

(1959) 05 AHC CK 0013

In the Allahabad High Court

Case No : Review Applns. No's. 297 to 300 of 1958 in Civil Misc. Writ No. 480 of 1958

Dan Singh Bist

APPELLANT

Vs

Additional Collector, Bijnor and Others

RESPONDENT

Date of Decision : 06-05-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114, 151
Constitution of India, 1950 — Article 226

Citation : AIR 1960 All 152 : (1959) 29 AWR 651

Hon'ble Judges : B.R. James, J

Bench : Single Bench

Advocate : G.S. Pathak and S.C. Khare, for the Appellant; K.B. Asthana, Junior Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

B.R. James, J.—Has the High Court the power to recall and correct an invalid or manifestly erroneous order passed by it in the exercise of its jurisdiction under Article 226 of the Constitution, is the problem which these four applications raise, a problem which I confess is not capable of an easy solution inasmuch as it is not covered by authority.

2. The circumstances which have led to these applications fire briefly these. One Thakur Dan Singh Bist held zamindari rights in two villages in district Bijnor. The State Government acquired his rights under the provisions of the Land Acquisition Act, but by certain orders of 1952 and 1955 released cultivatory rights in his favour in respect of a certain area in the two villages, & he utilised this area as a modern farm. Subsequently the State Government decided to evict him from the land and to recover damages for its use and occupation. Accordingly proceedings, were started against him under the U.P. Government Land (Eviction and Rent Recovery) Act (U.P. Act No. XXIX of 1953), and on their completion the Additional Collector of Bijnor passed four orders dated 14-5-1957

directing his eviction from the area in question and further directing the payment of certain amounts as damages.

He lodged appeals against the four orders, but they were dismissed by the District Judge. Thereupon he filed four petitions under Article 226 of the Constitution against the State Government and the officials concerned praying that the aforesaid four orders of the Additional Collector and the appellate orders of the District Judge be quashed and State authorities prevented from interfering with his possession of the disputed area and from recovering damages from him, and his main contention was that the Act in question was unconstitutional inasmuch as it contravened Article 14 of the Constitution.

After this constitutional point had been argued before me for some time I suo motu posed a question which did not arise from the pleadings, namely, whether or not the Additional Collector was the "competent authority" under Act No. XXIX of 19531 read with the U.P. Government Premises (Rent Recovery and Eviction) Act (U.P. Act No. XXXIX of 1952), and in consequence had jurisdiction to pass the impugned orders. Since the question was one for which learned counsel for the parties were not prepared, their request for one day's adjournment in order to search for the relevant Government Notifications was acceded to.

The following day when the case was taken up the learned counsel for Thakur Dan Singh referred me to. Notification No. 5069(ii) I.C.-151-52 dated 23-8-1956, which declared the Collector of Bijnor as the "competent Authority" for the district of Bijnor. The learned counsel for the State did not produce any other Notification; instead he accepted the finality of the Notification of 23-8-1956 and argued that under the terms of the U.P. Land Revenue Act the Additional Collector enjoyed the same powers as the Collector and was therefore entitled to act as the "competent authority". Pronouncing judgment on 28-8-1958 I overruled this contention, and holding that the Additional Collector had no jurisdiction to pass the orders that he did, quashed them.

3. But the fact of the matter is that subsequent to the Notification mentioned above the State Government had issued a fresh Notification No. 5948/ I-C-353-C-56 dated 24-9-1956, authorising the Additional Collector of Bijnor to perform the functions of the competent authority in that district, a Notification of which learned counsel for the parties had no knowledge at the time they argued the case before me. On its discovery Mr. K.B. Asthana, Junior Standing Counsel, on behalf of the State Government filed the present four applications, which purport to be under Order XLVII and Section 151 C.P.C. and his prayer is that after taking into consideration the Notification of 24-9-1956 I should review my judgment dated 28-8-1958, set it aside, and re-open the writ proceedings.

