

Mag Singh Vs. Board of Revenue for Rajasthan, Ajmer and ors.

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Court : Rajasthan

Decided On : Feb-08-1984

Reported in : AIR1986Raj82

Judge : K.S. Lodha, J.

Acts : Rajasthan Tenancy Act, 1955 - Sections 30, 222, 223, 224, 225 and 225(2)

Appeal No. : Civil Writ Petn. No. 584 of 1976

Appellant : Mag Singh

Respondent : Board of Revenue for Rajasthan, Ajmer and ors.

Advocate for Def. : S.S. Bhandawat, Dy. Govt. Adv.

Advocate for Pet/Ap. : M.S. Singhvi and; Prithvi Singh, Adv. for S.M. Mehta, Adv.

Disposition : Petition allowed

Judgement :

ORDER

K.S. Lodha, J.

1. Shri Mag Singh has challenged the order of a learned single Member of the Board of Revenue, Ajmer, dt. 9-9-75 dismissing the petitioner's revision against the order of the learned Revenue Appellate Authority, Jodhpur dt. 19-8-75 dismissing his appeal against the order of the Sub-Divisional Officer, Bhirmal passed on 10-1-73 directing the land in excess of the ceiling limit of Smt. Lal Kanwar widow of Takhat Singh may be acquired, as barred by time.

2. I have heard the learned counsel for the petitioner and the learned Deputy Government Advocate.

3. The facts briefly stated and relevant for the purposes of this order are that the land in dispute originally stood in the name of Takhat Singh husband of Smt. Lal Kanwar as his khudkast after the resumption of his jagir in village Galife. On the death of Shri Takhat Singh, the land was mutated in the name of Smt. Lal Kanwar and proceedings under Chap. III-B of the Rajasthan Tenancy Act (hereinafter called 'the Act') for determining the ceiling area to which Smt. Lal Kanwar was entitled were taken. The Sub-Divisional Officer, Bhinmal, found that Smt. Lal Kanwar had 172.43 Bighas equal to 60.01 standard acres of land in her possession in excess of the ceiling limit and,

therefore, he directed that the same may be resumed. Smt. Lal Kanwar indicated her option with regard to the lands, she wanted to surrender and the Sub-Divisional Officer directed that those lands may be taken possession of by the State. Accordingly, those lands are alleged to have been taken possession of by the Naib-Tahsildar on 29-3-73. The case of the petitioner Mag Singh is that the land standing in the name of Takhat Singh was the joint ancestral land of Takhat Singh and himself and after the death of Takhat Singh, there had been a partition between him and Smt. Lal Kanwar widow of Takhat Singh by which half of the land fell to his share. He was not given any notice of the ceiling proceedings and the proceedings were only taken against Smt. Lal Kanwar holding the whole land to be belonging to her and as a consequence excess land was ordered to be taken possession of by the State. Smt. Lal Kanwar gave option in respect of those parcels of land which had fallen to the petitioner's share by the aforesaid partition and thus he was being deprived of his land without hearing. He, therefore, filed an appeal against the order of the Sub-Divisional Officer, Bhinmal. dt. 10-1-73 before the learned Revenue Appellate Authority, Jodhpur. However, the learned Revenue Appellate Authority was of the opinion that that appeal was barred by time inasmuch as although the order dt. 10-1-73 may not have been passed in the presence of or with notice to the present petitioner, he had certainly acquired knowledge of that order when he signed the declaration dt. 29-3-73 of the Naib-Tehsildar taking possession of the surplus lands and, therefore, the appeal filed on 15-10-73 was barred by time. Against this order, the petitioner filed a revision before the Board of Revenue, Ajmer. The Board dismissed that revision holding that the revision was not competent and that the petitioner could have filed an appeal against that order if he had such a right. It is against this order of the Board dt. 9-9-75 that the petitioner is aggrieved and he has come up before this Court.

