



[2024:RJ-JD:44345-DB]

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

D.B. Special Appeal Writ No. 21/2020

1. Raghvendra Singh son of late Shri Bheem Singh Ji, aged about 58 Years, resident of Beenawas, Tehsil Bilara, District Jodhpur, Rajasthan.
2. Manvendra Singh son of late Shri Bheem Singh Ji, aged about 52 Years, resident of Beenawas, Tehsil Bilara, District Jodhpur, Rajasthan.

----Appellants

Versus

1. The Board of Revenue, Rajasthan, Ajmer.
2. The Additional Collector, Jodhpur.
3. The authorized Officer Jodhpur (SDO, Jodhpur).
4. The State of Rajasthan, through Revenue Secretary, Government of Rajasthan, Jaipur.
5. Pratap Singh son of late Shri Bheem Singh Ji, aged about 55 Years, resident of Beenawas, Tehsil Bilara, District Jodhpur, Rajasthan.

----Respondents

With

D.B. Special Appeal Writ No. 64/2017

Pratap Singh son of late Shri Bheem Singh Ji, Beenawas, Tehsil-Bilara, District-Jodhpur.

----Appellant

Versus

1. Board of Revenue, Rajasthan, Ajmer.
2. Additional Collector, Jodhpur.
3. The authorised Officer, Jodhpur SDO, Jodhpur.
4. State of Rajasthan through Revenue Secretary, Government of Rajasthan, Jaipur.
5. Raghvendra Singh son of late Shri Bheem Singh Ji, resident of Beenawas, Tehsil-Bilara, District-Jodhpur.
6. Manvendra Singh son of late Shri Bheem Singh Ji, resident of Beenawas, Tehsil-Bilara, District-Jodhpur.

----Respondents

For Appellant(s) : Mr. Satya Prakash Sharma,  
Mr. Abhimanyu Khatri,  
Mr. D.S. Rajvi, and  
Mr. Vikas Joshi, Advocates

For Respondent(s) : Mr. S.S. Ladreacha, AAG assisted by  
Mr. Ravindra Jala, Advocate



**HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR**  
**HON'BLE MR. JUSTICE KULDEEP MATHUR**

**Judgment**

**Reserved on : 30/08/2024**

**Pronounced on : 16/01/2025**

*Per, Shree Chandrashekhar, J.*

These Special Appeals are directed against the writ Court's decision not to interfere with the orders passed by the Board of Revenue on 26<sup>th</sup> October 1993 and 9<sup>th</sup> September 1997 whereby the decision of the authorized Officer to resume 336 bigha and 4 biswa land from the appellants was approved by it.

2. Raghvendra Singh and Manvendra Singh both son of late Bheem Singh Ji claiming themselves to be the residents of Beenawas within Tehsil Bilara in the district of Jodhpur have approached this Court through D.B. Special Appeal (Writ) No.21 of 2020 to question the order dismissing S.B. Civil Writ Petition No.3930 of 1997. By filing D.B. Special Appeal No.64 of 2017, Pratap Singh who was the respondent no.5 in the aforementioned writ proceedings has also laid a challenge to the said decision of the writ Court rendered on 16<sup>th</sup> August 2016.

3. Briefly stated, a proceeding was drawn against Bheem Singh Ji and his family members under the Rajasthan Imposition of Ceiling on Agricultural Holding Act 1973 (in short, 'Rajasthan Ceiling Act') the provisions of which had come into force with effect from 1<sup>st</sup> January 1973. Pursuant thereto, an inquiry was caused and a report was submitted whereunder Bheem Singh Ji and his family members were shown to have surplus agricultural land at Beenawas and Kaparda; more particularly, in the landed property measuring about 527 bigha belonging to the Salt



Company. As per this inquiry report, Bheem Singh Ji could retain certain portions of the lands at village Beenawas and Kaparda and about 190 bigha and 16 biswa land out of the aforementioned lands recorded in the name of the Salt Company was to be resumed. By filing Ceiling Appeal No.118 of 1976, Bheem Singh Ji challenged the order dated 20<sup>th</sup> January 1976 passed by the authorized Officer for acquiring the said piece of land which according to him was non-irrigated land and thus could not have been considered as surplus land. On 31<sup>st</sup> March 1976, the aforesaid appeal preferred by Bheem Singh Ji was dismissed by the Additional Collector who held that the lands recorded in the name of the wife and minor sons of Bheem Singh Ji cannot be excluded and the ceiling limit was to be decided taking them as the part of joint family. The said order was challenged in Ceiling Review Appeal No.329 of 1976 before the Board of Revenue which disposed of the Review Appeal vide order dated 14<sup>th</sup> July 1976 with an observation that the Final Settlement order should include a total of only 190 bigha and 16 biswa land and the rest of the land out of 527 bigha belonging to the Salt Company was to be left out of the ceiling proceedings. The Board of Revenue clarified that the order dated 14<sup>th</sup> July 1976 shall be without prejudice to the final decision in the Assessment File of the Salt Company which was reportedly pending separately at that time.

4. More than six years thereafter, the authorized Officer under the Rajasthan Ceiling Act was directed by the State Government by passing the order dated 23<sup>rd</sup> February 1983 to re-open the ceiling proceedings against Bheem Singh Ji and his family. In compliance thereof, the Additional Collector who is the authorized



Officer under the Rajasthan Ceiling Act passed an order on 29<sup>th</sup> August 1985 for acquiring 336 bigha and 4 biswa land which was excluded from the ceiling proceedings by virtue of the order dated 14<sup>th</sup> July 1976 passed by the Board of Revenue and the Tehsildar was directed to take possession over that piece of land. This decision of the Additional Collector, Jodhpur to acquire 336 bigha and 4 biswa land was approved by an order dated 26<sup>th</sup> October 1993 passed in Ceiling Appeal No.88 of 1991 and so also in Ceiling (Review) Petition No.13 of 1994 which came to be dismissed on 9<sup>th</sup> September 1997 by the Board of Revenue.

