
(1963) 12 P&H CK 0004
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1302 of 1961

Deep Chand and Another

APPELLANT

Vs

Additional Director, Consolidation of Holdings, Punjab,
Jullundur, and Another

RESPONDENT

Date of Decision : 19-12-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 3

Citation : (1964) 1 ILR (P&H) 665

Hon'ble Judges : Jindra Lal, J; Harbans Singh, J; Graver, J; Falshaw, J; Dua, J

Bench : Full Bench

Advocate : K.L. Kapur with Mr. M. R. Punj, for Mr. Har Pershad, M/s Subash Chander, Harbhagwan Singh, G.C. Mital and R.S. Mital, for the Appellant; S. M. Sikri, Advocate General, Mr. L.D. Kaushal, Senior Deputy Advocate-General with Mr. Munishwar Puri, for the Respondent No. 1 and Mr. N.S. Keer with Messrs. Kuldip Singh Keer and Daljit Singh Keer, for the Respondent No. 2., for the Respondent

Judgement

Dua, J.—In this case we are called upon to answer the following question :

How far in the present case the Additional Director, Consolidation, was competent to recall or review his orders on the merits in the absence of any statutory provision conferring such power ?

2. Reference to a Bench of five Judges has been necessitated by the fact that doubt was entertained about the correctness of some of the observations contained in Jagir Singh etc. v. The Settlement Commissioner etc (1959) 61 P.L.R. 480 (F.B.) a decision by a Bench of three Judges of this Court.

3. Facts material for our present purpose are clear from the two referring orders and, therefore, need not be stated again. Shri K. L. Kapur, the petitioners' learned counsel, has submitted that, a power of review is not inherent in a quasi-judicial tribunal and like appeals and revisions this power must be conferred by statute. He has, however, conceded the existence of inherent power to recall an

invalid order or an order which is a nullity; it has further been conceded that inherent power to correct clerical or arithmetical mistakes or mistakes arising from accidental slip or omission may also be considered to vest in a quasi-judicial tribunal. In support of his contention, he has, to begin with, relied on *Bajinath Ram Goenka v. Nand Kumar Singh* I L. R. 34 Cal. 677. The facts in that case are that the plaintiff's property was sold for arrears of Government revenue by the Collector of Monghyr and was purchased by defendant No. 2. The plaintiff and his co-sharers appealed to the Commissioner : The plaintiff's appeal was dismissed but that of the co-sharers allowed and the sale set aside. Subsequently, the Commissioner reviewed his order cancelling the sale, and, after setting it aside, affirmed the sale; defendant No. 1 was in consequence put in possession of the property by the Collector. A suit was thereupon instituted challenging the Commissioner's power to review his previous order. The Court of first instance upheld the challenge to the power of review in the Commissioner. On appeal to the High Court, competency of the Commissioner to review his previous order was sought to be supported. The argument apparently urged was that the word "final" in section 25 of Bengal Act XI of 1959 only meant "not open to appeal". The High Court disagreed with the appellant's contention and following a previous decision of that Court in *Lala Pryag Lal v. Jai Narayan Singh* I. L. R. 22 Cal 418, approvingly quoted a lengthy passage therefrom. Only relevant portion may here be reproduced:

I cannot admit that such a power of review is inherent in every Judicial or Revenue Officer. It is a power expressly given by law to Judicial Officers under certain conditions, and therefore, it cannot be assumed that, when not so given, it is inherent in every officer. If this had been so, there need not have been any legislation on the subject. We cannot hold that all this legislation was unnecessary. But in respect of the matters now before us, we find that those portions of the CPC which confer the power to review a judgment and regulate the exercise of such powers have not been extended to proceedings under the Bengal Acts of 1868 and 1880;....

