

(1987) 01 PAT CK 0015

In the Patna High Court

Case No : Civil Writ Jurn. Case No's. 1583 of 1981 and 170 of 1986

Ram Kishun Mandal and etc.

APPELLANT

Vs

State of Bihar and Others etc.

RESPONDENT

Date of Decision : 05-01-1987

Acts Referred:

Bihar Tenancy Act, 1885 — Section 103A, 103A(1), 103A(4), 104G
Bihar Tenancy Rules, 1886 — Rule 2, 63A

Citation : AIR 1987 Patna 250 : (1987) 35 BLJR 415 : (1987) PLJR 291

Hon'ble Judges : S.S. Sandhawalia, C.J.; S. Shamsul Hasan, J.; Lalit Mohan Sharma, J

Bench : Full Bench

Advocate : Rana Pratap Singh, No. 2, Arun Kumar Singh, No. 3, Shambhunath Mishra, in CWJC No. 170/86 and S.K. Mishra, in CWJC No. 1583/81, for the Appellant; Parmeshwar Prasad Sinha, Anant Prakash Sahay, Upendra Prasad Sinha, Shyamdeo Roy and Shambhu Nath Singh, (in CWJC No. 170/86), Ram Janam Maharaj, (for No. 1 in CWJC No. 1583/81) and Jagannath Jha, Standing Counsel I, for the Respondent

Judgement

S.S. Sandhawalia, C.J.—The three significant issues arising for adjudication by the Full Bench on a reference in this set of two connected civil writ jurisdiction cases may well be succinctly formulated in the terms following :--

1. Whether an appeal against an order u/s 103A(1) of the Bihar Tenancy Act, 1885 is still maintainable despite the deletion of Sub-section (4) thereof by the amending Act 7 of 1969 because of the continuance of Section 63-A(b) and (c) of the Bihar Tenancy Rules?
2. Whether an appeal against an order u/s 103A(1) of the Bihar Tenancy Act is equally envisaged by Section 104-G of the said Act?
3. Whether the revenue officer specially empowered by the State Government can, u/s 103-A(3) of the Bihar Tenancy Act, exercise an inherent power to review his own decision till the final publication of the record of rights?

2. The matrix of facts necessary for the decision of the aforesaid pristinely legal questions may be noticed with relative brevity from CWJC 170 of 1986 (Ram Kishun Mandal v. The State of Bihar and others). The lis therein arises from a number of khatas concerning various parties. The names of respondents 5 to 12 were recorded in the record of rights during the recent survey operation which led the petitioner to file an objection u/s 103-A(1) of the Bihar Tenancy Act, 1885 (hereinafter referred to as the "Act") before the Assistant Settlement Officer who rejected the same. Aggrieved thereby, the petitioner preferred a survey revision before the Court of the Survey and Settlement Officer, Darbhanga, which was later allowed by a common order dt. 26th June, 1978 in favour of the petitioner with a direction that a khata of concerned lands be prepared as per the claim of the petitioner. The respondents, however, filed ten appeals before the learned Commissioner, Darbhanga Division, against the said order of the Survey and Settlement Officer, dt. 26th June, 1978. Thereon the learned Commissioner (vide his order, Annex. 2) held that by virtue of the deletion of Sub-section (4) of Section 103-A(1) of the Act by amending Act 7 of 1969 no appeal now lay against the order u/s 103-A(1). He also noticed that an anomaly had been created by the continuance of Sub-rules (b) and (c) of Rule 63-A of the Bihar Tenancy Rules (hereinafter called the "Rules"), and a reference has been made to the Government to delete that portion of the rule. However, despite the non-maintainability of the appeal, he made the following observations : --

"In the circumstances no appeal can lie before the present court. However, I feel that as the case is made out by the learned lawyer, some points are worth considering. The Settlement Officer can entertain such petition u/s 103A(3) of the Bihar Tenancy Act as revision. The party may go to the Settlement Officer in revision accordingly."

Armed with the aforesaid observations, respondents 5 to 12 then filed a petition before the Settlement Officer, Darbhanga. On behalf of the petitioner strenuous objection was raised that despite the observation of the learned Commissioner no further review or second revision of an order u/s 103 A(1) was maintainable. Vide Annex. 3, the learned Settlement Officer rejected the objection and directed the revision to proceed.