5. The Rajasthan Ceiling Act was enacted to secure the ownership and control of the material resources and, in particular, the agricultural lands available for cultivation in the State of Rajasthan to sub-serve the common good as envisioned under clauses (b) and (c) of Article 39 of the Constitution of India. The Preamble to the Rajasthan Ceiling Act recites that there is great disparity in the holding of agricultural lands leading to the concentration of such lands in the hands of certain persons and therefore it was felt necessary to acquire the agricultural lands in excess of the ceiling area, and to distribute such lands to the landless and other persons among the rural population. In "*Ram Pratap v. State of Rajasthan & Anr.*"<sup>1</sup> and "*State of Rajasthan v. Mathura Lal*"<sup>2</sup>, this Court held that the Rajasthan Ceiling Act is a special law and shall have overriding effect over the Rajasthan Tenancy Act 1955 and the Rajasthan Land Revenue Act 1956. This was held so as section 3 of the Rajasthan Ceiling Act mandates that the provisions of the Rajasthan Ceiling Act shall have effect

1 [1982] SCC OnLine Raj 27.

2 [1983] RRD 308.



notwithstanding any inconsistency in any other law for the time being in force or any custom, usage or contract or decree or order of a Court or other authority to the contrary. Section 6 starts with an overriding expression, "notwithstanding anything contained in any law for the time being in force", and makes every transfer of land whether by way of sale, gift, exchange, assignment, surrender, bequest, creation of trust or otherwise made on or after 26<sup>th</sup> September 1970 invalid and deemed to have been made in order to defeat the provisions of the Rajasthan Ceiling Act; except, a bonafide transfer made prior to the commencement of the Rajasthan Ceiling Act. Section 10 provides for furnishing of returns by the persons holding land in excess of the ceiling limit. Under section 10, every person who on the date of commencing of the Rajasthan Ceiling Act held lands in excess of the ceiling area applicable to him was required to furnish to the authorized Officer a return in such form and containing such particulars as may be prescribed. Under section 12, the authorized Officer shall prepare a draft statement in respect of each person holding land in excess of the ceiling area on the basis of the return furnished under section 10, or the additional particulars furnished under sub-section (1) of section 11 or on the basis of the information obtained by him under sub-section (2) of section 11. The furnishing of the draft statement together with a notice seeking objection under section 12 requires a reasonable opportunity of being heard. Section 13 provides that after the disposal of objections, the authorized Officer shall prepare the Final Statement and cause a copy of the same to be served on the person concerned and shall also cause it to be published for





information of the general public, and such service and publication shall be conclusive evidence of the facts stated in the Final Statement.

6. The most important provision for the present purpose is contained in section 15 which initially provided that the State Government may direct any Officer subordinate to it to re-open a decided case and make inquiry to determine the ceiling area and the surplus area afresh any time within three years of the publication of the Final Statement under section 13. Under subsection (2), it was provided that the ceiling area in relation to a person fixed under the repealed law by section 40 of the new law could also have been re-opened at any time within three years of the commencement of the new Act. The provisions of section 15 as originally enacted were drafted in the following manner :-

*"15. Power to re-open cases. -(1) Notwithstanding anything contained in any provision of this Act, if the State Government at any time within three years of the publication of the final statement under section 13, is satisfied that the ceiling area in relation to a person has been determined in contravention of the provisions of this Act, it may direct any officer subordinate to it to re-open a decided case and enquiry into it and to determine the ceiling area and the surplus area afresh in accordance with the provisions of this Act.*

*(2) Notwithstanding anything contained in section 40, if the State Government, at any time within three years of the commencement of this Act, is satisfied that the ceiling area in relation to a person as fixed under the law repealed by the said section has been determined in contravention of the provisions of such repealed law, it may direct any officer subordinate to it, to re-open a decided case and enquire into it and to determine the ceiling area and the surplus areas afresh in accordance with the provisions of such repealed law."*

7. Section 15 was amended to the effect that the State Government may direct re-opening of any final order which in its





opinion was passed in contravention of the provisions of this Act and that such order was prejudicial to the State Government, any time within four years of the date of such final order or within three years from 15<sup>th</sup> day of August 1975 whichever was later. Subsequently, section 15 was further amended to the effect that no notice for re-opening the concluded ceiling proceeding shall be issued after the expiry of five years from the date of the final order or after the expiry of 30<sup>th</sup> June 1979 whichever is later. The amended provisions under section 15 as on 23<sup>rd</sup> February 1993, that is, on the day of re-opening of proceedings in the present case read as under :-

*"15. Power to reopen cases. -(1) Notwithstanding anything contained in this Act, if the State Government, after calling for record or otherwise, is satisfied that any final order, passed in any matter arising under this Act is in contravention of the provisions of this Act and that such order is prejudicial to the State Government or that on account of the discovery of new and important matter or evidence which has since come to its notice, such order is required to be re-opened, it may, at any time within four years of the date of such final order or within three years from the 15th day of August 1975 whichever is later, direct any officer subordinate to it to re-open such decided matter and to decide it afresh in accordance with the provisions of this Act.*

