in the object of the statute to suggest that the expression 'mortgagor' includes the purchaser of the equity of redemption. According to the preamble, the Act was passed "to consolidate and amend the law relating to regulation of money lending transactions and to grant relief to debtors in the State of Bihar". The principal object of the Act, is ,therefore, to grant relief to debtors including debtors who offer security for the loans taken by them. As was pointed out by a Full Bench of this Court in *Madho Singh v. State* (: (MANU/BH/0037/1978 : 1978 BBCJ (HC) 86 : AIR 1978 Pat 172)), Section 12 of the Act places restriction on the right of the mortgagee-money lender to hold property under usufructuary mortgage beyond seven years in the interest of a particular class of the general public, namely, the agricultural debtors. The object underlying Section 12 of the Act, therefore, is to confer a benefit upon or to grant relief to agricultural debtors who have given lands in usufructuary mortgage as security for the loan taken by them.

29. Now the purchaser of the equity of redemption acquires a property subject to an incumbrance after furnishing consideration for the same. In the transaction by virtue of which he becomes the purchaser of the equity of redemption, he does not receive but gives money, and he gives the money for the purpose of acquiring the interest of the mortgagor in the mortgaged property. He is clearly and undoubtedly not a debtor. If any authority is needed for this proposition, reference may be made to *Gajadhar Marwari v. Baidyanath Mandal* (MANU/BH/0104/1950 : AIR 1950 Pat 379) in which *Jamuar, J.* speaking for a Bench of this Court observed,--

"They are purchasers of the equity of redemption of the mortgagor and thus not themselves debtors" (at Page 382 of the report.)"

The object of the Act and particularly of Section 12 thereof, therefore, does not require us to give an extended meaning to the expression 'mortgagor' to include within its ambit the purchaser of the equity of redemption who is not a debtor whom alone the Act is designed to benefit. In the majority of cases, the purchaser of the equity of redemption is a person in affluent circumstances, whose condition does not require conferment of any special benefits. He is not the victim of any unconscionable bargain like the mortgagor who has executed usufructuary mortgage in respect of the agricultural land, majority of whom, according to the finding of this Court in *Madho Singh's* case (*supra*) are victims of unconscionable money lending transaction. More often than not, taking advantage of the straitened circumstances of the mortgagor and the mortgagor's inability to redeem the mortgage, he has purchased the

mortgagor's interest for less than its fair price. It may be just and reasonable to restrict the right of the usufructuary mortgagee to remain in possession of the land for the term of the mortgage and till the payment of the mortgage money for conferring benefit on the mortgagor, the victim of the unconscionable transaction. But it seems neither just nor reasonable to restrict the aforesaid legal right of the mortgagee for conferring a benefit on the purchaser of the equity of redemption who equally with the mortgagee usually belongs to the class of the 'haves' and not of the 'havenots' and is not the victim of any unconscionable transaction.

30. The object of the enactment may require us to include within the expression 'mortgagor' his legal representatives, as the heirs of the debtors may well be regarded as debtors and in need of the benefit conferred by Section 12. But merely because the natural meaning has to be departed from to include the heirs and legal representative of the mortgagor, is no reason for extending the meaning to include the purchaser of the equity of redemption also who does not come in the category of 'debtor' the class which was intended to be benefited by the Act. As observed by Lord Wensleydale in the oft-quoted passage -

"The grammatical and ordinary sense of the word is adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further" *Grey v. Pearson* (1857) 6 HL Cas 61.

