



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 1805/2002

Mordhawaj S/o late Shri Fateh Singh Resident of Dayawali,
Tehsil Nadbai, District Bharatpur.

-----Petitioner

Versus

1. Ramwati w/o Sughadsingh
 2. Karansingh S/o Sughadsingh minor through mother Ramwati
 3. Bhagwanswaroop S/o Sughadsingh minor through mother Ramwati
- All resident of gram Dayawali, Tehsil Nadbai District Bharatpur
- Respondents

4. Rampyari W/o late Shri Fatehsingh
 5. Gita D/o late Shri Fatehsingh minor through mother Rampyari
 6. Pramila D/o late Shri Fatehsingh
 7. Suresh S/o It. Shri Fatehsingh minor through mother Rampyari
- All resident of Dayawali, tehsil Nadbai, district Bharatpur.
8. Board of Revenue for Rajasthan, Ajmer.
 9. State of Rajasthan through Tehsildar, Nadbai, Distt. Bharatpur.
 10. Bank of India, Kumher Gate branch, Bharatpur

-----Respondents

For Petitioner(s)	: Mr.Sanjay Mehrishi Mr.Rakesh Saini Mr.R. M. Sharma
For Respondent(s)	: Mr.Neeraj Batra, GC with Ms.Gunjan Chawla Ms.Priyamvada Singh Mr.Mukesh Kumar Mr.Ram Singh Bhati

JUSTICE ANOOP KUMAR DHAND
Order

14/05/2025

Reportable

1. The legal question, which emerges for consideration of this Court, in this writ petition is that "whether the Board of Revenue



(hereinafter referred to as "the Board") can quash a judicial order passed by the Revenue Appellate Authority (hereinafter referred to as "the RAA") under its administrative power contained under Section 221 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as "the Act of 1955")?"



2. The instant writ petition has been preferred against the impugned judgment dated 20.04.2001 passed by the Board by which the application filed by one Sughad Singh (husband and father of the respondent Nos.1; 2 & 3 respectively) under Section 221 of the Act of 1955 against the judgment dated 26.07.1978 passed by the RAA, has been quashed and set-aside.

3. Learned counsel for the petitioner submits that a suit for declaration of khatedari rights was filed by the petitioner before the Court of Assistant Collector, Nadbai, Bharatpur, but the same was rejected vide judgment and decree dated 03.06.1976, against which an appeal was preferred before the RAA and the same was allowed vide judgment dated 26.07.1978 and the suit filed by the petitioner was decreed and the defendants-respondent as well as the State were restrained from interfering with the khatedari and cultivation of the petitioner.

4. Counsel submits that neither the State nor the defendants/respondents preferred any appeal before the Board, but one stranger, i.e., Sughad Singh submitted an application under Section 221 of the Act of 1995 and the same was allowed by the Board vide impugned judgment dated 20.04.2001 and the judicial order passed by the RAA was quashed and set-aside.

5. Counsel submits that the powers contained under Section 221 of the Act of 1955 are not judicial powers rather this provision



deals with the administrative power of the Board and while exercising the administrative power, a judicial order cannot be quashed and set-aside.

6. In support of his contention, learned counsel for the petitioner has placed reliance upon the judgment passed by the Division Bench of this Court in the case of **Surendra Singh & Ors. Vs. Kisturi & Ors.** reported in **2009(2) RRT 1094**.

7. Counsel submits that with regard to the submission made hereinabove, the impugned judgment dated 20.04.2001 passed by the Board is liable to be quashed and set-aside.

8. *Per contra*, learned counsel for the respondent opposes the prayer and submits that the land in question is a 'sawai chak' land which was proposed to be allotted to the landless persons and the petitioner has no concern whatsoever with the land in question. Counsel submits that the suit filed by the petitioner for declaring him as khatedar of the land in dispute was rightly rejected by the Assistant Collector, but the RAA has erroneously decreed the suit filed by the petitioner. Counsel submits that under these circumstances, an application under Section 221 of the Act of 1955 was submitted before the Board and the same was rightly allowed and the judgment passed by the RAA has been rightly quashed and set-aside, hence, under these circumstances, interference of this Court is not warranted and the petition is liable to be rejected.

9. Heard and considered the submissions made at the Bar and peruse the material available on record.

10. Perusal of the record indicates that the petitioner is claiming himself to be the khatedar of the land in question. For declaration





of his khatedari right, he approached the Court of Assistant Collector by way of filing a suit, however, the same was rejected vide judgment and degree dated 03.06.1976. Aggrieved by the aforesaid, the petitioner approached the RAA by way of filing an appeal and the same was allowed vide judgment dated 26.07.1978 and while quashing the aforesaid order passed by the Assistant Collector, the petitioner was declared as khatedar of the land in question and the defendants-respondents as well as the State were restrained from interfering with the cultivation and khatedari of the petitioner.

11. It is worthy to note here that neither the State nor the original defendants assailed the aforesaid judgment and decree passed by the RAA by way of filing any appeal before the Board or before any other forum of law, but the applicant, i.e., Sughad Singh, i.e. husband and father of respondent Nos.1; 2 & 3 respectively submitted an application under Section 221 of the Act of 1955 before the Board and the said application has been allowed vide judgment dated 20.04.2001 and the judgment dated 26.07.1978, passed by the RAA has been quashed and set-aside.

12. Now, the question remains for consideration of this Court is that whether the Board can pass such order in exercise of its powers contained under Section 221 of the Act of 1955?

