

Surendra Pal Singh vs The Board Of Revenue For Rajasthan And ... on 13 May, 1993

Equivalent citations: 1994 AIR 1439, 1993 SCR (3) 722, AIR 1994 SUPREME COURT 1439, 1994 AIR SCW 874, (1993) 3 SCR 722 (SC), 1993 (3) SCC(SUPP) 229, 1993 (2) UJ (SC) 86, (1993) 3 JT 465 (SC), 1993 (3) JT 465, (1993) 2 RENTLR 12

Author: Yogeshwar Dayal

Bench: Yogeshwar Dayal, Kuldip Singh

PETITIONER:
SURENDRA PAL SINGH

Vs.

RESPONDENT:
THE BOARD OF REVENUE FOR RAJASTHAN AND ORS.

DATE OF JUDGMENT 13/05/1993

BENCH:
YOGESHWAR DAYAL (J)
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YOGESHWAR DAYAL (J)
KULDIP SINGH (J)

CITATION:
1994 AIR 1439 1993 SCR (3) 722
1993 SCC Supl. (3) 229 JT 1993 (3) 465
1993 SCALE (2) 889

ACT:
Rajasthan Tenancy Act 1955-S. 221-General powers of superintendency and control of Board of Revenue over all revenue courts, held includes both administrative and judicial powers--Ch.III-B, Ss 225,230-Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973.

HEADNOTE:
Proceedings were commenced under Chapter III-B of the Rajasthan Tenancy Act 1955 for determining the ceiling area for Raghubir Singh, the father of the appellant. In a revision application in the first round of litigation. The Board of Revenue directed that the ceiling area for Raghubir

Singh may be determined according to the old law, i.e. Act of 1955, and not according to the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973.

Thereafter, by his order dt. 5.5.76, the SDO held, inter alia, that tile father and the son, appellant, constituted two separate units and each of them was entitled to get 62 bighas and 8 biswas.

Aggrieved by the SDO's order, Raghubir Singh filed an appeal before Revenue Appellate Authority, which was dismissed. He then filed a revision application under S.230 of the Act of 1955 before the Board of Revenue for Rajasthan.

He urged that he was in possession of 112 bighas only and sought permission to adduce additional evidence, which was disallowed. However, the Member of the Board held inter alia that the provisions of the old law applied to the case, but the SDO had committed an error of law in determining the ceiling area under the new Act of 1973. The Board further held that there is no provision for separate units in Chapter III-B of the Act of 1955, and remanded the case to the SDO, Hanumangarh, for fresh determination of the Ceiling area for Raghubir Singh.

Before the High Court, it was urged that the State having not appealed against the order of the SDO dated 5.5.76, it became final, and the Board of

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Revenue had no jurisdiction to set aside that part of the SDO's order which had gone against the State and in his favour. It was submitted that the power of general superintendence and control over all revenue courts which vested in the Board could not be exercised to the detriment of the writ petitioners much less by way of suo motu exercise of powers.

The High Court dismissed the petitions.

Before this court it was submitted that the State not having filed an appeal, or a revision, the Board of Revenue could not, while hearing the revision petition of Raghubir Singh, set aside the orders of the SDO and Revenue Appellate Authority under S.221 of the Act of 1955.

Dismissing the appeal, this court,

HELD:.....(1) S.221 is not subject to the other provisions of the Act. It is clear from the language of Section 221 of the Act 1955 that the Board of Revenue has general powers of superintendence and control over all revenue courts. It is both administrative as well as judicial powers. It is open to the Board to exercise its powers of superintendence on all its subordinate courts in order to regulate the functioning of the subordinate courts so as to keep them within their respective spheres of jurisdiction. If the subordinate court disregards any specific provision of law and does something illegal it is open to the Board of Revenue to interfere and set the matter right. (727-E)

Karan Singh v. Board of revenue, Rajasthan 1962 Raj LW 178 and Permessar Singh v. Kailaspati AIR 1916 Pat. 292 (FB),

distinguished.

Kana v. Board of Revenue ILR (1955) 5 Raj. 55, approved.

(2) There is no restriction on the powers of the Board to set aside the order of the SD0 provided it comes to the conclusion that interest of justice requires exercise of such powers. (728-D)

(3) In not determining the ceiling area according to the Act of 1955, the SD0 committed a grave illegality in not merely ignoring the law but also ignoring the directions of the Board of Revenue itself. (728-F)

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1367 of 1980. From the Judgment and Order dated 19.7.1979 of the Rajasthan High Court in D.B. Civil Writ Petition No. 769 of 1979. Subhash Mallick and S.K. Jain for the Appellant. B.D. Sharma for the Respondents.