3. The petitioner then preferred the present petition invoking the constitutional jurisdiction of the Court that the Settlement Officer could not revise his order a second time and there was no power of review granted by the Statute. This petition originally came up before my learned Brother, S. Shamsul Hasan, J. before whom firm reliance was placed on *Devendra Pd. Gupta v. State of Bihar* 1978 BUR 87 : AIR 1978 Pat 166 and *State of Bihar v. Ram Dayal Missir* 1962 BUR 385 . However, expressing some doubt about the correctness of the view taken therein he referred the matter to a Division Bench which, in turn, has made the present reference to a larger Bench. In the connected case --CWJC 1583 of 1981 (*Chandra Kant Yadav and others v. Kari Mukhiya and others*) identical issues arose and it was consequently directed to be heard along with

CWJC 170/86. That is how these matters are before us.

4. As is somewhat plain, questions Nos. 1 and 2 posed at the very outset are so interlinked and intertwined that it is apt to deal with them together in order to avoid any unnecessary repetition or overlapping. Herein the matter turns largely on the changes wrought in Section 103-A and before construing the same, as it stands, today, it becomes inevitable to look at the legislative history of the provision. Section 103-A, was itself introduced in the Act way back by Bengal Act III of 1898. Prior to 1963 it consisted of three sub-sections. By Act 1 of 1963 Sub-section (3) was substituted by a fresh provision and a new Sub-section (4) was added and the original Sub-section (3) was made Sub-section (5). The newly added Sub-section (4) was as follows : --

"An appeal shall lie, in the prescribed manner and to the prescribed officer from any order passed under Sub-section (3)."

Patently to effectuate the purpose of this subsection Rule 63-A was added in the Rules by a notification dt. 9th Sept., 1963. In the year 1967 the aforesaid Sub-section (3) was again amended by Act 1 of 1967. The main difference appears to be only this that for filing a revision the period of limitation of three months was prescribed. It would, however, appear that second thoughts arose later with regard to the additional remedy provided by way of appeal by the insertion of Sub-section (4) earlier. These are well exhibited in the Objects and Reasons of the Bihar Tenancy (Amendment) Act, 1969 (7 of 1969), the relevant portion whereof is as under : --

"With a view to making available institutional credit to such persons, it is further considered necessary to delete Sub-section (4) of Section 103A of the Bihar Tenancy Act so that the record-of-rights are prepared expeditiously. This sub-section was inserted by the Bihar Tenancy (Amendment) Act, 1962 (1 of 1963) by providing an additional right of appeal before finalisation of the record-of-rights. As there is already a provision for appeal u/s 104G, experience has shown that the additional right of appeal provided under Sub-section (4) of Section 103A of the Bihar Tenancy Act has unduly delayed finalisation of record-of-rights."

It was in the light of the above that the amending Bill, when enacted as amending Act 7 of 1969, totally deleted Sub-section (4) of Section 103-A, which had been earlier inserted therein in 1963.

5. The stage is now set for reading the relevant statutory provisions around which the controversy revolves : --

"103A. Preliminary publication, amendment and final publication of record-of-rights. -

(1) When a draft record-of-rights has been prepared, the Revenue Officer shall publish the draft in the prescribed manner and for the prescribed period, and shall receive and consider any objections which may be made to any entry therein, or to any omission there from during the period of publication.

(2) (Omitted by Section 4 of the Bihar Tenancy (Third Amendment) Ordinance, 1974).

(3) Revenue Officer specially empowered by the State Government in this behalf may, on application made to him within three months of any order or decision on any objection made under Sub-section (1) or on his own motion after giving reasonable notice to the parties concerned to appear and be heard in the matter, revise, at any time before the final publication of the record-of-rights, any such order or decision whether made by himself or by any other Revenue Officer.

(4) (Omitted by Section 4 of the Central Act VII of 1969 and/or Section 4 of Bihar Act 10 of 1976).

"104-G. Appeal to, and revision by superior Revenue authorities.-- (1) An appeal if presented within two months from the date of the order appealed against, shall lie from every order passed by a Revenue Officer prior to the final publication of the record-of-rights on any objection made u/s 104-B, Sub-section (3), or Section 104E; and such appeal shall lie : to such superior Revenue authority as the State Government may by rule prescribe.

