

RAJASTHAN HIGH COURT

Karan Singh

Vs.

Board of Revenue, Rajasthan

D.B. Civil Writ No. 27 of 1958
(Ranawat and Chhangani, JJ.)

24.04.1961

JUDGMENT

Ranawat, J.

1. This is an application under Article 226 of the Constitution. Karan Singh and Charan Singh, who are tenants of land Khasra Nos. 63, 64, 93, 98, 99, 139, 142, 147, 150, 151, 163, 182, 483, 449, 500 and 501 measuring 22 Bighas and 14 biswas in Village Tehra Lodha sublet the said land to Ramsukha for a period of three years commencing from the 6th of February 1951. On account of the provisions of the Rajasthan (Protection of Tenants) Ordinance 1949, the petitioners Karansing and others could not eject the sub-tenants on the expiry of the term of the lease and Ramsukha, therefore, continued in possession as a sub-tenant up to the time the Rajasthan Tenancy Act of 1955 came into force on the 15th of October 1955. The Rajasthan (Protection of Tenants) Ordinance was repealed by the Rajasthan Tenancy Act and a period of one year was prescribed inability by sec. I 82-A for filing applications for ejectment under clauses (a) and (b) of section 180 of the said Act. A similar period of one year was also prescribed under item 68 of Schedule 3 of the Tenancy Act. Karansingh and Charansingh made an application within the said prescribed period for Ramsukha's ejectment to the Sub-divisional Officer, Bharatpur on the 13th of February 1956. A notice was issued by the Sub-divisional Officer to the sub-tenant Ramsukha and he filed a reply on the 21st of March 1956 and 4th of April 1956 was fixed for hearing of the petition of ejectment. On that day Ramsukha made a default and failed to appear. The Sub-divisional Officer recorded evidence ex parte and made an order of ejectment on the 13th of June 1956. Ramsukha filed an appeal from the said order of ejectment to the court of the Additional Commissioner, Jaipur, but that appeal was barred by limitation prescribed for filing appeals under section 228

of the Rajasthan Tenancy Act. The Additional Commissioner, therefore, held that the appeal was time-barred and dismissed it on that ground on the 14th of June 1957. Ramsukha then filed a second appeal to the Rajasthan Board of Revenue and the learned members of the Board held that the decision of the Additional Commissioner that the first appeal was time-barred was correct; but they set aside the order of ejectment for the reason that the application for ejectment had not been made between the 1st of July and the 30th of September, as provided by section 181 of the Rajasthan Tenancy Act. The learned members of the Board observed that the provision of section 181 was mandatory and as it was disregarded in this case, they were bound to set aside the order of ejectment. Karansingh and Charansingh have come to this Court against the order of the Board of Revenue dated the 24th of December 1957. It is urged on behalf of the petitioners that the Board of Revenue acted without jurisdiction in this case in as much as the first appeal having become time-barred, the second appeal on merits could not be entertained and the Board had no power under section 230 in revision as well to interfere with a decree or order of a subordinate court in which an appeal lay to the Board, as in this case. As regards the powers of superintendence under section 9 of Rajasthan Land Revenue Act, it is urged that those powers have to be exercised sparingly subject to the provisions of the Rajasthan Land Revenue Act. In the instant case, it is contended that the Board had jurisdiction to act on a second appeal which lay to it and it had, therefore, no power to interfere otherwise than by way of an appeal. Mr. Ratanlal also urged that the provision of section 181 was for the administrative convenience of the revenue courts and it was not mandatory. The learned counsel argued that the Tenancy Act prescribed the time of ejectment from April to the end of June and with a view to enable the Revenue Courts to do so, the provision of section 181 has been enacted. In other words, the learned counsel urged that application made between July to September is likely to be decided some time between September and April so that the order of ejectment may be enforced during the months of April to June. The revenue courts, he contended, did not lose their jurisdiction by contravention of the provision of section 181 in a particular case.

2. Mr. Vishinlal for Ramsukha has urged that the provision of section 181 is mandatory and the Board of Revenue had jurisdiction under section 9 of the Rajasthan Land Revenue Act to make an order in exercise of its powers of superintendence to ensure that the provision of section 181 was duly complied with.

3. Ramsukha, it may be pointed out, failed to appear before the Sub-divisional Officer and to canvass before him that the application for ejectment was not made in accordance with section 181 of the Rajasthan Tenancy Act. Had he raised that objection, the matter would have been examined and gone into by that court and Ramsukha would have succeeded at least in getting the matter postponed till the month of July 1956. He, however, failed to appear and to take up that point at that stage. He raised this point in second appeal before the Board of Revenue. The Sub-divisional Officer made an order of ejectment unmindful of section 181 of the Rajasthan Tenancy Act as no objection was taken before him. Ramsukha also failed to file an appeal to the Additional Commissioner within time and his appeal was, therefore, dismissed. The Board of Revenue on an appeal from an order of the Additional Commissioner held that the first appeal of Ramsukha was time-barred. Having come to that decision, it was not competent to the Board to go into the merits of the appeal. As an appellate court, the Board had no jurisdiction to enter into the merits of the case and to set aside the order of ejectment on the ground of disregard of the provision of section 181 of the Tenancy Act. The respondent has tried to justify the order of the Board by referring to section 9 of the Rajasthan Land Revenue Act. Section 9 provides as follows:

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

4. Mr. Ratanlal has tried to urge that the provision of 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. We do not think the contention of the learned counsel has any force. The language of section 9 is general and it is difficult to read into it the idea canvassed by the learned counsel that these powers are intended to be limited only to executive and administrative functions. Before the Rajasthan Tenancy Act came into force, the Board was invested with corresponding powers of superintendence and control under section 12 of the Rajasthan Board of Revenue Ordinance 1949. Under section 9 the powers of superintendence and control have been qualified by other provisions of the Act, whereas under section 12 of the Ordinance there was no such qualification. With this difference, the language of section 12 and section 9 is similar. In *Kana and others v. Board of Revenue, Rajasthan*,¹ it was held that the power of superintendence and control under section 12 of the Rajasthan Board

of Revenue Ordinance 1949 included power to revise judicial orders also of the subordinate courts in appropriate cases. It was specifically mentioned in that case that such power of superintendence would generally not be exercised where a party had remedy by way of appeal and revision and did not avail of it even though the power may be there. It was further observed that the power of the Board under section 12 was to be exercised sparingly in extraordinary cases where interests of justice required. In that case the decision in *Harchand v. Rajasthan Revenue Board*,² was relied on. The Full Bench decision of the Patna High Court in *Parmessar Singh v. Kailaspati*,³ was also approved. In view of the decision in Kana's case (r), the contention of Mr. Ratanlal cannot be considered to have any force. However, even assuming that the Board of Revenue had powers of superintendence and control in judicial proceedings over the subordinate revenue courts, it has to be considered whether in this particular case such powers were available to the Board and if so, to what extent. As already mentioned above, Ramsukha did not take up the point of disregard of the provision of section 181 before the subordinate court and he made default in appearing before that court. He further was not careful to go in appeal to the Addl. Commissioner within time. Ramsukha thus waived his right of appeal which he possessed in law. Having waived that right to file an appeal, whether it was competent to the Board of Revenue to grant him relief in exercise of powers of control and superintendence on the ground of section 181 not having been respected by the sub-divisional Officer. It may be mentioned here that the Board has no power of revision under section 230 in a which an appeal lies to the Board. In the instant case, a second appeal lay to the Board and the Board of Revenue, therefore, had no jurisdiction under section 230 of the Rajasthan Tenancy Act to interfere in exercise of its revisional jurisdiction. It had power to interfere in appeal only if Ramsukha had taken a second appeal after having filed a first appeal within time to the Additional Commissioner. A second appeal not having been prosecuted according to law, the Board could not use its appellate jurisdiction to grant relief to Ramsukha. The powers of superintendence and control are now referred to by Ramsukha as enabling the Board to interfere in the order of ejectment. It may be pointed out that the powers of control and superintendence under section 9 of the Rajasthan Tenancy Act can be exercised subject to other provisions of the Act. In other words, in cases of appellate or revisional jurisdiction powers under section 9 cannot be resorted to. The contention of the learned counsel of the respondent that the order of the Board was legal under sec. 9 cannot be accepted. The Board was competent to exercise its powers of superintendence and control so as to interfere in judicial proceedings in a case where

the matter would have been taken to it by way of an appeal but was not so taken.

5. Even if it may be assumed for the sake of argument that powers under section 9 were available to the Board, it would have to be seen if disregard of section 181 is such a grave error as to call for interference by the Board in the interest of justice. Section 181 (1) is as follows:-

"181 (1) An application for ejectment under section 180 shall be made between the first day of July and 30th day of September and not otherwise."

6. Section 184 of the Rajasthan Tenancy Act, 1955 lays down that delivery of possession in execution of a decree or order for ejectment shall not be made before the 15th day of April or after the 30th day of June in any year. Reading the two provisions of section 181 and 184 together the intention of the legislature appears to be, as suggested by Mr. Ratanlal, that orders of ejectment have to be executed during the period between the 15th of April and the 30th of June in any year and in order that the orders of ejectment may be executed during that period, it has been provided in section 181 that applications for ejectment should be made from 1st July to the end of September, so that from September to 15th April they may be enquired into and disposed of. The scheme of the Act in this behalf is for the administrative convenience of the revenue authorities and for ensuring that orders of ejectment shall not be executed except during the period from the 15th of April to the end of June. A tenant can voluntarily surrender his possession at any time of the year and there is no bar to it. The provisions of section 181 and 184 are intended to safeguard the rights and interests of a tenant or a sub-tenant. A tenant or a sub-tenant may waive his rights in this behalf and can voluntarily surrender possession of his holding at any time of the year. Thus the benefit of section 181 is capable of being waived by a tenant or a sub-tenant and it can be availed of by him only if he does not waive his rights under it. In this view of the matter provision of section 181 cannot be regarded to be mandatory. Having regard to the purpose for which these provisions have been enacted, we think the intention of the legislature cannot be deemed to treat section 181 as mandatory. Ordinarily Ramsukha had a right to take shelter under section 181 in the court of the Sub, divisional Officer and if he had canvassed that point, the petition for ejectment would not have proceeded against him any further till July next. However, he waived his right and he did not take care to press that the provision of section 181 should be given effect to so as to safeguard his rights under the law. He further failed to file an

appeal in time. In this view of the matter, we do not think the interest of justice was in favor of Ramsukha. He having waived his claim cannot expect the revenue courts to go out of their way to force the application of section 181 in spite of his default.

7. To sum up it may be mentioned that in cases where appellate and revisional powers are not exercisable, the Board may exercise its powers of superintendence and control in the interest of justice in appropriate cases, but in this case 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 cannot be held proper with reference to section 9 of the Land Revenue Act. As discussed above, the first appeal not having been filed in time, Ramsukha had no case in second appeal to claim interference with the order of ejectment in exercise of the appellate powers of the Board. The order of the Board is thus without jurisdiction. The application under Art. 226 is allowed and the order of the Board dated 24th December 1957, in so far as it interferes with the order of ejectment passed by the Sub-divisional Officer is concerned, is quashed. The petitioner shall get costs of these proceedings from Ramsukha.

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Cases Referred.

1. ILR 5 Raj. 55
2. 1953 RLW 280: ILR 2 Raj. 833
3. AIR 1916 Patna 292