13. At the outset it may be noticed that the Board of Revenue is not a constitutional authority. As per sub-section (6) of Section 5 the 'Board' shall mean the Board of Revenue for the State established or constituted under the Rajasthan Board of Revenue Ordinance, 1949 or under any other law for time being in force. Turning to the scheme of the Act of 1955, this Court finds that the





Board has inherent powers to call for the record of any case decided by any subordinate revenue court and pass such orders as it thinks fit. These powers which are in addition to the powers of appeal and revision, have been provided by Section 230 of the Act of 1955, which reads as under:-



“230. Power of the Board to call for the cases.- The Board may call for the record of any case decided by any subordinate revenue court in which no appeal lies either to the Board or to a civil court under section 239 and if such court appears -

- (a) to have exercised jurisdiction not vested in it by law; or
- (b) to have failed to exercise jurisdiction so vested; or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity;

The Board may pass such orders in the case as it thinks fit.

14. Section 221 of the Act of 1955, however, provides vesting general power of superintendence and control in the Board over all the revenue courts. It reads as under:

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

- (a) xxx
- (b) all Additional Collectors, Sub Divisional Officers, 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.



15. The Hon'ble Apex Court had occasion to consider the scope of Section 221 of the Act of 1955 in the case of **Devi Singh vs. Board of Revenue for Rajasthan** reported in **(1994) 1 SCC 215** and it has been indicated in para 4 as under:-

"4. Having heard learned counsel for the appellants, since he alone is here to assist us, and no one is appearing on behalf of State of Rajasthan, we view it with surprise the approach of the Board of Revenue. Section 221 of the Rajasthan Tenancy Act provides vesting a general power of superintendence and control in the Board over all revenue courts and all such courts as are subordinate thereto. Besides that provision there are provisions beginning with section 222 upto section 228 which provide for appeals and the manner in which they need be presented in the fora given therein and the Board of Revenue is one such. Section 229 inter alia, thereafter provides that subject to the provisions of the Code of Civil Procedure 1908 the Board of its own motion or on the application of a party to a suit or proceeding may review and may rescind, alter or confirm any decree or order made by itself or by any of its members. In the face of these provisions it is not understandable how could the Board exercise power of general superintendence under section 221 of the Act....." (Emphasis supplied)

16. With regard to the power of superintending control conferred by Article 227 of the Constitution of India on the High Court, this



Court finds that it is similar to the control exercised by the Court of Kings Bench over the subordinate Courts of England, under Common Law. The constitutional supervisory power under Article 227 of the Constitution of India is indefinite in character but unlimited in extent. The power is be the administrative and a judicial in nature and it has been restored to what it was under Section 107 of the Government of India Act, 1915 and Section 15 of the Charter Act. The object of Article 227 of the Constitution of India is to make the High Court responsible for the entire administration of justice in the State and to vest in the High Court, with a reserve of judicial and superintending power, which could be brought into play, at any time, by the High Court whenever it considers it necessary to draw upon the same.

17. The power of Board of Revenue under Section 221 of the Act of 1955 is not akin to the power of the High Court, as provided under Article 227 of the Constitution of India. In the scheme of the Act of 1955, there is a clear demarcation of the judicial and the administrative powers of the Board. While Section 230 of the Act of 1955 provides for the judicial power, Section 221 of the Act of 1955 confers only administrative power and in exercise of administrative power, no decree or judicial order could be set aside. The Hon'ble Apex Court in the case of **Devi Singh** (supra) also indicated that in the face of the provisions under Sections 222 to 229 of the Act of 1955, the power of general superintendence under Section 221 of the Act of 1955 could not be exercised. The judgment passed in the case of **Hanja Ram vs. State of Rajasthan** reported in **2007 Rajasthan Revenue Decision 187**



was found to be *per in curium* and contrary to the judgment passed by the Hon'ble Apex Court in the case of **Devi Singh** (supra), by the Division Bench of this Court in the case of **Surendra Singh** (supra).



18. The Division Bench of this Court in the case of **Surendra Singh** (supra) has categorically held that the power of superintendence of the Board, contained under Section 221 of the Act of 1955 is not akin to the power of the High Court, as provided under Article 227 of the Constitution of India. Such power of the Board is an administrative power upon the subordinate revenue courts. By exercising the administrative power, the judicial order passed by any administrative authority cannot be quashed and set-aside and it has been held in Para 9 which read as under:-

"9. In the instant matter, since the Board of Revenue in exercise of administrative power under section 221 set aside the decree of a competent court, the order can not be sustained. Learned Single Judge also failed to appreciate the true scope of section 221 and the impugned order of learned Single Judge also deserves to be quashed."

19. Since the controversy involved in this writ petition has already been set at rest with the aforesaid finding not only by the Hon'ble Apex Court in the case of **Devi Singh** (supra) but also by the Division Bench of this Court in the case of **Surendra Singh** (supra), hence, this Court finds no valid reason to take a different view.

20. In the instant case also, by exercising the powers contained under Section 221 of the Act of 1955, a judicial order dated 26.07.1978 passed by the Revenue Appellate Authority has been



quashed and set-aside by the Board in exercise of its administrative powers vide order dated 20.04.2001 and the same could not have been done in the light of the judgment passed by the Division Bench of this Court in the case of **Surendra Singh** (supra).



21. In view of the above, the instant writ petition stands allowed. The impugned order dated 20.04.2001 passed by the Board stands quashed and set-aside.

22. Stay application and all pending application(s), if any, also stand disposed of.

23. It goes without saying that the respondents would be at liberty to assail the validity of the judgment dated 26.07.1978 before appropriate forum of law.

(ANOOP KUMAR DHAND),J

Aayush Sharma /6