An appeal was taken from this decision to the Privy Council whose judgment is reported as *Bajinath Ram Goenka v. Nand Kumar Singh* I. L. R 40 Cal 552. (P. C.). The learned counsel for the petitioners has referred us to the arguments for the appellant before the Judicial Committee at p. 553 of the report and has pointed out that it was submitted before the Board that every Court had an inherent power to alter on review an erroneous order made by itself, this submission, according to the learned counsel, did not find favour with the Board as is apparent from the brief order. *Ananiharaju Shetty v. Appu Hegade* AIR 1919 Mad. 244, is the next decision cited. At p. 246, *Seshagiri Aiyar J.* has observed as follows :

The last argument related to the inherent power of a judicial officer to review his own judgment. It is settled law that a case is not open, to appeal unless the statute gives such a right. The power of review must also be given by the

statute. Prima facie a party who has obtained a decision is entitled to keep it unsoiled, "unless the Legislature, had indicated the mode by which it can be set aside. A review is practically the hearing of an appeal by the same officer who decided the case., There is at least as good reason for saying that such power should not be exercised unless the statute gives it, as for saying that another tribunal should not hear an appeal from the trial Court unless such a power is given to it by statute.

The learned Judge then referred to some English and Indian decisions in support of his view. The decisions of the Calcutta High Court in the cases of Pryag Lal(supra) and Baij Nath Ram Gaenka (supra) were also noticed by the learned Judge and it was observed that the Board in Baij Nath's case(supra) had also declared in explicit terms that the power to review is not inherent in a Court. Ramachandra M. Deo Garu v. Beero Pollai etc. A. I. R 1636 Mad. 631 (F. B.) has next been cited and reliance has been placed on the following observations at p. 540 :

Generally no Court has got a power of revising its own appellate orders nor has a Court the power of review unless specially conferred on it.

The same view was taken in two later Single Bench decisions of the Madras Court in M. J. Kutinha v. Mrs. Nathal Bai etc.A I. R 1841 Mad. 272 and S.J.S. Fernandas v. V. R. Chetty A. I. R. 1953 Mad. 236. The Bombay High Court has In re Pranlad Krishna Kurne A. I. R. 1951 Bom. 25 (F. B.), also made the following observations at p. 27 :

It is clear that no Court has an inherent power of review. A power of review like a power of appeal must be conferred by statute. As far as the Criminal Procedure Code is concerned, no power of review is given to the High Court in criminal matters, and there is nothing in Article 226 which would induce us to hold that the Constitution has conferred a power upon the High Court of review in matters falling under that Article.

It is true that in that case the precise question before the Court was whether in an application for a writ of habeas corpus under Article 226 of the Constitution it was open to the High Court to reconsider the matter on the same material but the petitioners' learned counsel relies on the observations quoted above as laying down a general principle on the absence of inherent power of review in a Court where the statute does not grant it. Coming to the Patna Court, on behalf of the petitioners, reliance has been placed on two decisions, both under the Motor Vehicles Act. In Ramnath Prasad v. S.T. A. Authority A. I R 1967 Pat 117, a Division Bench of that Court considered it to be well-settled that a power of review is not inherent in any authority. The moment a right to decide is exercised, the authority becomes functus officio, except for the matter of grave clerical errors or mistakes committed by the authority, for which it is responsible. There is, therefore, according to that Court, no inherent power to review apart from the statute, except to correct its own clerical mistake. This decision was

relied on by another Division Bench in Rameshwar Sinha and Another Vs. State of Bihar and Others, From Debi Prasad and Others Vs. Khelawan and Others, , has been cited where a Division Bench observed that as a general rule no Court or Judge has power to rehear, review, alter or vary any judgment or order after it has been entered or drawn up respectively. Reliance for this observation was placed on Halsbury's Laws of England (Hailsham Edition) Vol. 19 p. 260 and Order 20, Rule 3, Civil Procedure Code. After referring to two English decisions and to the decision of the Privy Council in Baij Nath Ram Goenka's case(supra), this rule was stated to be subject to certain qualifications. Briefly stated those qualifications are :

- (a) Before delivering and assigning a judgment the Court can vary its order so as to clarify its intention rendering the language free from doubt.
- (b) The correction of any clerical mistake or error arising from accidental slip or omission so as to do substantial justice and effectuate the Court's meaning and intention.
- (c) If an order or judgment is entered without notice to a party who has a right to be heard, the Court or Judge may set it aside.
- (d) If an order has been signed by inadvertence or failure of memory when it was intended not to be signed, it can be recalled,
- (e) When a decree is passed against a dead person it may be vacated and the case reheard; and
- (f) A Court has larger power of modifying or setting aside interlocutory orders.