4. The error in my judgment of 28-8-1958 is manifest, for the Additional Collector did possess the requisite jurisdiction. Neither I nor learned counsel had been aware of the subsequent Notification at the time I delivered my judgment. Learned counsel did not even have time -- nor indeed, quite candidly, did they

ask for it -- to enable them to go through the issues of the Government Gazette or to contact the authorities at Bijnor or Lucknow. Had we not entertained the erroneous belief that the Notification of 23-8-1956 was the last word on the subject, I would never have held the Additional Collector as acting without jurisdiction. Thus through inadvertence, and in ignorance of a fact, viz., the existence of the later Notification, I passed an invalid judgment. My judgment is vitiated by an error of fact apparent on the face of the record, and the error has done an injustice to the respondents in the writ petitions.

5. The question is whether or not I have power to rectify the error. Mr. Asthana contends that I have such power, while Mr. G.S. Pathak, learned counsel for Thakur Dan Singh, has strenuously argued to the contrary. Before me there has been a full-dress debate on the subject, and learned counsel have cited numerous authorities in support of their respective contentions. Out of the many decisions cited before me I propose to mention only those which I consider relevant to the issue, paying special attention to decisions of our own High Court. It would appear that, with the exception of one case before the High Court of Madras (whose decision will be referred to in due course) the problem raised by these applications has so far not come up for consideration before any High Court. Nor have learned counsel been able to cite any case from England or the United States. The importance of the issue is therefore obvious,

6. In order that the controversy be judged in its proper setting attention must at the outset be drawn to some basic matters. So that finality be brought to litigation a Court once it has signed and pronounced a judgment cannot afterwards alter or add to it, save for the purpose of correcting a clerical, arithmetical or accidental mistake. If the mistake be, of any other kind it can be corrected by a higher Court in appeal or revision, or by the Court itself by review. In the present case we are not concerned with appeal or revision. So far as the power of review is concerned, it is not an inherent power but has to be derived from some statutory provision, for after pronouncing its judgment the Court becomes *functus officio*, and only a specific law can revive it.

Article 137 of the Constitution has specifically invested the Supreme Court with the power to review any judgment or order passed by it, but the Constitution confers no such power on the High Courts. Nevertheless there is no provision in the Constitution debarring the High Courts from exercising a power of review, so that if such power is found derived from some other statute, a High Court will be entitled to review its judgments and orders. By virtue of Article 226 of the Constitution our High Court has framed Rules which apply to all proceedings and matters before it. Chapter XXII of these Rules applies to directions, orders or writs under Article 226 other than writs in the nature of habeas corpus but these Rules are confined to procedural matters and are silent on the power of review. We have therefore to see if there is any other enactment which might be called in aid of the High Court.

7. Mr. Asthana submits that the CPC (hereinafter referred to as the Code) is first

that enactment and that, provided certain specified conditions are fulfilled, Section 114 and Order 47 therein give this Court the power to review its judgments and orders.

8. Now, Section 141 of the Code enacts that the procedure provided by it in regard to suits shall be followed (as far as it can be made applicable) in all proceedings in any Court of civil jurisdiction, while Section 117 makes the provisions of the Code (save for some matters which are not relevant here) applicable to all High Courts, and the Full Bench of this Court in *Mt. Abhilakhi Vs. Sada Nand and Others* has laid down that the provisions of the Code apply to all High Courts in the exercise of their entire civil jurisdiction including their jurisdiction under the Letters Patent. It follows that the provisions of the Code will apply if it is found that in deciding *Thakur Dan Singh's* writ petitions I acted in the exercise of my civil jurisdiction.

9. But did I do so? The answer is furnished by the recent decision of a Division Bench of this Court in *Brij Lal Suri Vs. The State of Uttar Pradesh and Others*, a decision binding on me. In examining the nature of the jurisdiction under Article 226 the Bench pointed out that what is to be looked into is the nature and circumstances of the particular case and the mere fact that it had been dealt with under Article 226 is not sufficient for saying that it is or is not a civil proceeding; it held that if the proceeding is started to enforce or vindicate a civil right and if carried to its conclusion might result in an order or finding determining the civil rights of the parties to the dispute, the proceeding shall be a civil proceeding.

What *Thakur Dan Singh* sought was that he be maintained in possession of the land which he was occupying and be not made to pay damages for its occupation; consequently he started the proceedings with the object of enforcing or vindicating what was patently a civil right in respect of the land, and my order allowing his petitions finally determined this civil right qua the disputed land. By virtue of the Division Bench decision the proceedings before me must be held to have been civil proceedings, from which it follows that, in adjudicating them I exercised my civil jurisdiction. Consequently, inasmuch as the present applications have arisen out of those proceedings, the Code must apply to them.