*(2) Without prejudice to any other remedy that may be available to it under the Rajasthan Tenancy Act. 1955 (Rajasthan Act 3 of 1955), if the State Government, after calling for the record or otherwise, is satisfied that any final order passed in any matter arising under the provisions repealed by section 40, is in contravention of such repealed provisions and that such order is prejudicial to the State Government or that on account of the discovery of new and important matter or evidence which has since come to its notice, such order is required to be re-opened, it may, at any time within six years of the commencement of this Act, direct any officer subordinate to it to re-open such decided*



*matter and to decide it afresh in accordance with such repealed provisions:*

*Provided that no final order passed by the Board in the matter referred to in sub-section (1) or in sub-section (2) shall be directed to be re-opened and decided afresh under the said sub-sections unless the State Government is satisfied that such order is required to be re-opened on account of the discovery of new and important matter or evidence which has since come to its notice or due to some mistake or apparent on the face of the record."*

8. The order dated 23<sup>rd</sup> February 1983 for re-opening the ceiling proceedings was passed by the State Government on the ground that the decision of the authorized Officer dated 20<sup>th</sup> January 1976 and the Board of Revenue dated 14<sup>th</sup> July 1976 were against the provisions of the Rajasthan Ceiling Act as also against the State's interest. According to this order, 336 bigha and 4 biswa land held by the Salt Company was wrongly declared not fit for acquisition and sale of 21 bigha and one biswa land to Ghevarchand was not permissible. This has been the stand taken by the State-respondents that the order dated 23<sup>rd</sup> February 1983 was passed on the premise that a new fact had come to the knowledge of the State Government that there was no decision in File No.1240 of 1975 in respect to 336 bigha and 4 biswa land belonging to the Salt Company. The order dated 23<sup>rd</sup> February 1983 gives the following reasons for exercising the power under section 15(1) of the Rajasthan Ceiling Act :-

*"4. The decision of the authorized Officer, the report of the District Magistrate and the reply submitted by the non-applicant were perused. The non-applicant, his wife and minor son had 341/18 bigha land in village Beenawas out of which 40/10 bigha was arable, 289/13 bigha was rainfed and 1/15 bigha was non-cultivable. Apart from this, there was separate land in the name of Salt Company in village Kaparda. This total land was 5379/8 bigha. The non-*





applicant's share in this land was 1/16 out of this land which amounts to 336/4 bigha. This land of Salt Company is marked as cultivable in the records of settlement. In his decision, the authorized Officer has not included 336/4 bigha land and thus in the order issued, the land belonging to Salt Company held by the non-applicant was left out. The argument of the counsel for the non-applicant that this land is not cultivable is not valid because as has been stated above that the type of land is marked as Barani (rainfed) and the type of land marked in the settlement records will be considered final. Contrary to this, any classification of land is not valid. The second question remains regarding the transfer of 21/1 bigha land being bonafide. This transfer has been done on 16.05.72 in favour of a person named Ghevarchand. This land has been marked in favour of Ghevarchand. A copy of the Jamabandi has been presented as a proof of this. Also, this sale has been stated to have been done due to the need of money. In view of this situation, there is no doubt in considering this transfer as bonafide. Therefore, the notice issued on this point is cancelled. As has been stated above that the land of the non-applicant situated in Kaparda has not been included by the authorized Officer in his order of acquisition. In such a situation, the decision given by the authorized Officer is contrary to the provisions of law and against the State's interest. Hence, there are sufficient grounds to cancel it.

**5.** From the above analysis, it is found that the decision of the Sub-Divisional Officer, Jodhpur dated 20.01.76 is not in accordance with the Rajasthan Imposition of Ceiling on Agricultural Holding Act, 1973 and is against the State's interest. Therefore, using the powers conferred in Section 15 of the said Act, the Additional District Magistrate, Jodhpur is authorized and directed to reopen the said ceiling case in the light of the above decision and give notice to the applicants as per the Rules and after detailed investigation on all the points mentioned, give his decision as per the legal provisions.

**6.** A copy of this decision along with the related file has been sent to the Additional District Magistrate, Jodhpur for appropriate action."



9. Pertinently, the order dated 20<sup>th</sup> January 1976 in Ceiling Appeal No.118 of 1976 which was passed in 1<sup>st</sup> ceiling proceedings referred to the inquiry report of the Tehsildar according to which the family of Bheem Singh Ji consisted of his wife and three minor sons. Under section 2(d) of the Rajasthan Ceiling Act, the expression ceiling area has been defined to mean the maximum area of agricultural land that a person or a family is entitled to hold under section 4 anywhere throughout the State. Sub-section(o) to section 2 provides that "surplus land" means the land held by a person in excess of the ceiling area applicable to him and declared to be surplus under section 13. It is further provided under section 4 that in the case of every person not being a family and in the case of every family consisting of five or less than five members which shall be taken as "primary unit" of family, the ceiling area applicable to such person or such family shall be decided as per the provisions under section 4. The order of the authorized Officer passed in 1<sup>st</sup> ceiling proceedings is quite significant for the reason that no evidence was produced on behalf of the State respondents to controvert the stand taken by Bheem Singh Ji. Before the authorized Officer, Bheem Singh Ji and Ghevarchand who was the purchaser from Bheem Singh Ji tendered their statements and their evidence was accepted by the authorized Officer. At that time, Bheem Singh Ji had declared 678 bigha and 2 biswa land in his possession out of which 21 bigha and 1 biswa land was sold to Ghevarchand. By this order, the authorized Officer held that Bheem Singh Ji and his family were holding excess land to the extent of 190 bigha and 16 biswa out of 527 bigha recorded in the name of the Salt Company, and this is



the order which was ultimately affirmed by the Board of Revenue. In that round of litigation, the Board of Revenue had held as under :-