(2) The Board of Revenue may, in any case under this Part, on application or of its own motion, direct the revision of any record-of-rights or any portion of a record-of-rights at any time within two years from the date of the certificate of final publication :

Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter."

Rule 63A of the Rules-

"63A.-- Revision of entry in the draft record-of-rights, order or decision and appeal against order passed under Sub-section (3) of Section 103A.-- (a) Before revising under Sub- section (3) of Section 103A, any entry in the draft record-of-rights or any order or decision, the Revenue Officer specially empowered by the State Government in this behalf shall hear the parties concerned and for that purpose cause to be served on them a notice, containing the particulars of the entry, order or decision proposed to be revised, at least fourteen days before the date fixed for hearing.

(b) Every appeal, against an order passed under Sub-section (3) of Section 103 A shall be preferred within thirty days from the date of the order.

(c) If the order under Sub-section (3) of Section 103A was passed by an Asstt. Settlement Officer, the appeal wilt lie to the Settlement Officer or to the Charge Officer and if the order was passed by the Settlement Officer or the Charge Officer, the appeal shall lie to the Commissioner of the Division.

6. In the light of the aforesaid legislative history and the somewhat clear legislative result there from, the learned Counsel for the respondents was himself fairly lukewarm in maintaining the uphill, if not impossible, stand that despite the

express deletion of Sub-section (4) from Section 103-A, the right of appeal would still survive by the mere continuance of Rule 63-A. It is somewhat elementary that an appeal is the creature of the statute and there is no inherent or vested right thereto. As noticed above, this right of appeal u/s 103-A was, in terms, conferred by the insertion of Sub-section (4) therein and equally taken away by its subsequent deletion there from. Therefore, if the very fountainhead of the right of appeal is obliterated from the section, it cannot possibly survive by the mere continuance of a procedural provision in subordinate legislation which might have inadvertently missed amendment. The intent of the legislature in repealing Sub-section (4) seems to be too patent and cannot possibly be overridden by any lacuna in not repealing the relevant provision of Rule 63-A simultaneously.

7. The learned Commissioner, in Annexure 2, himself noticed that a reference has been made to the Government to rectify the anomaly that Clauses (b) and (c) of Rule 63-A still continue whilst the right of appeal has itself been taken away. A request had been made to delete the aforesaid provision of the rule as well. This oversight has since been corrected. Thus, the intention of the legislature becomes clear from the fact that by a notification duly published in the official gazette Clauses (b) and (c) of Rule 63-A have been deleted. The said notification reads as follows : --

"The 11th April, 1984

G.S.R. 7. In exercise of the powers conferred by Section 189 of the Bihar Tenancy Act, 1885 (Act VIII of 1885), the Governor of Bihar is pleased to make the following amendment in the Rules made under the said Act.

AMENDMENT

Amendment of Rule 63-A of the Rules made under the Bihar Tenancy Act, 1885 (Act VIII of 1885) :-

(a) Title of Rule 63-A shall be substituted in the following manner : --

"Revision of entry in the draft record of rights, order or decision under Sub-section (3) of Section 103-A".

(b) Sub-rules (b) and (c) of Rule 63-A shall be omitted,"

The aforesaid amendment is obviously declaratory by way of abundant caution, because, as noticed earlier, the very fountain-head of the right of appeal had been earlier obliterated by the deletion of Sub-section (4) of Section 103-A. It is well to remember that Rule 63-A with Sub-rule (clause) (a) is still there in statute and is being maintained.

8. On legislative history, principle as also language of the relevant statutory provisions, there appears to be nothing whatsoever to sustain the stand that the right to appeal would still survive after the deletion of Sub-section (4) by the mere accident or the omission of the continuance of the relevant part of Rule 63-

A for some time.