10. Now, Section 114 and Order 47 of the First Schedule of the Code embrace the subject of review : the former contains a brief statement of the Court's general power of review, while the latter provides for the details and procedure. Both the section and Rule 1 of the Order prescribe three categories of orders or decisions, numbered as (a), (b) and (c), which alone can be reviewed. In the present case we are not concerned with categories (a) and (c). Category (b) is the one relevant for our purposes. But there is difference in the wording of (b) in the section and in the Rule, for whereas the section says "by a decree or order from which no appeal is allowed by this Code", the words "by this Code" do not occur in Rule 1. What then is the law the Code actually enacts? This makes a slight digression necessary.

11. Section 121 of the Code declares that the Rules in the First Schedule shall have effect as if enacted in the body of the Code, while Section 128(1) lays down the condition that the Rules must not be inconsistent with the provisions of the Code. It follows that the section and the Rule possess equal legal force, and one cannot override the other. They must therefore be read in conjunction. It would appear that the omission from Rule 1 (b) incidentally, as also from Rule 1 (a) of the aforementioned three words was purely inadvertent or accidental. Taking the section and the Rule together, the law with regard to cases of category (b) should read :

"Any person considering himself aggrieved by a decree or order from which no appeal is allowed by this Code, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon, as it thinks fit."

This is how the two provisions have been read by the Full Bench in ILR Mt. Abhilakhi Vs. Sada Nand and Others . Thus, to attract the Court's power of review the order must be one "from which no appeal is allowed by this Code", and further, certain statutory conditions must be satisfied. What the issue before me therefore boils down to is a two-fold question : (1) does my judgment in favour of Thakur Dan Singh belong to the category wherein no appeal is allowed by the Code, for it is only then that Section 114 and Order 47, Rule 1, would apply and I would have the power to review it; (2) are any of the above-quoted statutory conditions fulfilled, for it is then that a review of the judgment would be admissible?

12. Prima facie, both questions invite an answer in the affirmative. It is indisputable that a right of appeal against my judgment (made as it was under Article 226 of the Constitution) has been given by our Letters Patent and continued by Article 225, but no appeal is allowed by the Code; that is to say, an appeal is allowed by some other law, but not by the Code. The discovery of the subsequent Notification of 24-9-1956 was the discovery of new and important matter which after the exercise of due diligence was not within the knowledge of the State counsel, nor could it be produced by him at the time when I passed my judgment. Prima facie therefore on a plain reading of the law contained in the Code a review of that judgment would be justified.

13. Unfortunately for Mr. Asthana, the law declared by our High Court compels a contrary conclusion. This brings me to the Full Bench case of Mt. Abhilakhi Vs. Sada Nand and Others , an authority on which Mr. Pathak strongly relies. The question before the Full Bench was whether an application for review of a judgment passed in a Letters Patent appeal lay. In considering the question their

Lordships discussed the terms of Section 114 and Order 47 Rule 1 of the Code.

Banerji and Bennet. JJ., stressing the distinction between procedure and jurisdiction, and pointing out that while the procedure prescribed by the Code did apply to the hearing of Letters Patent appeals and the consequent decrees, the jurisdiction in the exercise of which the judgments were made was derived from the Letters Patent and not from the Code, held that Section 114 "is not intended to provide for the review of judgments passed in the exercise of jurisdiction derived from other laws and that an application for review of judgment would not lie in the present case". The view of Mukerji, J. was just the opposite, and he emphasised that the judgment given in a Letters Patent appeal came clearly and without any ambiguity within the language of Clause (b) of Section 114 and that there was no valid ground for the interpretation that the order mentioned in that section must be an order which is provided by the Code. It is the view of the majority that must prevail.