*"3. It has been shown that 336 bigha 4 biswa of land situated at Kaparda is not agricultural land. It is in the possession of and use of Salt Company in which the present appellant has also a share. The learned Counsel for the appellant says that u/s 16(1) the very inclusion of the above land in the final statement has the legal effects of its acquisition and hence the final order of acquiring only 190 bigha 16 biswa is inconsistent with the provisions of this section. His client suffers the disadvantage of his rights being in that land extinguished through acquisition and still not getting any compensation thereof under the provisions of Ceiling law. This is manifestly illegal and unauthorised vis-a-vis him.*

*4. I see the point well made out. It is clear that the authorised Officer has not intended to acquire this land under this order independently of the decision regarding the other lands vesting in salt company, even though it has stood in the land records in the name of the appellant. Hence the present appeal succeeds to the extent that the final statement shall stand amended to include a total of only 190 bigha 16 biswa as chosen to be acquired. This is without prejudice to whatever final decision is there for the land vesting in the salt company to be decided in the assessment file of the company, reportedly pending separately."*

10. Notwithstanding the fact that the State Government has power to re-open any concluded proceeding, the Board of Revenue being the statutory appellate Authority was not required to mechanically approve the order of the authorized Officer which was passed pursuant to the decision of the State Government to re-open the ceiling proceedings. While dismissing Ceiling Appeal No.88 of 1991 and Ceiling (Review) Petition No.13 of 1994 filed by Bheem Singh Ji, the Board of Revenue reviewed its own order passed in Ceiling (Review) Appeal No.329 of 1976. However, the Rajasthan Ceiling Act does not provide a power in the Board of Revenue to review its decision and such power is vested only in



the authorized Officer under section 23A which was incorporated in the Act through an amendment. The power conferred to the authorized Officer under section 23A extends to dropping of the proceedings on its own motion or an application of the Tehsildar. Section 23 A further provides that the authorized Officer may review or rescind or alter or confirm any order passed under this Act. But no such power has been given to the Board of Revenue to review its order passed under the Rajasthan Ceiling Act. Therefore, the absence of a provision for review by the Board of Revenue in the Rajasthan Ceiling Act must be held as a conscious decision of the Legislature particularly in view of the power of review vested in the authorized Officer under section 23A. This is a settled law that the power of review can be exercised by a *quasi* judicial authority or the Court only when the statute provides for the same. In "*Kalabharti Advertising v. Hemant Vimalnath Narichania & Ors.*"<sup>3</sup> the Hon'ble Supreme Court held that a review application is not maintainable against a judicial/*quasi* judicial order if there is no provision in the statute granting an express power of review. In "*Patel Narshi Thakershi & Ors. v. Shri Pradyumansinghji Arjunsinghji*"<sup>4</sup> the Hon'ble Supreme Court held that the power to review is not an inherent power and it must be conferred by law either expressly or by necessary implication. Section 114 of the Code of Civil Procedure which is a substantive provision for review provided to a person aggrieved by a decree or by an order of the Court does not lay down any condition precedent for exercising the power of review. However, the Court can review its order only on the prescribed grounds mentioned in

3 [2010] 9 SCC 437.

4 [1971] 3 SCC 844.



Order 47 Rule 1 of the Code of Civil Procedure. In "*Meera Bhanja v. Nirmala Kumari Choudhary*"<sup>5</sup> the Hon'ble Supreme Court observed that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1. Under the said provision, a judgment is open to review if there is a mistake or an error apparent on the face of the record, but then, an error which is not self-evident and has to be deciphered by a process of reasoning can hardly be said to be an error apparent on the face of the record. In a catena of judgments, the Hon'ble Supreme Court held that it is not permissible while exercising the jurisdiction under Order 47 Rule 1 of the Code of Civil Procedure to re-hear and correct an erroneous decision.

11. No matter that in 2<sup>nd</sup> round of litigation, the order passed by the State Government for re-opening the ceiling proceedings and the order of the authorized Officer for acquiring 336 bigha and 4 biswa land belonging to the Salt Company were under challenge, the Board of Revenue was required to give reasons for differing from its own order and thereby reviewing the order dated 14<sup>th</sup> July 1976 passed in 1<sup>st</sup> round of litigation. The power to re-open cases under section 15(1) of the Rajasthan Ceiling Act is confined to the cases where (i) a final order was passed in contravention of the provisions of the Rajasthan Ceiling Act, or (ii) the final order was prejudicial to the interest of the State Government. The State Government may also be entitled to re-open any case on account of the discovery of new and important matter or evidence which came to its notice after passing of any final order under the

5 [1995] 1 SCC 170.



Rajasthan Ceiling Act. But even on these grounds, the power under section 15(1) of the Rajasthan Ceiling Act cannot be exercised beyond the period of limitation. In its order dated 14<sup>th</sup> July 1976, the Board of Revenue recorded a finding that 336 bigha and 4 biswa of non-irrigated land was in possession and use of the Salt Company in which the present appellant had 1/16<sup>th</sup> share. This finding of the Board of Revenue was found erroneous by the State Government on the ground that the land of the Salt Company was recorded as cultivable land in the Records of Settlement and the entries in the settlement records are considered conclusive and final. However, there was no record before the State Government except the inquiry report of the Tehsildar and the recommendation of the District Collector to establish that the subject land was rainfed or agricultural land suitable for agriculture. This was also not brought on the record that the Salt Company or the appellants were in occupation of the subject land for agricultural purposes or were in fact carrying agricultural activities over the subject land.