After these illustrations, the Court again observed as follows:

It will thus be seen that unless authorized by statute a Court or Judge has no inherent power to set aside or modify a final order once made merely because it is wrong.

The other decisions cited on behalf of the petitioners in support of this proposition are: Rasunddin Mia v. Raisaheb Dr. Hem Chandra Das A. I. R. 1961 Asa 124, V. Kesavan v. K. S. Raghavan etc. A. I. R. 1953 Coc. 488, Puttu Lal Gobind Dass v. Achchey Lal Nandu Lal A. I. R. 1956 V. P. 42, AIR 1941 419 (Lahore) Jamadar Uttam Singh v. Punjab State etc. (1960) 62 P. L. R. 164 and The The Ambala Bus Syndicate Private Ltd. Vs. State Government and Others,

4. Uttam Singh's case(supra) is a Division Bench decision by Bhandari" C. J. and Falshaw J. (as he then was) on Letters Patent Appeal against the judgment of Mehar Singh J. In that case during the course of consolidation proceedings a plot of land was allotted to three persons Ujagar, Raja & Kushia while two plots were allotted to Uttam Singh, Uttam Singh objected to this allotment as his land had been split up into two portions but his objections were overruled by the Consolidation Officer. On appeal by him, the Settlement Officer directed variation in the land allotted to Ujagar, Raja & Kushia who thereupon preferred an appeal

to the Additional Assistant Director but without success, considering themselves aggrieved, they presented two applications to the Minister, Consolidation of Holdings, who forwarded one of them to the Director retaining the other with himself; he also sent for the records. When the Minister visited Hoshiarpur in November, 1957, he afforded a hearing to the landowners concerned in the presence of the Director; On 3rd December, 1957, he forwarded the second application also to the Director asking him to dispose it of u/s 42 of the Consolidation Act after affording the parties concerned an opportunity of hearing. In the result both the applications presented by the said three persons were with the Director in December, 1957. On 26th March, 1958 he dismissed the first application forwarded to him by the Minister by a short order. Later he summoned the parties and after hearing them he set aside the order of the Additional Assistant Director u/s 42 and restored that of the Consolidation Officer with, inter alia, the following observations :

The C. H. M. had heard this case on 29th November, 1957 at Hoshiarpur and had expressed his opinion that it would be better to shift the petitioners to one side of the path as before.

It was this order that was assailed by means of a writ petition and in the course of the judgment, it was observed:

It is impossible to make a broad general statement which is applicable to all administrative tribunals and to all situations as to whether it is or is not within the power of an administrative officer to rehear, to reconsider or to modify an administrative decision made by him.

Be that as it may, the fact remains that even if an administrative tribunal has inherent power to review its own order, it cannot exercise this power arbitrarily and without reason.

6. The first point for decision in the present case is whether the first order passed by the Director can be said to be an order passed u/s 42 of the statute. It is true that section 42 empowers the State Government to call for and examine the record of any case pending before or disposed of by any officer and to pass such order in reference thereto as it thinks fit, but it is not necessary that an order u/s 42 should be passed only after the records have been sent for and examined. It is a matter of everyday experience that Courts of law often dismiss applications for revision summarily without sending for or examining the records. If, therefore, the Director dismissed the respondents' application on the 26th March, 1958 in limine and without examining the records, it cannot be said that his order was void and of no effect. The order dated the 26th March, 1958 was clearly an order u/s 42 of the statute.