14. I should like to mention that only the Patna High Court in *Inder Mahton and Others Vs. Ramkishun Missir and Others*, agrees with the majority view; the High Courts of Madras in *Venkatasubbarayudu v. Govinda Krishna* ILR 40 Mad 651 : (AIR 1917 Mad 670) of Bombay in *Ratanchand Khimchand v. Damji Dharsey* AIR 1927 Bom. 232 and of Suba Singh Vs. Neki Kishen Sahai and Others, agree with the minority view. Moreover, the ratio of the decision of the Supreme Court in *Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh*, , throws doubt on the correctness of the opinion of the majority. On the, strength of these authorities I venture to suggest that the decision in *Mt. Abhilakhi Vs. Sada Nand and Others* needs reconsideration. Nevertheless, until it is reversed by the Supreme Court or by a larger Bench it remains binding on me. It follows that since my judgment of which review is sought has been passed under the Constitution, i.e., a law other than the Code, I have no power to review it u/s 114 or Order 47 Rule 1.

15. I might add that in the very recent case of *Adarsh Bhandar, Aligarh Vs. Sales Tax Officer, Aligarh*, a Full Bench of this Court has observed :

"The power of the High Court to review an order passed by it under Article 226 of the Constitution is either included in the power conferred by the Article itself or can be exercised under the CPC in case the proceeding is treated as a civil proceeding";

and on the strength of this it might be argued that the Court has the right to review its orders given under Article 226. But their Lordships were dealing with the validity of an enactment by the U.P. Legislature which, in contravention of Article 245, purported to compel the High Court to review its orders in certain matters of sales-tax. A reading of their judgment shows that the observations aforesaid were made while discussing the competence of the U.P. Legislature to pass such a measure and were mere obiter dicta -- if I may say so without meaning any discourtesy, the Full Bench never intended to lay down the law on

the High Court's general power of review.

16. Indeed, I am aware of just one reported case which is wholly in favour of Mr. Asthana. It is *C. Chenchanna Naidu Vs. Praja Seva Transports Ltd., Cuddappah and Another*, decided by a Division Bench of the High Court of Madras. A petition under Article 226 of the Constitution had been filed for enforcement of the civil right to ply a stage carriage. Their Lordships dismissed it. Subsequently they were asked to review their order of dismissal, and the question arose whether or not they had the necessary power to enable them to do so. Holding that they did possess such power, they ruled :

"The petitioner invoked the civil jurisdiction of this court to issue a writ under Article 226 of the Constitution. If the application for the issue of a Writ is made on the civil side, in dealing with such an application we are governed by the provisions of the C.P.C. It is indisputable that the procedure applicable to all courts of civil jurisdiction is that contained in the C.P.C. . . . once it is conceded that the procedure applicable to cases of this kind is that enacted in the C.P.C. the question of jurisdiction of this court to review its orders under Article 226 does not present much difficulty. Order 47, Rule 1 C.P.C. has invested civil courts with power to review their own decrees or orders under certain conditions. But so far as this Court is concerned, the decision does not render much assistance to Mr. Asthana for the simple reason that it was given on the basis of the view consistently held by the High Court of Madras that a judgment or order of the High Court is open to appeal under the Code hence Section 114 and Order 47, Rule 1, applied, whereas I am bound by the majority decision in *Mt. Abhilakhi Vs. Sada Nand and Others* which holds otherwise.

17. Nevertheless two decisions relied on by Mr. Pathak, viz. *In re In Re: Prahlad Krishna Kurne, and Kalika Prasad Vs. Additional Commissioner, Agra Division and Others*, are of no help either. In the former the first application that had been rejected was u/s 491 Cr. P.C.; two applications were then filed, one for a review of the order rejecting the original application and the other for a writ of habeas corpus under Article 226. A Full Bench of the Bombay High Court dismissed both the applications, observing that the Court has no inherent power of review, that such a power like that of an appeal must be conferred by a statute and that the Cr. P.C. did not vest any power of review in the High Court; the Bench also pointed out that Article 226 by itself did not confer upon the High Court any power of review.

Obviously the Full Bench was sitting in the exercise of its criminal jurisdiction, so that Cr. P.C. applied, and it is indisputable that there is no provision in that Code corresponding to Section 114 or Order XLVII C.P.C. The second case was decided by Mehrotra, J. of this High Court. The question before him was whether or not the Additional Commissioner had any power to review an order passed by him under the U.P. Agricultural Tenants (Acquisition of Privileges) Act, an enactment which designedly excludes the operation of the Code.