9. However, since the whole controversy herein stems from the observation of the view taken by the Division Bench in *Devendra Prasad and Others Vs. State of Bihar and Another*, it becomes necessary to examine the three-fold reason which impelled it to arrive at the conclusion which it did. Firstly, the view taken by the Division Bench as is manifest from para 5 of the report appears to be that the Objects and Reasons of the amending Act 7/69 indicated that the right of appeal was not being taken away because it already existed u/s 104-G of the Act and the continuation of Rule 63A. This reasoning to my mind, with the greatest respect, emanates from a misconstruction of the relevant part of the Objects and Reasons appended to the Bill. These have already been quoted earlier in para 4. A reference thereto would show that it is plain therefrom that it has been said in unequivocal terms that experience had shown that the additional right of appeal under Sub-section (4) of Section 103-A of the Bihar Tenancy Act had unduly delayed the finalisation of the record of rights. The amending Bill was thus intended to speed up the somewhat tardy pace of the proceedings because of the existing right of appeal. Far from opining that a right of appeal against an order u/s 103-A existed u/s 104-G, the import was clear that the right earlier conferred was being taken away. Therefore, the initial error of reasoning underlying the judgment appears to be a misconstruction of the Objects and Reasons of the Bill. Even otherwise it is well settled that the Objects and Reasons are only an aid to the construction and a statute may undergo a metamorphosis during its passage in the legislature. Where the language of the statute is clear and categorical, the same cannot be nullified by what might, at the initial stage, have been the views of the proposer of the Bill in introducing it in the legislature. Consequently, when in express terms a right of appeal conferred earlier had been taken away by repealing and deleting Sub-section (4), it would not be easily possible to construe it to the contrary on the basis of any subsidiary aid of construction. With the greatest deference, this aspect of the judgment in *Devendra Pd. Yadav's* case (*supra*) is not sustainable.

10. Secondly, the Division Bench relied on the continuance of Rule 63-A for its view that the right of appeal would continue when read with Rule 76 and attempted to harmonise the patent conflict arising in view of the different periods of limitation prescribed. This aspect has already been elaborately dealt with above in paras 6 to 8 of the judgment. As noticed earlier, this portion of the controversy is now conclusively set at rest by the subsequent amendment of Rule 63-A and the deletion of Clauses (b) and (c) thereof leaves no doubt about the legislative intent.

11. Lastly, it seems to be the admitted position that the Division Bench was misled by a printer's error in an unauthorised publication of Section 104-G. It is apparent from a reading of the judgment that Section 104-G was construed as employing the word "or" and not the word "on", in the 4th line of its Sub-section (1). It was common ground before us that in the authorised version of the

section the word employed therein is "on" and not "or". Once that is so, the very bottom of the reasoning of the Division Bench holding that Section 104-G authorises an appeal from every order passed by a Revenue Officer prior to the final publication of the record of rights and would include even an order under Sub-section (3) of Section 103-A would fall to the ground. On the basis of the authorised version of Section 104-G and the word employed being "on", it is plain that it envisages appeals only against orders passed by a Revenue Officer on any objection made u/s 104-B, Sub-section (3) or Section 104-E. Section 104-G thus does not even remotely make any mention of Section 103 or any appeal against orders passed in any one of its subsections.

12. That the misprint of an unauthorised version of Section 104-G and the consequential error was there is manifest from the admission order in C.W.J.C. No. 1583 of 1981 (Chandra Kant Yadav v. Kari Mukhiya). This order was passed by the Motion Bench to which N. P. Singh, J. who had prepared the judgment in Devendra Prasad and Others Vs. State of Bihar and Another, , was himself a party. It observed in the said order as follows : --

"It was urged that if word "on" is read in that section, then such appeals are limited only against the orders passed on any objection made u/s 104B, Sub-section (3), or Section 104E. In our opinion, if really in that section word "on" has been used, then the matter requires further examination."

Before us it is now no longer in dispute that the authorised version of Section 104-G employs the word "on". It necessarily follows that the observation of the Division Bench earlier was thus rested on a manifest printing error.

13. In the light of the aforesaid discussion, it is somewhat plain that the rationale of the Division Bench in Devendra Prasad and Others Vs. State of Bihar and Another, cannot be supported. With the deepest deference, the judgment does not lay down the law correctly and has, therefore, to be overruled. .. -

14. To finally conclude on this aspect, the answer to question No. 1 posed at the outset is rendered in the negative and it is held that an appeal against an order u/s 103-A(I) of the Bihar Tenancy Act is not maintainable in view of the deletion of Sub-section (4) thereof by the amending Act 7 of 1969. The answer to question No. 2 is rendered in the negative and it is held that an appeal against an order u/s 103-A(I) of the Act is not envisaged u/s 104-G of the said Act.