7. This brings me to consideration of the second question which has arisen in the present case, namely whether a tribunal constituted by the Act of 1948 has been invested with the power to vacate an order passed by it and to replace it by another order. The answer is clearly in the negative. Even if a tribunal possesses

some inherent power, the Director has given no reason for recalling his previous order and for passing a new one.

It appears that the Full Bench decision in Jagir Singh's case (supra) which had been decided on 2nd February, 1959 was not brought to the notice of the Division Bench. In The Ambala Bus Syndicate case (supra), I was called upon to consider the power of review in the tribunals constituted under the Motor Vehicles Act. Some of the cases cited before us in the instant case were also brought to my notice including the Full Bench decision in Jagir Singh's case (supra). Although I felt that some of the observations contained in Jagir Singh's case (supra) were too widely expressed, yet as I was disallowing the writ petition on another ground, I did not suggest reference to a larger Bench. I, however, did observe that orders which are ultra vires and without jurisdiction are ordinarily considered as nullities and it is never too late to give effect to the plea that they are void." But orders not so vitiated become final and to permit all such orders to be varied or reversed on the merits whenever a quasi-judicial tribunal chooses to do so was with respects considered by me to be a doubtful proposition. To accede to such an unqualified power without statutory sanction was, in my view, volatile of the rule which attaches finality to litigation and controversies before judicial and quasi-judicial tribunals. The petitioners have also drawn our attention to a recent Supreme Court judgment in Roop Singh v. State of Punjab (1963) 65 P. L. R. 576 S C, according to which when Government delegates its power under East Punjab Act 50 of 1946 to an officer and that officer in pursuance to such delegation hears an appeal and makes an order, the order of the officer is considered as the order of the Government and the Government cannot interfere with it under section, 42 of the Act, This decision has been pressed into service by the petitioner's learned counsel for the limited submission that the, order of the Government there was not sought to be supported on the basis of an inherent power of review vesting in the Government.

5. Shri Kapur has also made a reference to Halsbury's Laws of England, 3rd edition, Vol. 22, paragraph 1665 at p. 785, where it is stated that as a general rule, except by way of appeal, no Court, Judge, or master has power to rehear, review, alter, or vary any judgment or order after it has been entered or drawn up respectively, either in an application made in the original action or matter, or in a fresh action brought to review such judgment or order. The object of the rule is to bring litigation to finality but it is subject to a number of exceptions. According to the learned counsel, the case in hand does not fall under anyone of the exceptions illustrated there. A passing reference has also been made to Daryao and Others Vs. The State of U.P. and Others, , for the proposition that the rule of res judicata is not a technical rule but is based on public policy and that it is in the public interest that individuals should not be vexed twice over with the same kind of litigation, the contention being that unless a power is specifically conferred there should be no review of orders finally determining the controversies, and that the inherent or implied power of review would be volatile of this rule.

6. The petitioners' counsel has further submitted that *Aijaz Ahmad v. Nazirul Husan* etc. AIR. 1935 All 268, from which Dulat J. who prepared the judgment of the Full Bench in *Jagir Singh's* case(supra) quoted a passage, does not lay down or support the broad proposition considered by the Full Bench to have been enunciated in that decision. Similarly, the Supreme Court decision in *Keshardeo Chamria v. Radha Kissen Chamria* etc. A. I. R. 1953 S. C. 28, it has been contended, does not approve any such broad proposition.