In holding that there was none his Lordship pointed out that the power of review can be exercised only if it has been expressly conferred by the statute whereas the Act did not make the provisions of the CPC applicable to proceedings under it. Thus both the cases cited by Mr. Pathak deal with matters not governed by the Code, whereas, as I have endeavored to show, the present applications are governed by the Code, but the insurmountable obstacle in the way of their being dealt with u/s 114 and Order XLVII, Rule 1, is the decision in *Mt. Abhilakhi Vs. Sada Nand and Others*

18. Having failed to persuade me to hold that under the provisions of Section 114 and Order XLVII I have the power to review my order, Mr. Asthana refers to Section 151 of the Code and contends that it empowers me to recall my invalid or manifestly erroneous order which had undoubtedly done injustice to his client. Mr. Pathak disagrees. The section provides :

"Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

19. Some comments on this section are called for. It does not confer any fresh powers on the Court; it merely preserves its existing powers. But its contents draw attention to two facts first, it presupposes the existence of inherent powers of the Court and gives them statutory recognition; second, it allows the Court to make such orders as it may deem fit provided it considered them necessary for the ends of justice or to prevent abuse of the process of the Court. In the very nature of things a code of procedure cannot be exhaustive, and consequently where the circumstances so require the Court is entitled to act upon the possession of an inherent power to act *ex debito justitiae* and to do that real and substantial justice for the administration of which alone it exists.

Nevertheless it has to be remembered that even u/s 151 it has no power to do that which is forbidden by any law; for instance, it cannot assume jurisdiction over a matter which is excluded from its cognizance; it cannot entertain an appeal where no appeal is provided; it cannot act contrary to the law of limitation. But within these limits its power to do justice or to undo injustice is very wide. To quote from Woodroffe. J. in *Hukum Chand v. Kemalanand Singh* ILR Cal 927 : "I am always slow to believe that the Court's powers are unequal to its desire to order that which it believes to be just"; and "I decline to believe that those are cases where this Court must fold its hands and allow injustice to be done". Nor would it be correct to assume that any procedure is to be taken as prohibited unless expressly provided for by any law. Mahmood, J. in the Full Court decision of this Court in *Narsingh Das v. Mangal Dubey* ILR All 163 observed :

"Courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the Code, but on the converse principle that every procedure is to be understood as permissible till it is shown

to be prohibited by the law. As a matter of general principle prohibitions cannot be presumed."

Neither the Code nor any other law anywhere places a bar on the High Court's power to recall and correct its invalid orders made in the exercise of its jurisdiction under Article 226; consequently by virtue of Section 151 I have a right to assume that I can make the necessary correction. Mr. Pathak argues that once having held the terms of Section 114 and Order XLVII, Rule 1 as not satisfied I cannot act u/s 151, for that would be tantamount to overriding those provisions.

In reply it is sufficient to point out first, that invoking the aid of one statutory provision does not imply negation of another, and second, that it is well-settled that whereas certain provisions of the Code do not apply to execution proceedings Section 151 can be utilised to do justice in them, so that if one provision does not help, another can be called in aid. It follows that where a wrong order cannot be corrected u/s 114 and Order XLVII, Rule 1, it by no means follows that the correction cannot be made u/s 151. In view of these considerations I am firmly of opinion that for doing justice in the present applications I have the power to act u/s 151.

20. I will now examine some authorities to ascertain the ambit of the power of the Court statutorily recognised by Section 151.

21. *Syud Tuffazal Hossein Khan v. Raghunath Prasad* 14 MIA 40 was a case where a Subordinate Court had annulled an invalid order passed by it directing a sale. The Privy Council held: "To recall and cancel an invalid order is not simply permitted to, but is the duty of a Judge, who should always be vigilant not to allow the act of the Court itself to do wrong to the Suitor."

22. *Debi Bakhsh Singh v. Habib Shah* ILR All 331 (PC), was a case where on the non-appearance of the plaintiff in a suit against the respondent the Deputy Commissioner dismissed it in appeal; the plaintiff was in fact dead at the time the order was made; his son and heir brought these facts to the notice of the Deputy Commissioner, who thereupon set aside his order of dismissal. The Judicial Commissioner reversed his order. Restoring the Deputy Commissioner's order the Privy Council, after referring to Section 151, pointed out that an abuse of the process of the Court had occurred in the course adopted by the Judicial Commissioner and observed : "Quite apart from Section 151, any Court might have rightly considered itself to possess an inherent power to rectify the mistake which had been inadvertently made. But Section 151 could never be invoked in a case clearer than the present, and their Lordships are at a loss to understand why, apart from points of procedure and otherwise, it was not taken advantage of." Special notice should, I think, be taken of the words "Quite apart from Section 151".