15. As regards question No. 3, no serious controversy could be raised with regard thereto in view of binding precedent on the point. Way back in 1957 BLJR 292: Ramdayal Missir and Others Vs. The State of Bihar and Others, an identical issue arose which was authoritatively answered by Ramaswami, Chief Justice speaking for the Division Bench as under : --

"On an examination of the language of these provisions it is manifest that the Settlement Officer has not been expressly granted the power of review of an order passed by the Assistant Settlement Officer u/s 103A of the Bihar Tenancy

Act."

The aforesaid judgment was challenged by way of appeal and the Constitution Bench affirming the High Court in 1962 BLJR 385 (SC) (State of Bihar v. Ram Dayal Missir) held as under : --

"In the very nature of things, proceedings under the provisions of the Bihar Tenancy Act like the one before us, do not admit of review under the provisions of Order XLVII of the Civil P.C which apply to "decree or orders" of a kind different from orders passed by an Assistant Settlement Officer or a Settlement Officer during, the course of preparation of Record of Rights, which has no finality in so far as the question of title is concerned. It must, therefore, be held that neither in express terms nor as officers discharging quasi-judicial functions have the Settlement or the Assistant Settlement Officer the power to review their orders, except by way of correction of accidental mistakes, under the inherent power of an officer, who has the duty to perform judicial functions."

16. In the light of the aforesaid authoritative enunciation, the answer to question No. 3 is rendered in the negative and it is held that the Revenue Officer acting u/s 103-A(3) of the Act has no inherent power to review his own decision till the final publication of the record of rights.

17. Once the legal issues have been settled above, the resultant effect on merits is not at all in doubt. However, before parting with this judgment one must in fairness notice the last ditch attempt of Mr. Ram Janam Maharaj, for the respondents, to sustain the impugned orders. Relying on Rule 2 of the Bihar Tenancy Rules, he for the first time contended before the Full Bench that the Commissioner has supervisory powers over the inferior authorities to examine the correctness of any orders passed by them. Basic reliance was placed on Bibi Khairun Nisa Vs. The State of Bihar and Others, . It was further sought to be contended that in any event a superior Tribunal has an inherent power and even though not endowed with such powers specifically by the statute, it may be assumed that such a power exists. Reference by way of analogy was made to Thayillath Vamanan Nambudiri Vs. Amarmankandiyil Narayana Kurup and Others, . On these premises Mr. Ram Janam Maharaj submitted that the order of the Commissioner (Annex. 2) by which he had himself held that no appeal was maintainable before him but nevertheless opined that the party may go afresh before the Settlement Officer, may well be within the bounds of law.

18. So far as the strict legal position is concerned, there may, perhaps, be no quarrel with the proposition aforesaid and in any case it is not necessary herein to opine thereon because the application thereof in the instant case, as suggested by the learned counsel for the respondents, seems to be wholly unjustified. It bears reiteration that before the learned single Judge the basic point canvassed in these writ applications was the effect of the deletion of Sub-section (4) of Section 103-A of the Act in regard to the right of appeal against the order of the Charge Officer. To settle the law the matter was referred to the

Division Bench and before it also the basic challenge was to the ratio of Devendra Prasad and Others Vs. State of Bihar and Another, . That alone had necessitated the reference to the Full Bench and at no time was it ever asserted that the Commissioner had exercised the powers under Rule 2 of the Bihar Tenancy Rules.

19. This apart, the impugned order (Annex. 2) whilst categorically holding that no appeal lay, did not even remotely, and either expressly or implicitly, assume jurisdiction under R. 2 of the Bihar Tenancy Rules. Neither the Commissioner himself went into the merits of the case, nor he gave any direction under the rule aforesaid. Instead he observed as under : --

"The Settlement Officer can entertain such petition u/s 103A(3) of the Bihar Tenancy Act as revision. The party may go to the Settlement Officer in revision accordingly."