12. It is in the context of the cryptic orders passed by the Board of Revenue which were rendered primarily taking note of identical stand taken by the State-respondents that we are inclined to make an observation that the salutary public policy behind *res judicata* and *issue-estoppel* should also be kept in mind by the statutory Authorities even while dealing with an appeal under the Rajasthan Ceiling Act. This is necessary for maintaining certainty in the legal system that the statutory authority which is not vested with the power to review its own decision adheres to its previous decision in a subsequent or co-lateral proceeding; at least to its





decision on a question of fact. The importance of binding nature of the decision of a Court of law was emphasized by Lord Coke who once said "otherwise great oppression might be done under the color and pretence of law". The Latin maxim *interest reipublicae ut sit finis litium* which means "it is in the interest of the state that there be an end to litigation" incorporates the public policy of great importance. Indeed the binding character of judgments pronounced by the Court of competent jurisdiction is itself an essential part of the rule of law. In our opinion, the provision under section 11 of the Code of Civil Procedure which embodies the rule of conclusiveness of the judgments of a Court of law shall extend to a large measure to the decisions rendered or orders passed by the statutory authority under the Rajasthan Ceiling Act, even at the appellate stage. The application of the rule of *res judicata* or *issue-estoppel* does not create any right or interest in the property but merely operates as a bar to try the same issue once over. Else, there would be endless proceedings and finality to a litigation may become an illusion. In "*Sulochana Amma v. Narayanan Nair*"<sup>6</sup> the Hon'ble Supreme Court observed that the provisions under section 11 of the Code of Civil Procedure are based on public policy and provide private justice as well. These provisions apply to all judicial proceedings and *quasi* judicial proceedings of the Tribunals as well. Under the Explanations to section 11 of the Code of Civil Procedure, we may gather further insights to the public policy behind granting finality of a decision. Explanation IV provides that any matter which might or ought to have been made a defence or a ground of attack in a former suit

6 [1994] 2 SCC 14.



shall be deemed to have been a matter directly and substantially an issue in the latter suit. Therefore, a matter which the parties might or ought to have litigated in connection with the subject matter of the litigation shall also constitute *res judicata* between the parties.

13. We are conscious of the fact that in 2<sup>nd</sup> round of litigation the Board of Revenue was seized with the matter by virtue of the appeal filed under the statutory regime and it has all the powers of the appellate Authority but the manner in which the Board of Revenue dealt with the matter was a kind of abdication of its duty as the appellate Authority. Section 23 under Chapter VI of the Rajasthan Ceiling Act provides the forum for appeal to the Collector of the concerned district against a decision or order of the authorized Officer under sub-section (3) of section 12 or sub-section (3) of section 11B or under sub-section (3) of section 19 or any decision or order passed under section 21. Sub-section (2A) to section 23 provides that an appeal shall lie to the Board of Revenue against the decision of the authorized Officer under section 15. The appellate power conferred on the Collector of the concerned district under sub-section (1) and under sub-section (2A) of section 23 to the Board of Revenue seem to be wide enough to (i) decide the case finally (ii) remand the case or (iii) take additional evidence or require such evidence to be taken by the authorized Officer for the purpose of deciding the case finally. The power of the Collector or that of the Board of Revenue further extends to granting an order of stay of execution of any decision or order under challenge till a final decision is taken in the appeal. There is absolutely no cogent reason given by the Board of



Revenue in its orders dated 26<sup>th</sup> October 1993 and 09<sup>th</sup> September 1997 and the petitions filed by Bheem Singh Ji were dismissed on untenable grounds.

14. Besides the aforementioned aspects, the main ground of challenge laid to the order dated 23<sup>rd</sup> February 1983 passed by the State Government, that the powers under section 15(1) of the Rajasthan Ceiling Act could not have been exercised by the State Government after the lapse of the limitation period to direct re-opening of the concluded ceiling proceedings, was ignored by the Board of Revenue and the writ Court. Mr. Satya Prakash Sharma, the learned counsel for the appellants contended that the State Government's decision to re-open the orders passed by the authorized Officer and the Board of Revenue was not backed by any statutory provision in this behalf and, rather, hedged with the restrictions under proviso to section 15(1) which provided four years' limitation for re-opening a concluded ceiling proceeding from the date of the final order or within three years from 15<sup>th</sup> day of August 1975, whichever is later. The learned counsel for the appellants contended that the power to re-open a concluded ceiling proceeding is further circumscribed by the restriction that the decision to re-open the concluded proceeding within the prescribed limit of time must be based on discovery of a new and important matter or evidence but that ground is not available in the present case.

15. The purpose of the ceiling law is to determine the ceiling area and to resume the excess lands in possession of the landholder but the power of the State Government to re-open any concluded ceiling proceedings on any of the aforementioned



grounds must be exercised within the prescribed limitation period; an exception being the case of fraud, misrepresentation, etc. The validity of section 15 of the Rajasthan Ceiling Act has been upheld by the Hon'ble Supreme Court<sup>7</sup>. In "*Gurbax Singh & Atumal alias Atma Ram v. State of Rajasthan & Ors.*"<sup>8</sup>, the Hon'ble Supreme Court held that the State Legislature was competent under Entry-18 in the State List of Seventh Schedule of the Constitution of India to enact a law prescribing ceiling on land and, while enacting such a law it was permissible for the State Legislature to make a provision such as section 15 of the Rajasthan Ceiling Act to ensure the implementation of the agrarian reforms and to prevent evasion of the provisions of the Rajasthan Ceiling Act. However, to achieve the object behind the Rajasthan Ceiling Act the State Government cannot act in an arbitrary manner and exercise the power under section 15 on such grounds which are not available and cannot be considered as discovery of a new fact. Section 15 which vests power in the State Government to re-open cases talks of satisfaction of the State Government which must be based on objective analysis of the materials before the State Government. First proviso to sub-section (1) restricted the power of the State Government to re-open any case without issuing a notice to show cause against the proposed action upon the person concerned. Second proviso put further embargo on the power of the State Government that no notice to show-cause against the proposed action shall be issued after the expiry of "four years" from the date of the final order sought to be re-opened or after the expiry of three years from 15<sup>th</sup> day of August 1975 whichever was later.