The Judgment of the Court was delivered by YOGESHWAR DAYAL,J. This is an appeal against the judgment of the Rajasthan High Court dated 19th July, 1979 passed in D.B. Civil Writ Petition No. 681 of 1978 (Raghubir Singh v. The Board of Revenue for Rajasthan and others) and D.B. Civil Writ Petition No. 769 of 1979 (Surendrapal Singh v. The Board of Revenue for Rajasthan and others). These writ petitions were decided by the aforesaid common judgment. The first writ petition was filed by the father Raghubir Singh whereas the second writ petition was filed by his minor son Surendrapal Singh through his next friend Shri Jagjit Singh, maternal grand-father of the minor. The relief claimed in both the petitions before the High Court was the same, namely - for setting aside of the order dated 6th August, 1977 passed by the Board of Revenue for Rajasthan, Ajmer.

The facts of the case briefly are-that proceedings under Chapter III-B of the Rajasthan Tenancy Act (Act No. 3 of 1955) (hereinafter referred to as 'the Act of 1955') were commenced for determining the ceiling area for Raghubir Singh. The Sub-Divisional Officer, Hanumangarh, by his order dated 10th August, 1972, determined the ceiling area, but an appeal by Raghubir Singh, the Revenue Appellate Authority, set aside the order of the sub-Divisional Officer on March 6, 1973 and remanded the case. The matter was taken to the Board of Revenue for Rajasthan by a revision application and the Board by its order dated 14th April, 1975 directed that the ceiling area for Raghubir Singh may be determined according to the old law i.e. Act of 1955 and not according to the new law i.e. Rajasthan Imposition of Ceiling on Agricultural Holding Act, 1973 (hereinafter referred to as 'the Act of 1973').

In pursuance of the direction of the Board, the Sub- Divisional Officer, Hanumangarh, by his order dated 5th May, 1976 held that Surendrapal Singh, (appellant herein) aged 12 years, was a minor son of Raghubir Singh and used to study in Punjab and further held that the land in possession of Raghubir Singh was ancestral. The Sub-Divisional Officer, then came to the conclusion that the father and the son constitute two separate units and each one of them was entitled to get 62 Bighas and 8 Biswas. It was thus held that Raghubir Singh and his son Surendrapal Singh are entitled to retain 124 Bighas and 16 Biswas only and the surplus land measuring, 4 Bighas and 6 Biswas may be

resumed.

Aggrieved by the order of the Sub-Divisional Officer, Raghubir Singh filed appeal before the Revenue Appellate Authority, Bikaner, who by his order dated 6th September, 1976 dismissed the same and upheld the order of the Sub- Divisional Officer. Dissatisfied with the order of the Revenue Appellate Authority, Raghubir Singh filed a revision application under Section 230 of the Act of 1955 before the Board of Revenue for Rajasthan.

On behalf of raghubir Singh it was urged before the Board that the petitioner was in possession of 112 Bighas only and not 129 Bighas and 3 Biswas as held by the lower courts. He sought permission to adduce additional evidence in support of his contention. The application for adducing additional evidence was disallowed. However, the member of the Board came to the conclusion that Surendrapal Singh (appellant here in) was born to Raghubir Singh on 14th March, 1963 and was only 13 years of age when the ceiling proceedings were finalized by the Sub-Divisional Officer on 5th May, 1976. He further held that the provisions of the old ceiling law applied to the case but the Sub-Divisional Officer had committed an error of law in determining the ceiling area under the new law i.e. the Act of 1973. The Board went on to hold that there is no provision for separate units in Chapter III-B of the Act of 1955. In the ultimate analysis the Member of the Board found that there was a gross and patent illegality in the order of the Sub-Divisional Officer and, consequently, set aside the order of the Sub-Divisional Officer dated 5th May, 1976 as well as the order of the Appellate Authority dated 6th September, 1976 and remanded the case to the Sub-Divisional Officer, Hanumangarh, for fresh determination of the calling area for Raghubir Singh. Before the Division Bench of the High Court in the writ petitions it was urged on behalf of Raghubir Singh that no appeal having been filed by the State from the order the Sub-Divisional Officer dated 5th May, 1976, the said order became final and the Board of Revenue had no jurisdiction to set aside that part of the Sub-Divisional Officer's order which had gone against the State and in his favour. It was submitted that the power of general superintendence and control over all revenue courts vested in the Board could not be exercised to the detriment of the writ petitioners much less by way of suo motu exercise of powers.

The High Court by the impugned judgment dated 19th July, 1979 upheld the order of the Board of Revenue for Rajasthan and dismissed the writ petitions.

Surendrapal Singh, the erstwhile minor son of Raghubir Singh has come up to this Court by way of special leave which was granted and hence the present appeal.