In view of what I have held above on point No. 3, such a direction is plainly contrary to law and cannot possibly be sustained. It is difficult and indeed impossible to now attempt to presume from the materials on the record that the Commissioner was exercising supervisory powers under Rule 2 of the Bihar Tenancy Rules, particularly when he has not said anything on the merits of the case. I have, therefore, no hesitation in holding that as far as this application (CWJC 170/86) is concerned, the direction issued by the Commissioner cannot be said to be one under Rule 2 of the Bihar Tenancy Rules.

20. Once it is found as above, it is plain that the Commissioner had himself held that no appeal was maintainable before him, and he had no jurisdiction to direct that the Settlement Officer should entertain a petition afresh u/s 103A(3) of the Bihar Tenancy Act. Even otherwise, in view of the answer rendered to question No. 3 above, the Settlement Officer, Darbhanga, would have no jurisdiction to review the matter which had been completely adjudicated upon earlier. Annexure 3 has, therefore, to be quashed and this writ application is accordingly allowed without any order as to costs.

21. In C.W.J.C. 1583 of 1981 the primal challenge laid is to Annexure 1, the appellate order by the Commissioner entertaining and allowing an appeal against an order passed u/s 103A. In view of the answers rendered to questions Nos. 1 and 2 no such appeal was maintainable and consequently Annexures 1 and 5 are hereby quashed and the writ petition is accordingly allowed, but without any order as to costs.

Lalit Mohan Sharma, J.

22. I have gone through the judgment of the Hon''ble Chief Justice and I agree with his views as mentioned in paras. 14 and 16 of the judgment with respect to the three questions formulated in the opening paragraph. But on the last point urged by Mr. Maharaj and considered and rejected in paras 17 to 19 of the judgment, I regret to have arrived at a different conclusion and accordingly hold that ,the cases should be remitted to the Commissioner for reconsideration of the

applications filed before him.

23. It is true that the concerned respondents in both the cases wrongly assumed that appeals before the Commissioner were maintainable and pressed their claims on that basis. The question arises as to whether in the circumstances their grievances can be and should be examined on merits, or have to be rejected outright.

24. The supervisory jurisdiction of the Commissioner cannot be denied. In *Bibi Khairun Nisa Vs. The State of Bihar and Others*, this Court upheld it, and if I may say so with respect, correctly. The Rules under the Bengal Tenancy Act (which was then applicable in Bihar also) were originally framed in 1885. They were subsequently revised and published in the Calcutta Gazette on the 6th November 1907 (a copy whereof is available in the High Court's Library) and have continued to apply to Bihar even after the passing of the Bihar Tenancy Act. The hierarchy of the officers in the revenue department of the State in connection with Rule 2 of the Rules as accepted by this Court in *Bibi Khairunnissa's* case was not challenged by the learned Standing Counsel before us or on behalf of any other party; I, therefore, accept the assertion made on behalf of the contesting respondents that the Commissioner has got the supervisory authority to examine the correctness of the orders of the subordinate officers. This power, however, cannot be equated with appellate power, but at the same time cannot be denied to exist.

25. The next question is as to whether an authority vested with a particular jurisdiction can exercise it in favour of an aggrieved party, who has, under a misconception of law, invoked another jurisdiction, which does not exist. In my view, the answer is in the affirmative. In the special circumstances of a case, the authority may justifiably refuse to consider the matter under a jurisdiction not invoked, but at the same time it cannot be said that even in appropriate cases he cannot act otherwise. It has been firmly held that when an authority passes an order which is within its competence, it cannot be rejected as illegal merely because it purports to be made under a wrong provision, if it can be shown to be within its power under any other provision and, that the validity of the order should be judged by considering its substance and not its form. (See *Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others*,). In *Indian Aluminium Company Vs. Kerala State Electricity Board*, (paragraphs 30 to 39 of the reported judgment in Civil Appeal No. 1653 of 1974), the coal surcharge purported to have been levied under Sections 49 and 50 of the Electricity (Supply) Act, 1948 was challenged, and the Supreme Court agree with the appellants that it was not permissible under the provisions of the Act. The court, however, upheld the impugned levy under the agreement under which the electricity was being supplied, and while so doing observed that "if there is one principle more well-settled than any other, it is that when an authority takes action which is within its competence, it cannot be held to be invalid, merely because it purports to be made under a wrong provision, if it can be shown to be

within its power under any other provision." I may also usefully refer to the observations of the Supreme Court in para. 126 of the judgment in *Union of India and Another Vs. Tulsiram Patel and Others*, :-