31. The aim and object of the enactment, therefore, does not compel us to extend the ordinary meaning of the expression 'mortgagor' to include the purchaser of the equity of redemption, nor does the context in which the expression 'mortgagor' occurs. The expression occurs in the section which creates the statutory fiction of the full satisfaction of all dues in respect of a usufructuary mortgage relating to an agricultural land and the complete redemption of such a mortgage on the expiry of a period of 7 years from the date of the execution of the mortgage bond. In view of the non obstante clause "notwithstanding anything to the contrary contained in any law" etc., there can be no doubt that the rule laid down in Section 12 overrides where it applies the provisions of Section 60 or Section 62 of the T. P. Act. But, I am unable to hold that the law relating to the usufructuary mortgage contained in Section 60 or 62 of the T. P. Act is wholly abrogated by Section 12 of the Act. The statutory fiction of full satisfaction of the dues in respect of the mortgage and its complete redemption forms part of a section, the other part of which confers a right on the mortgagor to recover possession of the mortgaged land. The statutory fiction of satisfaction and redemption is, therefore, a part of the scheme under which the mortgagor is entitled to recover possession of the mortgaged land. In view of its context and its collocation, it is, clear that the purpose of enacting the statutory fiction is to enable the mortgagor to recover possession of the mortgaged land in the circumstances in which the statutory fiction operates. The satisfaction and redemption, therefore, is only for the purpose of conferring a special benefit on the mortgagor to recover possession of the mortgaged land and not for abrogating altogether the law regarding usufructuary mortgages contained in Section 60 or 62 of the T. P. Act. Section 12 does not confer a right of redemption on the basis of the statutory fiction of satisfaction and redemption even to persons who are not mortgagors. In Section 91 of the T. P. Act, a security for the payment of the mortgage debt, a lessee of the mortgagor, a creditor of the mortgagor who has, in a suit for the administration of his estate, obtained a decree for sale of the mortgaged property, are also entitled to redeem the mortgage. These persons are obviously not

included within the ambit of the expression 'mortgagor' and, therefore, they are not entitled to recover possession of the mortgaged land in the manner prescribed in Rules. If we bear in mind the object of the enactment which is to grant relief to debtors, there seems no warrant for holding that these persons can also redeem the mortgage when by virtue of the statutory fiction, the mortgage is deemed to be redeemed. They will be entitled to redeem only in accordance with law contained in the T. P. Act.

32. It must be remembered that Section 12 creates a different and, therefore, a new right to redeem and vests it in the mortgagors and creates a special remedy for enforcement of their right. The new right created can only be enforced by taking recourse to the remedy provided by the statute. It is well set- tied that when a right or liability is created by statute which gives a special remedy for enforcement, the remedy provided by the statute only must be availed of : N. P. Ponnu Swami's case, (MANU/SC/0049/1952 : AIR 1952 SC 64 at p. 69). As the remedy is available only to the mortgagor, it seems reasonable to conclude that the new right of redemption has been created only for the benefit of those persons who can avail of the remedy provided by the section. Persons other than the mortgagor will continue to have the right to redeem in accordance with the provisions of the old law. No anomaly, therefore, arises if the expression 'mortgagor' is held not to include the purchaser of the equity of redemption for the purchaser of the equity of redemption will continue to be entitled to his rights under the old law. There is, thus, nothing in Section 12 which indicates that 'mortgagor' includes the purchaser of the equity of redemption also.

33. Nor is there anything in the other sections of the Act which gives such an indication. I have not been referred to any such provision nor have I been able to discover any such provision. On the contrary, it is clear from Section 14 of the Act, which occurs in the same Chapter as Section 12, that purchasers of the equity of redemption are not treated by the Act on par with the mortgagor in all cases. Under Section 13 of the Act, in a suit brought by money-lender in respect of a loan, the court has the power to reopen the transaction of loan, take an account between the parties, and relieve the debtor of all liability in respect of any simple interest in excess of twelve per cent in case of secured loan and also to direct the moneylender to repay to the debtor any amount which the money-lender has realised from the debtor in excess of the amount which he is unable to realise under this Act. Under Section 11 of the Act, the maximum amount which a money-lender may realise from the debtor on account of principal and interest may not exceed double the amount advanced by him. Section 14 of the Act provides :--