7 "*Sukhdarshan Singh & Ors. v. State of Rajasthan & Ors.*" [1989] Supp.(2) SCC 671.

8 [1992] Supp.(3) SCC 24.



To recapitulate, section 15 was amended through the Rajasthan Imposition of Ceiling on Agricultural Land Holdings (Amendment and Validation) Act 1979 and came into force on 30<sup>th</sup> day of December 1978 and the prescribed period of limitation was extended upto "five years" through section 2 of the amending Act. Before that, the prescribed period of limitation was "three years" and that was also extended to "four years" by an amendment. Just to indicate, the order of the State Government for re-opening the ceiling proceedings was however even beyond the extended period of five years. The statement of objects and reasons for bringing amendment in the Rajasthan Ceiling Act states that it was necessary to extend the time limit because the period of four years for re-opening the cases had expired on 31<sup>st</sup> December 1978. The statement of objects and reasons in the amending Act provided the following reasons :-

*"Section 15 of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (Act No. 11 of 1973) empowers the State Government to direct re-opening of the cases finally decided under the old ceiling law contained in the relevant provisions of the Rajasthan Tenancy Act as also under the new ceiling law. For the cases under the new law, the time limit was four years from the date of passing of the final order or upto 31st December, 1978 whichever was later. No case decided more than four years prior to the said date could be available for re-opening. The cases finally decided under the old law could be re-opened within period of six years from the commencement of the new law contained in the Act of 1973. The Act came into force on 1-1-1973. The time limit thus expired on 31-12-1978 it became necessary to extend the time limit."*

16. The statement of objects and reasons for amending section 15 of the Rajasthan Ceiling Act provides a very useful insight to the legislative intentment that the limitation prescribed under



section 15 is not extendable and if a re-opening proceeding was not initiated within four years (or, five years after 2<sup>nd</sup> amendment in section 15) the State Government shall lose its power and jurisdiction vested in it by virtue of sub-section (1) to section 15.

As to the question of limitation, we may also refer to the discussions in "*Daulat Singh (D) through Lrs. v. State of Rajasthan & Ors.*"<sup>9</sup> wherein the Hon'ble Supreme Court held that the relevant date for counting limitation shall be the date of the order sought to be re-opened and the date of show-cause notice under section 15 of the Ceiling Act. The Hon'ble Supreme Court held as under :-

*"13. Section 15 of the Ceiling Act of 1973 confers upon the State Government the power to reopen the cases, if it is satisfied that the earlier order was in contravention with the provisions of the Act and is prejudicial to the State interest. The aforesaid direction to reopen cases must be preceded by a show cause notice served upon the person concerned. However, the proviso clause states that no notice can be issued after the expiry of five years from the date of the final order sought to be reopened or after the expiry of 30<sup>th</sup> June 1979, whichever is later.*

*14. Therefore, the provision mandates that, after the expiry of five years from the date of final order sought to be reopened, or after the expiry of 30th June 1979, whichever is later, no notice for reopening of such cases can be issued. Therefore, the relevant dates for determination of the issue of limitation is the date of order sought to be reopened and the date of issuance of show-cause notice under Section 15 of the Ceiling Act of 1973."*

17. However, overlooking the statutory prohibition in the Rajasthan Ceiling Act and the settled legal position the writ Court did not accept the plea of limitation taken by the appellants that the power of the State Government under section 15(1) of the

9 [2021] 3 SCC 459.

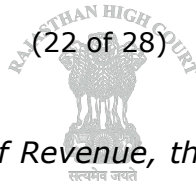




Rajasthan Ceiling Act for re-opening the concluded ceiling proceedings cannot be exercised beyond the prescribed period. On behalf of the appellants, it was contended that within the period of four years from the date of order passed by the Board of Revenue, that is to say from 14<sup>th</sup> July 1976, the State Government could have exercised its power to re-open the concluded ceiling proceedings but not after that. On the other hand, the stand taken by the State-respondents was that the re-opening proceedings were initiated well within the limitation period of four years on the ground of discovery of a new fact. Interestingly, the plea of limitation set up by the appellants before the writ Court was sought to be avoided also by taking a stand that no such plea was taken by the appellants before the Board of Revenue and the writ Court approved such objection. The writ Court held as under:-

*"...11. Indisputably, the contention sought to be raised by the petitioners regarding the reopening proceedings being barred by limitation was not raised before the Board of Revenue. In the instant petition, the petitioners have questioned the legality of order dated 23.2.83 passed by the State Government reopening the ceiling proceedings in exercise of the power conferred under Section 15(1) of the Act, but there is no foundation of facts or the ground raised in the petition filed in terms that the proceeding initiated by the State Government for reopening of the ceiling proceedings was barred by limitation. It is not even the case of the petitioners in the petition filed that the notice referred to in first proviso to Section 15(1) of the Act was issued by the State Government after expiry of the period of limitation as provided for under second proviso to Section 15(1) of the Act. Thus, to say the least, the contention sought to be raised on behalf of the petitioners in this regard without there being any foundation of facts in the petition, is absolutely misconceived and devoid of any merit.*

**12.** *Coming to the contention of the petitioners that the order dated 20.1.76 having been merged in the order dated 14.7.76*



passed by the Board of Revenue, the ceiling proceedings could not have been reopened, it is to be noticed that in terms of provisions of Section 15(1), the State Government is empowered to reopen the ceiling proceedings on being satisfied that the final order passed in the matter under the Act, is in contravention of the provisions of the Act or such order is prejudicial to the State Government or on account of discovery of new and important matter or evidence which has since come to the notice, such order is required to be reopened. In this view of the matter, the State Government is not precluded from reopening the ceiling proceedings concluded by the order passed by the Board of Revenue in appeal.