7. The learned Advocate General has in reply expressed his inability to support the existence of any general power of review as the passage from the Full Bench decision in *Jagir Singh's* case(supra) quoted in the referring order seems to convey, and has indeed frankly conceded that there is no basis for the existence of any such general and unqualified inherent power of review. An officer discharging quasi-judicial functions, it is agreed, cannot review any and every erroneous order merely or solely because it is later considered to be wrong on the merits but, asserts Mr. Sikri, that an inherent power to recall an erroneous order does vest in such an officer, the contention being that to recall an erroneous order is not to review the order but to exercise a different jurisdiction or power. It has further been contended that, in any event, there are several exceptions to the rule against the existence of an inherent power of review. The instant case, according to the counsel, falls within those exceptions. He too has relied for his submission on para 1665 of Vol. 22 of Halsbury's Laws of England (Simonds Edition). In addition, reference has been made to two Indian and one English decisions. In *re. S. N. Komarasawami* A. I. R. 1951 Mad. 767, a Division Bench laid down that a quasi-judicial tribunal like the Rent Controller or the appellate tribunal has an inherent power to set right mistakes made by inadvertence so long as the amendment does not amount to a review of the adjudication already made. In *Shib Prosad Mondal Vs. The State of West Bengal and Others*, , a case concerned with Motor Vehicles Act, a learned Single Judge observed as follows :

In my opinion it is unnecessary to draw a close parallel with judicial proceedings. The R. T. A. carries out duties which are administrative but in certain respects of a quasi-judicial nature. I do not see why, when it finds that an order has been made inadvertently overlooking that the law had meanwhile been changed, that order cannot be rectified. All that the R. T. A. purported to do was to rectify a gross mistake which appeared on the face of the proceedings. It is not to be considered with the same strictness and formality as a review in a purely judicial proceeding. I should think that for an administrative body sometimes carrying out quasi-judicial functions, there is an implied power to rectify such mistakes.

The third case cited is *Thynne v. Thynne* (1955) 3 A E R. 129, a decision by the Court of appeal in a divorce matter. We have been referred to p. 145 where the following observations of Evershed L. J., in *Meier v. Meier* (1948) P. 95 are reproduced with approval :

I prefer not to attempt a definition of the extent of the Court's inherent

jurisdiction to vary, modify or extend its own orders, if in its view the, purpose of justice require that it should do so.

And also where Morris L. J., has without categorizing or indicating limits, mentioned some illustrations in regard to the Court's powers. Main reliance has been placed by Mr. Sikri on the language of the illustrations a) and (b) in which in addition to reliance on. R. S. C, Ord. 28, r. 11, for the power to correct clerical mistakes and errors arising from accidental slip or omission, the Court is also stated to possess inherent powers for this purpose. The counsel has further contended that such inherent power cannot be exhaustively defined and, even though he has not been able to lay his hand on any reported precedent similar to the instant case, he has, nevertheless, asserted that the present is a case in which the exercise of the Court's inherent power of review is called for.

8. The contention that power to recall an erroneous order is distinct and different from power of review and is, therefore, inherent in every quasi-judicial tribunal, is supported neither by statute nor by any recognised principle or precedent, and indeed the difference appears to be too tenuous to form the basis of a sound argument. In the absence of statute, persuasive principle or binding authority I am, as at present advised, unable to persuade myself to sustain the bald contention, for, in my view, power to recall an order like the one before us is only another name for the power to review it, and, therefore, cannot be claimed as a separate and distinct jurisdiction as suggested.

9. I am also of the view that neither para. 1665 of Halbury's Laws of England, Vol. 22, nor the ratio of the decided, cases relied upon by Shri Sikri support his contention. Para. 1665 occurs in sub-section (i) of section (2) headed "Amendment and setting aside judgments or orders." The preceding para 1664 speaks of amendment before judgments or orders are drawn up; according to this para on discovering that an oral and imperfect order was outside the Judge's jurisdiction, he has power to withdraw it. Para 1665, as the marginal heading suggests deals with amendment of judgments and orders after they are drawn up and it unequivocally lays down the- general rule to be against the power to rehear, review, alter or vary any judgment or order after it has been entered or drawn up, the object of this rule apparently being to bring litigation to finality. That quasi-judicial tribunals are also governed by this general rule is not disputed before us. On behalf of the petitioners also it has been conceded that in case of orders which are invalid or void they may be set aside and to this extent the exception to the general rule has not been questioned by the petitioner's learned counsel. The short question on which, on this view, the controversy centers is, whether the impugned order in the instant case is invalid or void and whether there is any further exception to the general rule against the existence of the inherent power of review, and if the impugned order is covered by it.