"14. Transfer of equity of redemption by a mortgagor by sale otherwise than in execution of decree. If the equity of redemption of mortgagor is transferred by sale otherwise than in execution of decree and if out of the consideration money for the transfer any amount due under the mortgage in respect of interest for any period preceding the date of transfer is left in deposit with the transferee for payment to the mortgagee, the portion of the amount so left in deposit, which is in excess of the amount which would have been payable as simple interest at the rate of twelve per centum per annum for such period, shall not, in any suit brought before or after the commencement of this Act be taken into account for the purpose of Section 13 and, notwithstanding anything to the contrary contained in the said section, the mortgagee shall, in any such suit, be entitled to recover the amount of such excess in addition to any amount which he may otherwise be

entitled to recover:

Provided, however, that if the amount of such excess exceeds the limit provided by Section 11 the mortgagee shall not recover the amount of such excess and the transferee shall refund such excess to the mortgagor".

It is, thus clear that subject to the proviso, the mortgagee shall be entitled to recover the amount of money left in deposit with the purchaser at a private sale of the equity of redemption for payment of interest to the mortgagee even if the amount is in excess of the amount which would have been payable by the mortgagor as interest as determined after reopening the account as provided by Section 13. The benefit of Section 13, therefore, though available to the mortgagor is denied to the purchaser of the equity of redemption. And even if the amount exceeds the limit fixed by Section 11, though the mortgagee may not recover the same in excess of the limit, the purchaser of the equity of redemption is not entitled to retain the same; the proviso requires him to refund the excess to the mortgagor. If for the purpose of Section 13, the purchaser of the equity of redemption at private sale is not treated by the Act at par with the mortgagor that is some indication that the expression 'mortgagor' does not include the purchaser of the equity of redemption.

34. Further, the definitions of money lender and registered money lender contained in Section 2 (k) and 2 (n) run thus:--

"2 (k). 'Money-lender' means a person advancing loan and shall include a Hindu undivided family and the legal representatives and successors-in-interest. whether by inheritance, assignment or otherwise of a person who advances a loan;

XX XX XX XX

(n) 'Registered money-lender' means a person whose registration certificate granted under Section 4 still subsists and has not been cancelled under Section 33 and shall include a Hindu undivided family and the legal representatives and successors-in-interest whether by inheritance, assignment or otherwise of a registered money-lender".

The fact that the Act has specifically provided that money-lender shall include his successor-in-interest whether by inheritance, assignment and otherwise of a person who advances the loan, is also some indication that the expressions 'debtor' or 'mortgagor' occurring in the Act do not include their assigns. If the intention was to include their assigns, a similar inclusive definition of 'debtor' or 'mortgagor' would have been provided. I may mention that Section 146 of the Civil P. C. specifically lays down that proceedings which can be taken by or against any person may, save as otherwise provided, be taken by or against any person claiming under him. The context in which the expression 'mortgagor' occurs in Section 12 of the Act and the object of the enactment therefore, do not compel the construction that the expression 'mortgagor' includes within its ambit the purchaser of the equity of redemption. On the contrary, they reinforce the natural reading that it does not.

35. I am conscious that even in the absence of the statutory fiction contained in Section 59-A of the T. P. Act, the view was expressed in several decisions that the expression 'mortgagor' in Section 68 of the T. P. Act includes the purchaser of the equity of redemption; e. g. in Ramakrishnama v. Vuvvati Chengu Aiyar (MANU/TN/0625/1914 : AIR 1915 Mad 633); Rama-nandan Parbat v. Deni Sahi AIR

1924 Pat 91) and Janki Saran v. Md. Ismail (MANU/BH/0017/1930). Janaki Saran's case (supra) is based on the decisions in Ramanandan Parbat's case (supra), Ramakrishnama's case (supra) and the only independent reason given is that to limit the word 'mortgagor' to the actual mortgagor himself would be placing too narrow a construction on Section 68. It is not explained why such a construction would be too narrow. In Ramanandan Parbat's case (supra) it was assumed that the expression 'mortgagor' included the auction purchaser of the interest of the mortgagor subsequent to the mortgage and no reasons were given for that assumption. In Ramakrishnama's case, their Lordships of the Madras High Court while holding that the purchaser of the equity of redemption was responsible to the mortgagee for the waste committed by him enunciated the following principle:--

".....a provision in a statute which gives a right to and imposes a liability on a person must be deemed to confer that right and impose that liability on the person's legal representative and if it confers the right or imposes the liability on that person as the owner of a certain property, such right or liability is conferred or imposed on the assignee of such ownership right, unless the reason of the rule of law cannot clearly apply to anybody but the original owner of the property or the original obligator".