Mr. Subhagh Mal Jain learned senior counsel appearing on behalf of the appellant submitted that the State having not filed an appeal under section 225 of the Act of 1955 and or revision under Section 230 of the Act of 1955, the Board of the Revenue could not, while hearing the revision petition filed by Raghubir Singh, set aside the orders of Sub- Divisional Officer and the revenue appellate authority under Section 221 of the Act of 1955. Section 221 of the Act of 1955 provides as under:-

"221.Subordination of revenue courts.- The general superintendence and control over all revenue courts shall be vested in, an all such Courts shall be subordinate to the Board; and subject to such superintendence, control and subordination-

- (a) x x x (omitted)
- (b) all Additional Collectors, Sub.-

Divisional Officer, Assistant Collectors and Tehsildars in a district shall be subordinate to the Collector thereof,

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

(d) All Additional Tehsildars and Naib-

Tehsildars in a tehsil shall be subordinate to the Tehsildar thereof."

The contention of learned counsel for the appellant is that the section confers executive powers of superintendence and control on the Board and it does not vest any power of superintendence on the Board on judicial side. For this purpose he relied or the decision of the Division Bench of the Rajasthan High Court reported as 19 RLW 178: Karan Singh v. Board of Revenue, Rajasthan. The Division Bench in that case was concerned with the interpretation of Section 9 of the Land Revenue Act. Section 9 whereof provides as under:-

"9 Subject to the other provisions of this Act, the general superintendence and control over all revenue courts and over all revenue officers shall be vested in, and all such Courts and Officers shall be subordinate to, the Board."

In that case also the High Court took the view that it is not correct to say that Section 9 is limited to the executive control and superintendence of the Board over subordinate revenue courts and it does not apply to judicial proceedings. The contention on behalf of the appellant to that effect was negated but on merits the High Court held that it was not appropriate for the Board to exercise the powers conferred by Section 9 of the land Revenue Act in view of the fact that the Board had appellate jurisdiction and it could not, therefore, make use of its powers of superintendence and control and the order of the Board could not be held proper with reference to Section 9 of the Land Revenue Act. This case has no application for interpretation of the present Section 221 of the Act of 1955. Section 221 of the Act of 1955 is not subject to the other provisions of the Act. It is clear from the language of Section 221 of the Act of 1955 that the Board of Revenue has general powers of superintendence and control over all revenue courts. It is both administrative as well as judicial powers. It is open to the Board to exercise its powers of superintendence on all its subordinate courts in order to regulate the functioning of the subordinate courts so as to keep them within their respective spheres of jurisdiction. If the subordinate court disregards any specific provision of law and does something illegal it is open to the Board of Revenue to interfere and set the matter right. A similar question arose before the Rajasthan High Court in Kana and others v.Board of Revenue. Rajasthan: ILR (1955) 5 Raj. 55 where the High Court had to construe the power of the Board of

Revenue, Rajasthan, conferred on it by the Rajasthan Board of Revenue Ordinance (NO.XXII of 1949). There also there was similar provision like Section 9 of the Land Revenue Act and it was held that Section 12 of the said Ordinance must be held to give powers to the Board to revise judicial orders also passed by courts in appropriate cases. It was observed at page 63 of the report-"of course, -such powers would generally not be exercised where a party had remedy by way of appeal and revision, and did not avail of it. At the same time, the power is there, and-it may be exercised sparingly in extraordinary case,, where interest of justice requires that the Board should exercise the power".

Under Section 107 of the Government of India Act, 1955 there was provision of superintendence by High Court in these terms :-

Each of the High Courts has superintendence over all the courts for the time being subject to its appellate jurisdiction."

These words have been consistently interpreted to mean that the High Court had power in appropriate cases to interfere with the judicial orders of the courts.

Reference may in this connection be made to Parmessar Singh v. Kailaspati AIR 1916 Pat. 292 (F.B.). In the Government of India Act of 1935, there was provision under Section 224 for superintendence by the High Courts', but subsection(2) made it clear that this superintendence would not be construed as giving to the High Court any jurisdiction to question any judgment of any inferior court which was not otherwise subject to appeal or revision. Section 221 of the Act of 1955 is similar to Section 107 of the Government of India Act, 1915 and there is no section like sub-section (2) of Section 224 of the Government of India Act of 1935 in the Act of 1955. Thus there is no restriction on the powers of the Board to set aside the order of the Sub-Divisional Officer provided it comes to the conclusion that interest of justice requires exercise of such powers. The Board noticed that there was no provision for separate unit in Chapter III-B of tile Act of 1955 and the applicant Raghubir Singh and his son Surendrapal Singh constituted one unit and not two units and the case was remanded to Sub-Divisional Officer, Hanumangarh, for de novo determination of the ceiling area for the appellant in law. The High Court also did not go into the merits of the controversy nor we have thought it advisable to into it and it would be for the Sub-Divisional Officer, Hanumangarh to decide it in the light of the observations of the Board. It is clear from the judgment under appeal that the Board had by its order dated 14th April, 1975 directed that the ceiling, area may be determined according to old law i.e. Act of 1955 and it spite of it the Sub-Divisional Officer committed the grave illegality on not merely ignoring the law but also ignoring the directions of the Board of Revenue itself. The appeal consequently fails and is dismissed with costs.

U. R.

Appeal dismissed.