10. Shri Sikri has urged that there are other exceptions to the general rule prohibiting review. According to him, an order of summary dismissal can always be recalled because it cannot be described to be an order on the merits. Whether

or not this broad and unqualified contention, so put, is right does not call for considered determination, because in the instant case the Director, Consolidation has actually passed an order on 27th June, 1957 after calling for a report from the Settlement Officer, and, as his order clearly shows, it was in the light of the position disclosed in the Settlement Officer's report that the final order was made.

This order is in the circumstances clearly one passed by the Director after going into the merits and, being final, could only be set aside either on appeal or revision or review in accordance with the statutory provisions. It is not contended and indeed is not possible to contend that this order is a nullity being void and can, therefore, be ignored as nonest.

11. At this stage I may point out that O. 28 r. 11 of the rules of the Supreme Court is identical with section 152, C. P. C, but neither the language of this section nor the rule embodied in it is claimed to be applicable to the case in hand. The observations from the decision in Meier's case(supra) reproduced in Thynne's case(supra) must also, in my opinion, be read in their own context. The short point which arose in that case was whether the decree absolute could be set aside and appeal against the decree nisi re-instated on the ground that failure to furnish the requisite security had been due to mistake on the part of the appellant's solicitors. The head-note in that case Which illustrates the position, is in the following terms :

A wife who had obtained a decree nisi for divorce against her husband applied for an order for security of her costs of an appeal by her husband and the court of appeal directed that security should be provided by a specified date and that in the event of failure by the appellant to provide security, the appeal should stand dismissed. Owing to a mistake on the part of the appellant's solicitors, payment of the security, was not made by the date ordered, with the result that the appeal against the decree nisi stood dismissed, and in due course the decree was made absolute. On learning the facts the appellant applied to the Court of appeal to set; aside the decree absolute and re-instate the appeal.

Held, that there was no power in the Court by virtue of its inherent jurisdiction or otherwise to set aside the decree absolutely and re-instate the appeal. Per Somervell L. J. There is no authority under which the Court has jurisdiction to deprive a party "of rights which he has lawfully acquired under an order of the Court in circumstances of complete regularity on his part.

It is obvious that the observations of Evershed L. J. are authority for the broad proposition canvassed on behalf of the respondents before us. Judicial authority, it may be observed, belongs not to the exact words used in a Judgment taken out of the context but to the principle accepted and applied as necessary ground for decision. The passage quoted by the respondents' learned counsel does not, in my opinion, contain any such principle and is thus of no assistance to him.

12. Section 151, C. P. C, undoubtedly reserves to the Court the inherent power

to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court but this power, though undefined, and rightly so, in my opinion, cannot be utilised for permitting a judicial or a quasi judicial tribunal to vary and alter any order passed by it on the ground that it is later considered to be erroneous on the merits as indeed the existence of such wide power is rightly not canvassed by the learned Advocate General.

13. It is, in my opinion, profitable here to refer to a recent decision of the Supreme Court in *Mrs. V. G. Peterson v. O. V. Forbes etc.* A I. R. 1963 S. C 692 and reproduce the following instructive observations:

When, however, we find that the Court acted without jurisdiction in attaching the property and in any, case, in ordering such property to be handed over to Government we have to remember the other great principle which was stated many years ago in these words by Cairns, L. C. in *Rodger v. Comptoir D'Escompte de Paris* (1871) 3 P. C. 455, at p. 475 :

One of the first and highest duties of all courts is to take care that the act of the Court does no injury to any of the suitors To say that, we are aware, is not to say that whenever a Court after wrongly deciding a case between two parties discovers that the decision was wrong it has the inherent jurisdiction to re-open the matter and to set matters right by altering the decision. In many cases when the Court had made a mistake the party who has suffered for that mistake is without any remedy except what he can get in accordance with the provisions of appeal, revision or review. As the Courts are careful to point out again and again, Courts of Law have the jurisdiction to decide wrongly as well as rightly and the mere fact that the decision is wrong does not give a party a remedy.

