FULL BENCH

Before D. Falshaw, C.J., A. N. Grover, Inder Dev Dua, Harbans Singh and Jindra Lal, JJ.

DEEP CHAND AND ANOTHER,—*Petitioners.*

versus

ADDITIONAL DIRECTOR, CONSOLIDATION OF HOLDINGS, PUNJAB AND ANOTHER,—*Respondents*

Civil Writ No. 1302 of 1961.

1963.

Dec., 19th.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—S. 42—Additional Director—Whether competent to recall or review his orders on the merits—Power of review—When exercisable by judicial and quasi-judicial tribunals.

Held, that the Additional Director is not competent to recall or review his orders on the merits under section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948.

Held, that a judicial or *quasi*-judicial tribunal has no inherent power to rehear, review, alter or vary any judgment or order after it has been entered or drawn up on the ground that it is later considered to be erroneous on the merits. To concede such a wide power of review would introduce into judicial and *quasi*-judicial decisions, disconcerting element of permanent uncertainty and unpredictability tending to give an impression of *quasi*-judicial lawlessness, which cannot be upheld. If Courts do not possess such a wide and sweeping power, it is difficult to concede such a wide power in statutory judicial or *quasi*-judicial tribunals. The power of review can only be exercised if allowed by the statute and to the extent permitted and subject to the conditions imposed by the statute.

Held, that 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. The Courts also possess the inherent power of relieving suitors from the mistakes of Courts on the maxim *Actus curiae neminem gravabit* (the act of Court injures no one).

Case referred by the Hon'ble Mr. Justice Inder Dev Dua, on 5th April, 1963, to a larger bench for decision of the important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice A. N. Grover and Hon'ble Mr. Justice Inder Dev Dua, referred the case to a Full Bench on 23rd August, 1963, due to importance of question of law involved in the case. The Full Bench consisting of the Hon'ble the Chief Justice Mr. D. Falshaw, Hon'ble Mr. Justice A. N. Grover, Hon'ble Mr. Justice I. D. Dua, Hon'ble Mr. Justice Harbans Singh and Hon'ble Mr. Justice Jindra Lal, after deciding the questions referred to them returned the case to the Division Bench, on 19th December, 1963, and the case was finally decided by Hon'ble Mr. Justice A. N. Grover and Hon'ble Mr. Justice Inder Dev Dua, on 19th December, 1963.

Petition under Article 226 of the Constitution of India praying that a writ of mandamus, certiorari, *or other appropriate writ, order, or direction be issued quashing the order of respondent No. 1, dated the 18th March, 1961.*

K. L. KAPUR, M. R. PUNJ, HAR PARSHAD, SUBHASH CHANDER, HARBHAGWAN SINGH, G. C. MITTAL, AND R. S. MITTAL, ADVOCATES, for the Petitioners.

S. M. SIKRI, ADVOCATE-GENERAL, L. D. KAUSHAL. SENIOR DEPUTY ADVOCATE-GENERAL, MUNISHWAR PURI, N. S. KEER, KULDIP SINGH KEER AND DALJIT SINGH KEER, ADVOCATES, for the Respondents.

JUDGMENT.

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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?"

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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.* (1), a decision by a Bench of three Judges of this Court.

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 *Baijnath Ram Goenka* v. *Nand Kumar Singh,* (2). 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 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

(1) I.L.R. 1959 Punj. 1187=1959 P.L.R. 480.
(2) I.L.R. 34 Cal. 677;

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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* (3), 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 Code of Civil Procedure 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 *Baijnath Ram Goenka* v. *Nand Kumar Singh*, (4). The learned counsel for the petitioners has refer-

(3) I.L.R. 22 Cal. 418.
(4) I.L.R. 40 Cal. 552.

red 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. *Anantharaju Shetty* v. *Appu Hegade* (5), 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 unassailed, 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* and *Baij Nath Ram Goenka* were also noticed by the learned Judge and it was observed that the Board in *Baij Nath's case*, had also declared in explicit terms that the power to review is not inherent in a Court.

(5) A.I.R. 1919 Mad. 244.

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Ramachandra M. Deo Garu v. *Beero Pollai etc.* (6), 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. Kutinda* v. *Mrs. Nathal Bai etc.* (7), and *S. J. S. Fernandes.* v. *V. R. Chetty,* (8). The Bombay High Court has *In re Prahlad Krishna Kurne* (9), 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

(6) A.I.R. 1936 Mad. 531 (F.B.).
(7) A.I.R. 1941 Mad. 272.
(8) A.I.R. 1953 Mad. 236.
(9) A.I.R. 1951 Bom. 25 (F.B.).

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 (10), 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* v. *State of Bihar* (11). From Allahabad High Court *Debi Prasad etc.* v. *Khelawan etc.* (12), 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 13, Civil Procedure Code. After referring to two English decisions and to the decision of the Privy Council in *Baij Nath Ram Goenka's case*, this rule was stated to be subject to certain qualifications. Briefly stated those qualifications are:—

(a) Before delivering and signing judgment the Court can vary its order so as to clarify its intention rendering the language free from doubt.

(10) A.I.R. 1957 Pat. 117.
(11) A.I.R. 1960 Pat. 6.
(12) A.I.R. 1957 All. 67.

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(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 authorised 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* (13), *V. Kesavan* v. *K. S. Raghavan etc.* (14), *Puttu Lal Gobind Dass* v. *Achchey Lal Nandu Lal,* (15), *Ram Rakha Mal Bhandari* v. *Dina Nath Bhatia etc.* (16), *Jamadar Uttam Singh* v. *Punjab State, etc.* (17), and *The Ambala Bus Syndicate Private Ltd.* v. *State Government etc.* (18).