23. In *Mt. Jamna Kuer v. Lal Bahadur* AIR 1950 F.C. 131 a review petition had been dismissed by the High Court in spite of its finding that the petitioner was

entitled to a declaration as regards certain properties, on the technical ground that no error on the face of the record was held to be established. Allowing the petitioner's appeal the Federal Court, after narrating the facts, observed : "In this situation it would have been appropriate if the High Court had corrected this error in the review petitionwhether the error occurred by reason of the counsel's mistake or it crept in by reason of an oversight on the part of the Court was not a circumstance which could affect the exercise of jurisdiction of the Court to review its decision.

We have no doubt that the error was apparent on the face of the record and in our opinion the question as to how the error occurred is not relevant to this enquiry". I might add that, although it is, not found stated specifically in the judgment, their Lordships' decision appears to have been made under Order XLVII, Rule 1, but their observations would be equally applicable to cases dealt with u/s 151.

24. Maharaj Bahadur Singh and Others Vs. Surendra Narain Singh and Others, Chatrapat Singh and Others and Mr. A.H. Forbes and Others, and Aziz Ullah Khan and Others Vs. Court of Wards, are Division Bench decisions, the former of the Calcutta High Court and the latter of our Court, laying down that Section 152 does not in any way affect the inherent jurisdiction of the Court u/s 151 and that in the exercise of this jurisdiction the Court can amend a, wrong decree whether or not Section 152 applies.

25. In Parmarath Gir Vs. Krishna Dayal Gir and Others, a Subordinate Judge had passed an incorrect order requiring the personal appearance of the plaintiff on a certain date, and when he did not appear dismissed his suit for want of prosecution; subsequently he restored it. It was argued before a Bench of this Court in Revision that the Judge had no power to restore the suit inasmuch as sufficient cause to the satisfaction of the Judge had not been shown. Overruling the contention the Bench held that "for the revocation of an erroneous order no sufficient cause other than the irregularity of the order itself need be considered, and the Court has inherent power to rectify its own errors inadvertently committed", and it held that the Subordinate Judge could have massed his order either u/s 151 or Order XLVII, Rule 1.

26. In Mt. Champa Devi Vs. Mt. Asa Devi, the trial Court had at first ordered the stay of an entire suit whereas a part of it was maintainable; subsequently it recalled its earlier order. Approving the order of recall a Division Bench of this Court ruled that "a Court has inherent jurisdiction to recall and cancel its invalid orders and this is what the Court below did in the present case."

27. Kamta Chaudhary Vs. Lal Chandra Mool Pratap Bahadur Pal, was a case where a Judge of the Small Cause Court had in the first instance passed a money decree in favour of the plaintiff. Subsequently the defendant brought to his notice that he had been guilty of an obvious mistake in law inasmuch as he had failed to notice that under a certain provision of the Agriculturists' Relief Act every loan

must be evidenced by a written document, which had not been the case; thereupon the learned Judge set aside the decree and dismissed the suit. Upholding his order Allsop J. observed :

"I quite agree that a Court cannot admit an application for review merely upon the ground that it has made a mistake in law, but I think if the mistake is an obvious one due to failure to notice a particular section of an Act, or part of such a section, it would be too much to say that the obvious error could not be corrected by the Court."