These observations, in my opinion, clearly negative any inherent power or jurisdiction in a judicial, and if I may say so with respect, also in a quasi-judicial tribunal, to re-open a decided cause and set matters right by altering the decision merely on discovering an error in it on the merits.

14. To concede such a wide power of review would, in my opinion, introduce into judicial and quasi-judicial decisions, disconcerting element of permanent uncertainty and unpredictability tending to give an impression of quasi-judicial lawlessness, which I cannot persuade myself to uphold. If Courts do not possess such a wide and sweeping power, it is difficult to accede such a wide power in statutory judicial or quasi-judicial tribunals.

15. The case of void orders, or orders which are without jurisdiction certainly stands on a different footing. It has often been said that an order which is a nullity or which is invalid does not require to be set aside and may be properly ignored, for, it is not only bad but is incurably bad. It is automatically null and void without more ado, though it is sometimes convenient to have it declared to be so. Again, power to correct apparent clerical or similar mistakes may also be presumed, but only if they do not affect the substance of the decision : otherwise there can be no power of review on the merits except to the extent that the

statute confers it. Adverting for a moment to the question of the inherent power to save the suitors from the Court's own mistakes, two recent decisions of the Supreme Court may profitably be referred to as illustrative of this power. In *Shivdeo Singh and Others Vs. State of Punjab and Others*, on a writ petition by "A" for cancellation of the order of allotment passed by the Director of Rehabilitation in favour of "B", G. D. Khosla J. (as he then was) had cancelled the order, though "B" was not a party to the writ proceedings. Subsequently on "B" 's filing a petition under Article 226 for imp leading him as a party to "A" 's writ petition and re-hearing the whole matter, Khosla J. allowed his petition, On appeal, the Letters Patent Bench also affirmed this order. The Supreme Court on further appeal observed that there was nothing in Article 226 to preclude a High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. The Court then proceeded to observe :

Here the previous order of Khosla, J., affected the interests of persons who were not made parties to the proceeding before him. It was at their instance and for giving them a hearing that Khosla, J., entertained the second petition. In doing so, he merely did what the principles of natural justice required him to do. It is said that the respondents before us had no right to apply for review because they were not parties to the previous proceedings. As we have already pointed out, it is precisely because they were not made parties to the previous proceedings, though their interests were sought to be affected by the decision of the High Court, that the second application was entertained by Khosla, J.

In *Jang Singh v. Brij Lal etc.* 65 P. L. R. 884 (S. C.), C. A. 687 of 1962, another decision by the Supreme Court (on appeal by special leave from the judgment and decree of this Court) a compromise pre-emption decree was secured by Jang Singh who was directed to deposit by 1st May, 1958 Rs. 5,951/-less Rs. 1000/-, already deposited by him, failing which his suit was to stand dismissed. On 6th January, 1958 he applied to the Court for making the deposit. The Clerk of the Court, which was also the executing Court, prepared and handed over to the decree-holder, who was admittedly illiterate, a challan for depositing Rs. 4,950/- in the bank; the correct amount, however, was Rs. 4,951/-. Jang Singh deposited Rs. 4,950/- on the same day. On his application for possession in May, 1958, the Naib Nazir reported that the entire amount had been deposited in Court. On application by the vendee for payment of the deposit to him, the Naib Nazir reported that the deposit made was short by Rs. 1/- with the result that the vendee prayed for the dismissal of the suit. The trial Court dismissed it but the first appellate Court on taking some evidence relieved Jang Singh, holding that he had been prevented from depositing the full amount by the act of the Court. Second appeal from this decree was allowed by a learned Single Judge of this Court holding that the finding of the Court of first appeal was unsupported by evidence. On appeal with special leave, the Supreme Court reversed the decision of this Court. Hidayatullah J., who prepared the judgment of the Bench, spoke thus :