**13.** It is pertinent to note that in the instant case, in the original ceiling proceedings, the authorised Officer determined 527 bighas land in excess of the ceiling area in the hands of the petitioners, however the Board of Revenue proceeded to exclude the 336 bighas 4 biswas land observing that the authorised Officer has not intended to acquire the said land under the order passed by him independently of the decision regarding the other lands vested in the Salt Company. There was nothing on record suggesting that the said land was subject matter of the proceedings to be decided in the assessment file of the Salt Company and therefore, there was no occasion for the Board of Revenue to exclude the said land while assessing the land in excess of the ceiling area in the hands of the petitioners. In this view of the matter, on noticing the fact regarding the erroneous view taken by the Board of Revenue without ascertaining the correct factual position, the State Government was absolutely justified in directing reopening of the proceedings.

**14.** It is not even the case of the petitioners in the petition that the disputed land i.e. the land measuring 336 bighas and 4 biswas standing in their names in the revenue record was subject matter of assessment in the file of the Salt Company, which was reported to be pending separately. Suffice it to say that the petitioners have not been able to make out any case as to why the land standing in their names in the revenue record, which was not even subject matter of the assessment in file of the Salt Company should be excluded while assessing the land in excess of the ceiling area in their hands.



**15.** *In view of the discussion above, in the considered opinion of this court, the order impugned passed by the Board of Revenue does not suffer from any jurisdictional error so as to warrant interference by this court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India....."*

**18.** Quite contrary to the aforesaid findings recorded by the writ Court, there was a definite stand taken by the appellants in the writ pleadings that the ceiling proceedings had concluded on 14<sup>th</sup> July 1976 by the order of the Board of Revenue and it could not have been re-opened by the order dated 23<sup>rd</sup> February 1983 exercising the power under section 15(1) of the Rajasthan Ceiling Act. In paragraph no.13 of the writ petition, the appellants stated that a specific objection was raised before the Board of Revenue that the State Government could not have re-opened the ceiling proceedings concluded by the order dated 14<sup>th</sup> July 1976 but that objection was over-ruled by the Board of Revenue. The relevant portions of the writ pleadings in this behalf are reproduced herein below :-

*"....13. Aggrieved of this appeal was preferred before the Board of Revenue wherein a specific objection was raised that the State Govt cannot reopen the case decided by Ann.1 after the decision of the Board of Revenue because the order dated 20.1.76 was not a final order and it merges into Board of Revenue and ultimately Board of Revenue's order becomes final. This objection was over ruled by the Member of the Board of Revenue and the learned Board of Revenue rejected the appeal by the order dated 26.10.93, copy of the same order is Ann.6.*

**14.** *That a review was also filed before the Board of Revenue but the same has been rejected by the order dated 9.9.97,copy of the same order is annexed herewith as Ann.7.*

**15.** *That, the petitioners' only contention in this case is that the State Govt. can only direct the reopening of any final order*



*passed in any matter arising under this Act and in this case the final order is Ann.3 dated 14-7-76.*

**16.** *That, the order dated 20.1.76 Ann.1 cannot be said to be a final order. According to proviso appended to clause (2) of section 15 the State Govt. cannot direct the reopening of a matter decided by the Board on account of discovery of new and important matter or evidence which has since come to its notice. The relevant proviso is reproduced as under:-*  
*"Provided that no final order passed by the Board in the matter referred to in sub section (1) or in subsection (2) shall be directed to be reopened on account of the discovery of new and important matter or evidence which has since come to its notice or due to some mistake or error apparent on the face of record."*

**17.** *That, the State Govt. has directed the reopening of the order dated 20.1.1976 on the ground that the share of the petitioners in 336 bighas of land of salt company was not taken into consideration. This action of the State Govt. is without jurisdiction."*

19. We further find that there were specific grounds pleaded before the writ Court which refer to the plea of limitation in exercising the power under section 15(1) of the Rajasthan Ceiling Act. In this context, we may profitably reproduce the relevant portions of the grounds taken before the writ Court which read as under :-

*"(i) That the order dated 23.2.83 Ann.4 passed by the State Govt. under section 15.(1) of the act and further orders Ann.5, 6 and 7 passed in pursuance of this order Ann.4 are without jurisdiction and deserves to be quashed.*

*(ii) That the order dated 20.1.76 stands merged in order 14.7.76 passed by the Board of Revenue and thus the order Ann.1 cannot be termed as final order in the case. The final order in the matter is ann.3 passed by the board of Revenue and the Sate Govt. has not directed to reopen the order Ann.3 dated 14.7.76 but it has directed order Ann.1 dated 20.1.76 passed by the authorised Officer Jodhpur.*

*(iii) That, bare reading of section 15(1) of the Act makes it clear that the final order can be directed to be reopened and in this*



*view of the matter order Ann.1 dated 20.1.76 was not the final order in this case.*