They, thereafter proceeded to hold that "there is not only no reason why the original mortgagor alone should be made liable by reason of the waste and not his representative or a purchaser of his right who is directly responsible for the waste committed; the reason of the rule applies to them also as much as to the original mortgagor." No authority has been cited in the judgment for the principle of law enunciated therein. The principle seems to be contrary to the ratio of the decision of the in which Strachey C. J., Knox, J., concurring, while holding that the remedy of applying under Section 108 of the Civil P. C. for setting aside the ex parte decree against the defendant was not available to his legal representative observed as follows:--

"In order to make this remedy available to the legal representative, some general principle of law would be necessary by which the word defendant should be construed as including the legal representative of a deceased defendant. No authority has been cited to us, and we are aware of none which establishes any such general principle".

However, even assuming that the principle laid down is correct, the decision is of no help to the respondents. Their Lordships of the Madras High Court held that the expression 'mortgagor' in Section 68 included the mortgagee (transferee) also because 'the reason of the rule' imposing the liability on the mortgagor applied to the purchaser of the equity of redemption also as much as to the original mortgagor. The 'reason of the rule' enacted in Section 12 of the Act being to grant relief to a debtor does not apply to the purchaser of the equity of redemption because the purchaser of the equity of redemption is not a debtor. These decisions, therefore, lend no support to the contention that the expression 'mortgagor' in Section 12 includes the purchaser of the equity of redemption also. I may incidentally point out that a contrary view, namely, that the expression 'mortgagor' in Section 68 (b) of the T. P. Act does not include the purchaser of the equity of redemption was expressed in a Nagpur case, namely, Tretanath v. Ajodhaya Prasad (MANU/NA/0129/1927 : AIR 1930 Nag 139(2)).

36. Our attention has not been drawn to any decision on the question whether the

expression 'mortgagor' in Section 12 of the Act includes the purchaser of the equity of redemption. But some support for the conclusion that it does not may be drawn from the decision of the Bombay High Court in Manubhai v. Trikamlal (MANU/MH/0170/1960 : AIR 1960 Bom 247). In that case the purchaser of equity of redemption with whom the amount of the mortgage money was kept in deposit filed an application under Section 4 of the Bombay Agricultural Debtors Relief Act (26 of 1947) (hereinafter called 'the Bombay Act.')

and an award was passed by the court under the Bombay Act. After the appeal from the award was dismissed, the heirs of the mortgagee moved the Bombay High Court in revision and contended that the award was null and void because an application under the Bombay Act for adjustment of the mortgage debt on behalf of the purchaser of the equity of redemption did not lie as he was not a 'debtor' within the meaning of Section 4 of the Bombay Act. Section 4 of the Bombay Act, so far as it is relevant, was as follows:--

"Any debtor.....may make an application.....the court for adjustment of his debt".