28. In emphasising the limitations of the Court's power u/s 151 Mr. Pathak has cited *Ram Sarup Vs. Gaya Prasad Nageshar Prasad Vs. Gudri Lal Narain Das and Another* and *Beni Madho Prasad Singh Vs. Adit and Others*, all three decided by Division Benches of this Court. The first merely lays down that the Court has no inherent jurisdiction to set aside an ex parte decree. In the second a surety bond had been cancelled, and after the expiry of the period of limitation for appeal the decree-holder applied that the order of cancellation be set aside u/s 151; his application was refused by the Court of first instance but was allowed by the lower appellate Court; in second appeal the Bench observed that the order of cancellation of the bond could not be set aside u/s 151 as the party concerned had not pursued his right of appeal or revision. But a reading of their Lordships' judgment shows that the point though raised initially had been given up before them, so that, with respect, they cannot be deemed to have been giving a pronouncement upon the law on the subject. The third was a case where the stage of dating and signing the judgment had never reached, hence the issue regarding the Court's power to reconsider its judgment did not arise. Thus the three cases relied on by Mr. Pathak go nowhere near showing that I am not entitled to exercise my power u/s 151 in the instant case.

29. Finally, Mr. Pathak declared that the State Government by virtue of our Letters Patent and/or Chap. VIII, Rule 5, of our Rules of Court has a right to lodge an appeal against my order, and argues that instead of asking me to recall my wrong order it should pursue its remedy of appeal and the Appeal Court will afford it the relief it deserves. It is no doubt true that, as suggested in *Mt. Abhilakhi Vs. Sada Nand and Others*, the principle underlying Section 114 and Order XLVII apparently is that the power of review can be exercised only where either an appeal is not preferred or is not permitted. But I am not aware of any authority which declares that the exercise of jurisdiction u/s 151 is limited by any such consideration : the aggrieved party is entitled to choose between coming to the original Court u/s 151 or going up in appeal, and its right to adopt the course it chooses cannot be abridged.

30. The state of the law on Section 151, C.P.C. may therefore be summarized thus. The section gives statutory recognition to the inherent power of the Court to make such orders as may be necessary for the ends of justice, and in the absence of any specific law to the contrary the Court is entitled to exercise this power. Indeed, to recall and cancel an invalid order, or an order passed

inadvertently or by oversight, is not simply permitted but is the duty of the Court, which should always be vigilant not to allow any act of itself or any mistake of counsel do wrong to the suitor. How exactly the error has occurred is irrelevant, nor for the revocation of an erroneous order any cause other than the irregularity of the order itself need be considered. A mere mistake of law is normally not a sufficient ground for correcting a wrong order, but if the mistake is an obvious one due to failure to notice a particular piece of legislation the Court has the power to make the necessary correction and should not be hesitant in exercising that power. As to the aggrieved party, it has a right to choose between approaching the Court itself u/s 151 and going to the Court of Appeal (assuming of course that an appeal is maintainable).

31. From the discussion attempted in the foregoing my answer to the question posed in the opening paragraph of this judgment is that the High Court does possess the power to recall and correct an invalid or manifestly erroneous order passed by it in the exercise of its jurisdiction under Article 226 in respect of the enforcement or vindication of civil rights, and that so far as our High Court is concerned this power is derived not from Section 114 and Order XLVII but from Section 151 of the Code.

32. To sum up. Thakur Dan Singh instituted proceedings under Article 226 of the Constitution for enforcing or vindicating his civil rights in respect of some land. Through inadvertence, and in ignorance of a fact, viz., the existence of a subsequent Notification, I passed an invalid order. This order has done a manifest injustice to the State Government and its agents. I am now asked to review and correct it. There is no statutory bar to my doing so; nevertheless I cannot make the necessary correction unless authorised to do so by some Law. The Constitution itself is not such a law, nor are our Rules of Court. But in passing the order I exercised my civil jurisdiction. Consequently the proceedings before me must be governed by the Code of Civil Procedure. My wrong order can prima facie be reviewed u/s 114 and Order XLVII, Rule 1, but the majority decision in *Mt. Abhilakhi Vs. Sada Nand and Others* stands in the way of my doing so. But although those provisions cannot be called in aid, I have not only the power u/s 151 to undo the injustice but I am; bound to do so. No doubt the State Government could have sought relief from the Court of appeal, nevertheless it is equally entitled to approach me u/s 151, and it becomes my duty to do that real and substantial justice for the administration of which alone my Court exists. This compels the recalling of my invalid order.

33. In these circumstances I allow these four applications, set aside my judgment of 28-8-1958 and direct that the four writ petitions of Thakur Dan Singh be restored and decided on the merits. Since my invalid order was due to no one's fault the parties shall bear their own costs of these applications.