*(iv) That proviso appended to subsection (2) of section 15 makes it very clear that no final order of the Board can be passed on the basis of some new evidence. Thus if the order would have been in respect of Ann.3 dated 14.7.76 even then it would have been also without jurisdiction."*

20. In our opinion, the writ Court committed a serious error of records in refusing to take note of the plea of limitation raised on behalf of the appellants and proceeded to examine the matter on merits which was not permissible in the face of the bar under section 15(1) of the Rajasthan Ceiling Act. Section 16 of the Rajasthan Ceiling Act provides that the surplus land held by a person and shown in the Final Statement shall be deemed to have been acquired by the State Government from the date of service of the Final Statement and the same shall from the said date vest absolutely in the State Government free from all encumbrances. The legislative intention to prevent escapement or avoidance of the ceiling laws by a landholder is further manifest under section 17 which provides that it shall not be lawful for any person to acquire by purchase, gift, mortgage, assignment, lease, surrender, devolution, bequest or otherwise any land so as to affect and increase the extent of his holding over the ceiling area applicable to him on and from the commencement of the Rajasthan Ceiling Act, subject to the other provisions contained under section 17. Therefore, the State of Rajasthan shall have an accrued or vested right to the excess land as available on the appointed date and the substantive rights of the State of Rajasthan must be protected but the State Government cannot exercise the power under section

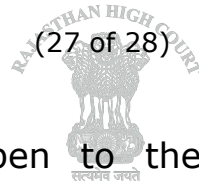


15(1) of the Rajasthan Ceiling Act after lapse of the period of limitation purportedly in the exercise of power of protecting the State's interest.

21. The laws of limitation are founded on public policy. Section 2(j) of the Limitation Act, 1963 defines the period of limitation as to mean the period of limitation prescribed for any suit, appeal or application under the schedule to the Limitation Act and the prescribed period would mean the period of limitation computed in accordance with the provisions of law. Section 3 of the Limitation Act casts a duty upon the Courts to dismiss a suit if made after the prescribed period even though limitation was not set up as a defence. In "*Maqbul Ahmed & Ors. v. Onkar Pratap Narain Singh*"<sup>10</sup> the Privy Council held that the Court is bound under section 3 of the Limitation Act to ascertain for itself whether the suit before it is within time and if the Court fails to do so and entertains a suit or claim which is barred by limitation, the Court acts without jurisdiction. This is in the common parlance that most of the times the plea of limitation turns out to be a mixed question of law and fact but where the factual basis has been determined the High Court should exercise its power of judicial review under Article 226 of the Constitution of India. The law is quite well-settled that the writ Court can entertain a plea based on pure question of law and it is not necessary that such a ground is specifically pleaded by the aggrieved party provided there was sufficient pleadings in that regard and a fair opportunity was given to the opposite party to meet such a ground of challenge.

<sup>10</sup> AIR 1935 PC 85.





Therefore, it shall be open to the Court to pronounce the judgment based on admitted facts, that is to say, in a case where the foundational facts necessary for determining limitation are admitted. The present case is of that kind.

22. Though the writ petition filed by the appellants was labeled under Articles 226 and 227 of the Constitution of India, the writ Court declined to interfere with the order dated 26<sup>th</sup> October 1993 as if the writ petition was filed under Article 227. The power under Article 226 of the Constitution of India is plenary and without any fetters. The language used in Article 226 of the Constitution of India is very wide and the powers of the writ Court extend to issue of orders, writs or directions. Under Article 226, the High Court issues directions, orders and writs to any person or authority including any Government. Whereas, the High Court exercises the power of superintendence over all Courts and Tribunals throughout the territory in relation to which it exercises jurisdiction under Article 227. The power to issue writs is definitely not the same as the power of superintendence inasmuch as a writ of *habeas corpus*, *mandamus*, *quo warranto*, *prohibition* or *certiorari* cannot be equated with the power of superintendence exercisable by the High Court. While the writs are directed against persons, authorities or the State, the supervisory jurisdiction under Article 227 is intended to ensure that the subordinate Courts and Tribunals act within the limits of their authority and according to law. It would be really too hyper-technical an approach to assume that the order passed by the statutory authorities under the Rajasthan Ceiling Act can only be challenged under Article 227 of



the Constitution of India. A *certiorari* may be granted where the statutory authority acted without or in excess of its jurisdiction. The object of writ of *certiorari* is to secure by authority of a superior Court that the jurisdiction of the inferior Tribunal should be properly exercised. The statutory authority may be competent to enter upon an inquiry but while making the inquiry it cannot act in flagrant disregard of the rules of procedure or in violation of the principles of natural justice. The writ Court in exercise of its power under Article 226 of the Constitution of India is entitled to embark upon an exercise to test legality of the order passed by a statutory authority under the Rajasthan Ceiling Act where the order is challenged on the ground of lack of jurisdiction. In our opinion, a decision based on clear ignorance or disregard of the provisions of law or where there is a manifest error apparent on the *face of* the record is certainly amenable to a writ of *certiorari*.

23. The order of the State Government for re-opening the Final Settlement order was without jurisdiction and palpably wrong. Having in our mind the Latin maxim "*sublato fundamento cadit opus*", which means when foundation is removed the superstructure falls, we hold that the orders passed by the authorized Officer and the Board of Revenue are bad in law.

24. In the result, the writ Court's order dated 16<sup>th</sup> August 2016 is set aside and these Special Appeals are allowed.

**(KULDEEP MATHUR),J**

**(SHREE CHANDRASHEKHAR),J**

Arjun/Ajay/-

Whether fit for reporting:-

Yes/No