The definition of 'debt' in the Bombay Act included a debt secured by a mortgage. The question for consideration was whether having regard to the fact that he had purchased the equity of redemption and retained a sum of money out of the purchase price to be paid to the mortgagee in satisfaction of the mortgage debt, the purchaser of the equity of redemption was a 'debtor' of the mortgagee in respect of the aforesaid mortgage debt and the mortgage debt was his debt. It was argued on behalf of the mortgagee on the strength of Section 59-A of the T. P. Act that the purchaser of the equity of redemption was the 'mortgagor' in respect of the mortgage debt and as the mortgagor was certainly a debtor in respect of the mortgage debt, the purchaser of the equity of redemption being a mortgagor must also be regarded as a debtor' and the mortgage debt must be regarded as 'his debt' within the meaning of the expressions as used in Section 4 of the Bombay Act. Negating that argument, Miabhoy, J., who delivered the judgment of the Bombay High Court in that case, held that the loan on the mortgage having been taken by the mortgagor, the mortgage debt was the debt of the mortgagor and not of the purchaser of the equity of redemption and, therefore, no application for adjustment under Section 4 of the Bombay Act could be made by the purchaser of the equity of redemption as the application was not for adjustment of 'his debt.' If the expressions 'debtor' and 'his' in the Bombay Act, which, like the Act, was enacted for the relief of the debtor may not be given an extended meaning to include within their ambit the purchaser of the equity of redemption, on a parity of reasoning the expression 'mortgagor' in Section 12 of the Act may not be given an extended meaning to include the purchaser of the equity of redemption.

37. I, therefore, hold that the expression 'mortgagor' in Section 12 of the Act or Rules 9 and 10 of the Rules do not include the purchaser of the equity of redemption and, therefore, the application under Rule 10 by respondent No. 5 was not maintainable and the learned Deputy Collector had no jurisdiction to pass an order at his instance ejecting the mortgagee petitioners and restoring the respondent No. 5 to possession and, therefore, the impugned order is null and void.

38. As the application succeeds on this ground, it is not necessary to consider the other contentions advanced on behalf of the petitioners.

39. It was assumed in the course of arguments before us that the mortgage (Annexure 2) was an 'usufructuary mortgage' within the meaning of expression as

used in Section 12 of the Act and I have also for the purposes of this case assumed that it was an usufructuary mortgage. It is, however, open to question whether the aforesaid mortgage is an usufructuary mortgage. According to Section 58 of the T. P. Act, usufructuary mortgage and anomalous mortgage are two of the kinds of mortgages recognised by the Transfer of Property Act. The mortgage (Annexure 2) partakes of the nature of the usufructuary mortgage because the mortgagee is entitled to remain in possession and to appropriate the income from the profits in lieu of interest. But it is not a usufructuary mortgage pure and simple because the mortgagor bound himself personally to pay the mortgage money. The mortgage (Annexure 2), therefore, is, a combination of usufructuary mortgage and simple mortgage and is thus neither a simple mortgage, nor a mortgage by conditional sale, nor an usufructuary mortgage, nor an English mortgage, nor a mortgage by deposit of title deed and, therefore, is an anomalous mortgage. A mortgage which is a combination of simple mortgage and usufructuary mortgage is not an usufructuary mortgage within the meaning of expression of Section 62 of the T. P. Act; it is an anomalous mortgage or at least a combination of simple mortgage and usufructuary mortgage. See the decision in *Ramrayanimgar v. Maharaja, Venkatagiri* (MANU/PR/0008/1926 : AIR 1927 PC 32). It is, therefore, manifest that the mortgage in question is not strictly speaking a usufructuary mortgage as defined in Section 58 of the T. P. Act. It may well be argued that the expression 'usufructuary mortgage' in Section 12 of the Act is confined to usufructuary mortgage as defined in Section 58 of the Act, that is to say, an usufructuary mortgage in the strict legal sense of the term and does not include a combination of usufructuary mortgage and simple mortgage. There is a presumption that words used in legislative enactment are used "correctly and exactly and not loosely and inexactly" -- per Lord Hewart, C. J., in a passage in the case of *Spillers Limited* 1931 2 KB 21 quoted with approval in *Mayer, Councillors and Burgesses v. Taranaki Electric Power Board* (MANU/PR/0098/1933 : AIR 1933 PC 216). In view of the conclusion at which I have arrived at, however, the matter need not be pursued further.

40. I would, accordingly, allow the application and by a writ in the nature of certiorari quash the order dated 10-7-1966, of the Deputy Collector, Land Reforms, copy whereof is Annexure 1 to the writ application. In the circumstances of the case, I would make no order of costs.

ORDER

41. In view of the majority judgment this application fails and is accordingly dismissed but without any order as to costs.

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