

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

S.B. Civil Writ Petition No.3049/2002

1- Narayan son of Suja, (since deceased) through Lrs:-

- 1/1. Ramkumari Devi Wife Of Late Shri Narayan, Aged About 68 Years,
- 1/2. Kailash S/o Late Shri Narayan
- 1/3. Kamladevi Daughter Of Late Shri Narayan
- 1/4. Hemraj S/o Late Shri Narayan,  
All are Residents Of Gram Khatwar, Tehsil Dudu, District Jaipur, Rajasthan.

-----Petitioners

Versus

1. State of Rajasthan through Tehsildar, Dudu Head Office Maujamabad, District Jaipur, Rajasthan.
2. Sarpanch, Gram Panchayat Gangati, Panchayat Samiti Dudu, District Jaipur.
3. The Board Of Revenue, Rajasthan, Ajmer.

-----Respondents

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For Petitioner(s) : Mr. Sukhdev Singh Solanki

For Respondent(s) : Mr. Neeraj Batra, GC

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**JUSTICE ANOOP KUMAR DHAND**

**Order**

**09/04/2025**

1. By way of filing this writ petition, a challenge has been led to the impugned award dated 20.12.2001 passed by the Board of Revenue (hereinafter referred to as "Board") by which the reference application filed under Section 221 of the Rajasthan Tenanct Act, 1955 (hereinafter referred to as "the Act of 1955") by Additional Collector, Dudu against the judgment and decree dated 13.12.2015 has been allowed and the aforesaid judgment has been quashed and set-aside.

2. Learned counsel for the petitioner submits that the petitioners filed a suit for declaration and permanent injunction

claiming his rights over the property in question before the court of Assistant Collector, Dudu and the same was allowed vide judgment and decree dated 13.12.1995 and the petitioner was declared as Khatedar of the property in question. Learned counsel submits that instead of assailing the aforesaid judgment by way of filing an appeal before the Appellate Authority, a reference was sent to the Board for quashing the aforesaid judgment. Learned counsel submits that in such like matters, reference application under Section 221 of the Act of 1955 is not maintainable before the Board as this issue has been decided by the Division Bench of this Court in the case of **Surendra Singh & Others Versus Kisturi & others** reported in **2009(2) RRT 1094**. Learned counsel submits that, under these circumstances, interference of this Court is warranted.

3. *Per contra*, learned counsel for the respondents opposed the arguments raised by learned counsel for the petitioner and submits that land in question is a pasture land which cannot be claimed by anyone but the Additional Collector, Dudu has passed a wrong judgment declaring the petitioner as Khatedar of the said land. Learned counsel submits that, under such circumstances, the judgment passed by the Additional Collector was assailed by the respondent-authorities by way of filing reference application under Section 221 of the Act of 1955 before the Board and the Board has rightly allowed the said application and rightly set-aside the judgment and decree dated 13.12.1995, hence under these circumstances, interference of this Court is not warranted.

4. Heard and considered the submissions made at Bar and perused the material available on the record.

5. Perusal of the record indicates that the petitioners filed a suit for declaration and permanent injunction against the State before the Court of Assistant Collector, Dudu claiming himself as Khatedar tenant of the land in question. The said suit was decreed vide judgment dated 13.12.1995 and the petitioner was declared as Khatedar tenant of the property in question.

6. It appears that after passing of the order, reference application was submitted under Section 221 of the Act of 1955 before the Board challenging the validity of the judgment and decree dated 13.12.1995.

7. Now the question remains for consideration of this Court is whether the reference application under Section 221 of the Act of 1955 was maintainable against the judgment and decree dated 13.12.1995 passed by the Assistant Collector?

8. The issue involved in this petition has already been set at rest by the Division Bench of this Court in the case of **Surendra Singh** (supra), wherein it has been held as under:-

"4. 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 1955 Act we find 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 1955 Act, 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.

5. Section 221 however provides vesting general power of superintendence and control in the Board over all 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) x xx

(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.

6. The Apex Court had occasion to consider the scope of section 221 in *Devi Singh vs. Board of Revenue for Rajasthan* (1994) 1 SCC 215 and it was indicated thus (para 4) -

"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)

7. Coming to the power of superintending control conferred by Article 227 on the High Court we find that it is similar to the control exercised by the Court of Kings Bench over the inferior Courts of England under the Common Law. The constitutional supervisory power under Article 227 is indefinite in character but unlimited in extent. The power is not only of an administrative nature but is also of a judicial 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 is to make the High Court responsible for entire administration of justice in the State and to vest in the High Court unlimited reserve of judicial power which could be brought into play at any time if the High Court considered it necessary to draw upon the same.

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

Revenue Decision 187) the Division Bench of this Court did not properly consider the scheme of 1955 Act and ratio indicated in *Devi Singh Board of Revenue* (supra) escaped its notice. Thus we find the judgment rendered in *Hanja Ram vs. State of Rajasthan* (supra) as per in curium. (Emphasis supplied)

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.”

9. Looking to the fact that the issue involved in this writ petition has already been decided by the Division Bench of this Court in the case of **Surendra Singh** (supra) wherein it has been held that a reference against the judgment is not maintainable. This Court finds no valid reason to take a different view.

10. In view of the reasons recorded above, the writ petition is allowed. The impugned judgment dated 20.12.2001 passed by the Board stands quashed and set-aside. Stay application as well as all applications (pending, if any) stand disposed of.

11. However, the respondents would be at liberty to assail the validity of the aforesaid judgment by way of filing appropriate appeal under provisions of law, if they are so advised.

(ANOOP KUMAR DHAND),J