"It is also well settled that where a source of power exists, the exercise of such power is referable only to that source and not to some other source under which were that power exercised, the exercise of such power would be invalid and without jurisdiction. Similarly, if a source of power exists by reading together two provisions, whether statutory or constitutional, and the order refers to only one of them, the validity of the order should be upheld by construing it as an order passed under both those provisions. Further, even the mention of a wrong provision or the omission to mention the provision which contains the source of power will not invalidate an order where the source of such power exists."

This proposition was recognised and given effect to by this Court as long back as in 1925 in *Shaikh Kaloo Vs. Bholanath and Others*, . A similar question arose also in *Musammam Madho Bibi Vs. Hazari Mal Marwari*, , where the aggrieved party had filed an application in an execution case under Order 21, Rule 58 of the Code of Civil Procedure, and the matter was investigated by the Subordinate Judge within the limited scope of Rule 58 when a question arose as to the true nature of the application and of the order passed thereon. This Court (as per the judgment of Mr. Justice Fazl Ali as he then was) held that the order would be treated as one u/s 47 of the CPC and while so doing, observed that the nature of the claim preferred would be determined by the character of the claim and not by the label used by the party and the jurisdiction of the Court to try the claim cannot also be affected by a mere misdescription of the character of the claim. Reference was made to *Shaikh Kaloo's* case (*supra*), where after an adverse decision by the executing Court an appeal was preferred by the aggrieved party before the District Judge, who allowed the same; and it was, urged before the High Court that the District Judge had no jurisdiction to entertain the appeal. A Division Bench of this Court observed that the executing Court did not appear to have treated the application as one under Order 21, Rule 58, C.P.C., "and, even if he had done so, the objection that an appeal did not lie would not have been entertainable if, in fact, that application was one entertainable u/s 47 of the Code." This principle has been followed by this Court on many occasions. To hold otherwise would be putting undue premium on procedural technicalities resulting in manifest injustice. I, therefore, hold that the Commissioner may in appropriate cases exercise his supervisory authority on applications which are labelled as appeals, and specially so because the power can be exercised even *suo motu*. I would go further and say that if an authority refuses to entertain a plea on the hypertechnical ground that the aggrieved party has labelled his application incorrectly it would amount to abdication of power and the officer concerned may in appropriate cases be compelled to consider the grievance on merits. Now it has to be seen whether the present cases are such cases.

26. The nature of the grievance made by the respondents in these cases is

serious. In C.W.J.C. 170 of 1986 the Commissioner was fully alive to the situation that the appeal before him was not maintainable, but he considered the grievance of the aggrieved applicant before him, fit for consideration, as is clear from his observations mentioned below : --

"In the circumstances no appeal can lie before the present Court. However, I feel that as the case is made out by the learned lawyer, some points are worth considering."

He, then wrongly assumed that the Settlement Officer could entertain a fresh petition under, Section 103-A(3) of the Act and on that basis passed the impugned order as contained in Annexure-2 which has to be set aside. Consequently, Annexure-3 must also go. It is, however, apparent that the Commissioner was not aware of his own supervisory jurisdiction and it is not possible to infer as to how he would have acted if he were aware of it. In the situation I am of the view that the matter should be remitted to him for reconsideration. In C.W.J.C. 1583 of 1981, the Commissioner assumed that he could examine the case as an appellate Court and his order is also, therefore, fit to be quashed; but for similar reason this case again deserves reconsideration by him. Accordingly, the impugned annexures in both the writ cases are quashed and the cases are-remanded to the Commissioner for reconsideration. The Commissioner, however, should appreciate that he has no appellate power and the supervisory authority conferred on him under Rule 2 is to be exercised sparingly and only in such cases where he comes to the conclusion that the error in the order impugned before him is grave resulting in serious injustice.

S. Shamsul Hasan, J.

27. I agree with Hon"ble the C. J.