This challan is admittedly prepared by the Execution Clerk and it is also an admitted fact that Jang Singh is an illiterate person. The Execution Clerk has deposed to the procedure which is usually followed and he has pointed out that first there is a report by the Ahlmed about the amount in deposit and then an order is made by the Court on the application before the challan is prepared. It is, therefore, quite clear that if there was an error the Court and its officers largely contributed to it. It is no doubt true that a litigant must be vigilant and take care but where a litigant goes to Court and ask for the assistance of the Court so that his obligations under a decree might be fulfilled by him strictly, it is incumbent on the Court, if it does not leave the litigant to his own devices to ensure that the correct information is furnished. If the Court in supplying the information makes a mistake the responsibility of the litigant, though it does not altogether cease, is at least shared by the Court. If the litigant acts on the faith of that information the Court cannot hold him responsible for a mistake which it itself caused. There is no higher principle for the guidance of the Court than the one that no act of Courts should harm a litigant and it is the bounden duty of Courts to see that if a person is harmed by a mistake of the Court he should be restored to the position he would have occupied but for that mistake. This is aptly summed up in the maxim :

"Actus curiae naminem gravabit".

In the present case the court could have ordered Jang Singh to make the deposit after obtaining a certified copy of the decree thus leaving it to him to find out the correct amount and make the correct deposit. The Court did not do this. The Court, on the other hand, made an order and through its Clerk prepared a challan showing the amount which was required to be deposited. Jang Singh carried out the direction in the order and also implicit in the challan, to the letter. There was thus an error committed by the Court which the Court must undo and which cannot be undone by shifting the blame on Jang Singh. To dismiss his suit because Jang Singh was also partly negligent does not exonerate the Court from its responsibility for the mistake. Jang Singh was expected to rely upon the Court and its officers and to act according to their directions. That he did so promptly and fully is quite clear. There remains, thus, the wrong belief induced in his mind by the action of the Court that all he had to pay was stated truly in the challan and for this error the Court must take fully responsibility and it is this error which the Court must set right before the suit of Jang Singh can be ordered to be dismissed." and a title lower down again :

* * * the only conclusion that can be reached is that Jang Singh relied upon what the Court ordered and the error, if any, was substantially the making of the Court. In these circumstances, following the well accepted principle that the act of Court should harm no one, the District Judge was right in reversing the decision of the Sub-Judge, Sirsa.

The observations in these decisions though relate to courts, may on general principles equally apply to judicial and quasi-judicial tribunals. These decisions

illustrate the narrow and restricted limits within which the inherent power of relieving suitors from the mistakes of Courts may legitimately be invoked for promoting the cause of justice which, according to our system, is administered according to law : they clearly do not lend any support to the broad and unqualified proposition that Courts are empowered to recall or review their Earlier erroneous and unjust orders whenever it is discovered that the error was due to their own mistaken view on the merits of the controversy, and the observations in Mrs. Peterson's case(supra) clearly seem to negative it. I may observe that it is not claimed that judicial and quasi-judicial tribunals possess, in this respect, any wider or more extensive inherent power than the Courts. Speaking with all respect, therefore, I do venture to think that the observations in the Full Bench decision in Jagir Singh's case (supra) reproduced in the referring order of the Division Bench dated 23rd August, 1963 are too broadly worded and do not represent the correct exposition of law.

16. In the light of the foregoing discussion, in my opinion, the Additional Director was not competent to recall or review his orders on the merits in the case in hand and I would answer the question accordingly. In the circumstances of the case, there would be no order as to Costs.

Graver, J.

I agree.

Jindra Lal, J.

I agree.

Falshaw, C.J.

I agree.

Harbans Singh, J.

I agree.