4. The contention of the learned counsel for the petitioner is that the learned Member of the Board was wrong in holding that the revision was not competent. According to him, the order passed by the Sub-Divisional Officer in ceiling proceedings under Chap. III-B of the Act was not a decree and, therefore, only a first appeal could lie against this order under Section 225 of the Act and no second appeal lay against such an order and only a revision could have been filed before the Board.

5. In my opinion, this contention cannot be said to be without substance and the learned Deputy Government Advocate has also not been able to controvert it. Under the Act, appeals have been provided under Ss. 223, 224 and 225 and the powers of revision have been conferred on the Board under Section 230 of the Act. Section 222 governs the rights of appeals and it provides that no appeal shall lie except as provided under this Act. Section 223 provides for appeals against original decrees and Section 224 provides for second appeals from decree passed in appeal. Section 225 then provides for appeals from orders. The order passed under Chap. III B of the Act as it stood before the coming into force of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 cannot be deemed to be decrees and, therefore, first appeal under Section 223 and a second appeal under Section 224 of the Act would not lie against such an order. It may be mentioned here that the term 'decree' has not been defined under the Act and, therefore, this term will have to be governed by the definition of decree given under Section 2(2) of the Civil P.C. Then the only other provision which can apply to such orders in matters of appeal is Section 225. That section reads as under : --

'225. Appeals from orders--(1) An appeal shall lie from the final order passed on an

application of the nature specified in the Third Schedule and from such other orders as are mentioned in Section 212 of this Act and in Section 104 of the Civil P.C. 1908 (Central Act V of 1908)-

(i) to the Collector, if such order is passed by a Tehsildar,

(ii) to the revenue appellate authority if such order is passed by an Assistant Collector, a Sub-Divisional Officer or a Collector, and

(iii) to the Board if such order is passed by a revenue appellate authority.

(1A) The provisions of Sub-section (1) shall apply to all suits, applications or proceedings pending on the date of the commencement of the Rajasthan Revenue Laws (Amendment) Ordinance, 1975 (Ordinance No. 13 of 1975).

(1B) All pending appeals from orders other than those from which an appeal lies under Sub-section (1) shall abate on the date of the commencement of the Rajasthan Revenue Laws (Amendments) Ordinance (Ordinance No. 13 of 1975).

(2) No appeal shall lie from any order passed in appeal under 'his section.'

Now the order passed under Chap. III-B for resumption of land in excess of the ceiling limit specifically does not fall under any of the items under the Third Schedule of the Act but the words used in Section 225 of the Act are 'An appeal shall lie from the final order passed on an application of the nature specified in the Third Schedule'. Therefore, even if the matter is not directly covered under any of the items of the third Schedule if it partakes of the nature of any of the items of that Schedule, an appeal in such matter would be governed by Section 225. Item 37 of the Third Schedule refers to Section 30 of the Act, which provides for the surrender of land in excess of ceiling area. Therefore, when an order directing resumption of the excess land is passed by the Sub-Divisional Officer, it must be deemed to be an order passed on an application of the nature specified in the Third Schedule because there is no other provision under the Act, which can govern such an order. In that view of the matter when the order can be governed by the Third Schedule a first appeal against such an order passed by the Sub-Divisional Officer would lie to the Revenue Appellate Authority under Clause (2) of Section 225 and according to Sub-section (2) of Section 225, no appeal shall lie from any order passed in appeal under this section and, therefore, a second appeal before the Board would not be competent. Therefore, only a revision would lie against such an order. The learned Member of the Board was, therefore, not right in dismissing the revision as not maintainable. The order, therefore, deserves to be set aside.

6. It would not be proper for me to express any opinion on the merits of the matter because it is for the Board to decide the same as it had not disposed of the revision on merits but it summarily rejected it as not maintainable.

7. I, therefore, allow this writ application and set aside the order of the learned Member of the Board dt. 9-9-1975. The Board shall entertain a revision and dispose it of in accordance with law. In the circumstances of the case, I shall make no order as to costs.