(13) A.I.R. 1961 Assam 124.
(14) A.I.R. 1953 Trav.-Cochin 438.
(15) A.I.R. 1956 V.P. 42.
(16) A.I.R. 1941 Lah. 419.
(17) I.L.R. (1960) 1 Punj. 334=1960 P.L.R. 164,
(18) I.L.R. (1963) 2, Punj. 163=A.I.R. 1963 Punj. 92.

Uttam Singh's case 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 and 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 over-ruled by the Consolidation Officer. On appeal by him, the Settlement Officer directed variation in the land allotted to Ujagar, Raja and 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 under section 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 under section 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

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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.

Ths first point for decision in the persent case is whether the first order passed by the Director can be said to be an order passed under section 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 under section 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 under section 42 of the statute.

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* which had been decided on 2nd February, 1959 was not brought to the notice of the Division Bench. In *The Ambala Bus Syndicate's case*, 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*. Although I felt that some of the observations contained in *Jagir Singh's case* 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 veried or reversed on the merits whenever a quasi-judicial tribunal chooses to do so was, with

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respect, considered by me to be a doubtful proposition. To accede to such an unqualified power without statutory sanction was, in my view, violative 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*, (19), according to which when Government delegates its power under East Punjab Act 50 of 1948 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 petitioners' 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.

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 any one of the exceptions illustrated there. A passing reference has also been made to *Daryao etc.*, v. *State of U.P. etc.* (20) for the proposition that the rule of *res judicata* is not a technical rule but is

(19) 1963 P.L.R. 576 (S.C.).
(20) A.I.R. 1961 S.C. 1457.

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 violative of this rule.

The petitioners' counsel has further submitted that *Aijaz Ahmad* v. *Nazirul Hasan etc.* (21), from which Dulat J., who prepared the judgment of the Full Bench in *Jagir Singh's case* 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.* (22), it has been contended, does not approve any such broad proposition.

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* 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 exception to the rule against the existence of an inherent power of review. The instant

(21) A.I.R. 1935 All. 868.
(22) A.I.R. 1953 S.C. 23.

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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* (23), 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 Mandal* v. *The State of West Bengal* (24), 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* (25), a decision by the Court of Appeal in a divorce

(23) A.I.R. 1951 Mad. 767.
(24) A.I.R. 1959 Cal. 543.
(25) (1955) 3 A.E.R. 129.

matter. We have been referred to p. 145 where the following observations of Evershed L.J., in *Meier* v. *Meier* (26), 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 purposes of justice require that it should do so"

and also where Morris L.J., has without categorising 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.

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

(26) (1948) P. at p. 95.

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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.

I am also of the view that neither para 1665 of Halsbury'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 imperfected order was outside the Judge's jurisdiction, he has power to withdraw it. Para 1665, as the marginal headings 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 petitioners' learned counsel. The short question on which, on this view, the controversy centres 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.

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 *non est*.

At this stage I may point out that 0.23 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* reproduced in *Thynne's case* 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

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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 no 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.

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.

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.* (27) 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' Escempte de Paris* (28).
>
> '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

(27) A.I.R. 1963 S.C. 692.
(28) (1871) 8 P.C. 455 at p. 475.

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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.

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 concede such a wide power in statutory judicial or quasi-judicial tribunals.

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 mement 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, etc.,* v. *State of Punjab, etc.* (29), 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 impleading him as a party to "A"'s writ petition and re-hearing the whole matter, Khosla J. allowed his petition. On appeal, the Letter 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 powers 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

(29) A.I.R. 1963 S.C. 1909.

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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.* (30), 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. 1,000, 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. 5,951. 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 Re. 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

(30) C.A. 687 of 1962.

Supreme Court reversed the decision of this Court. Hidayatullah J., who prepared the judgment of the Bench, spoke thus:—

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"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 if there was an error, the Court and 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 asks 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 Courts 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 Court 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 posi-

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tion he would have occupied, but for that mistake. This is aptly summed up in the maxim:

'*Actus curiae neminem 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 full 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 little 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* 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* 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.

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

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accordingly. In the circumstaces of the case, there would be no order as to costs.

A. N. GROVER, J.—I agree.

JINDRA LAL. J.—I agree.

D. FALSHAW, CHIEF JUSTICE.—I agree.

HARBANS SINGH, J.—I agree.

B.R.T.

FULL BENCH

Before R. P. Khosla, Gurdev Singh and P. D. Sharma, JJ.

NAWAL KISHORE THAKUR,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Criminal Original No. 74 of 1963.

1963.

Dec., 20th.

Code of Criminal Procedure (Act V of 1898)—S. 99—Petition under—Whether maintainable when search and seizure of documents has taken place under a warrant issued by a magistrate and not by the State Government by notification in the Gazette as provided in S. 99-A of the Code.

Held, that a petition under section 99-B of the Code of Criminal Procedure, 1898, is maintainable only if the action complained of had been initiated at the instance of the State Government, notified in the Official Gazette stating the grounds of its opinion and declaring the copy of every issue of the newspaper, etc., in view forfeited. It has further to be in respect of seizure of issues of the newspaper, etc., containing repugnant matter as contemplated under sections 124A or 153A or 295A of the Indian Penal Code. An application under section 99-B of the Code is not maintainable where search and seizure of documents, newspapers, etc., has taken place under a warrant issued by a magistrate.

Petition on behalf of the petitioner praying that the application of the petitioner under section 99-B, Criminal Procedure Code, be considered expeditiously and the order of forfeiture of documents be set aside.

R. N. NARULA, ADVOCATE, for the Petitioner.

K. L. JAGGA, ASSISTANT ADVOCATE-GENERAL, D. D. JAIN, ADVOCATE, AND SHER INDERJIT SINGH, P. P. KANGRA, for the Respondents.