

MANU/BH/0367/2014

Equivalent Citation: 2014(4)PLJR210

IN THE HIGH COURT OF PATNA

Letters Patent Appeal No. 672 of 2009 in Civil Writ Jurisdiction Case No. 4129 of 1990

Decided On: 08.09.2014

Appellants: **Nand Kumar Thakur**
Vs.

Respondent: **The State of Bihar**

Hon'ble Judges/Coram:

R.M. Doshi, C.J., Jayanandan Singh and Ashwani Kumar Singh, JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: Ajay Kumar Thakur and Imteyaz Ahmad, Advocates

For Respondents/Defendant: Madhukar Krishna Sinha, SC, Ashutosh Singh, A.C. to SC, Arun Kumar Jha and Lalit Narayan Jha, Advocates

JUDGMENT

Ashwani Kumar Singh, J.

1. This Appeal under Clause 10 of the Letters Patent has been preferred by the respondent no. 5 Nand Kumar Thakur (hereinafter referred to as 'the appellant') against the order dated 15th December 2008 passed by the learned single Judge in C.W.J.C. No. 4129 of 1990.

2. It is not necessary to refer to the facts of the case in great detail. Suffice it to say that with regard to tenancy rights in respect of Revisional Survey Plot No. 1687, Thana no. 497 situated at village-Bhuskaul, P.S. & Distt.-Darbhanga, the dispute ultimately reached the Settlement Officer, Darbhanga in Revision Application No. 42 of 1985 under Section 103A(3) of the Bihar Tenancy Act, 1985 (hereinafter referred to as 'the Act') against the order of the Assistant Settlement Officer. The Settlement Officer vide his order dated 11th April, 1986 allowed the aforesaid revision application and directed that the tenancy right of revisional survey plot no. 1687 be opened in the name of the respondents 2nd set (hereinafter referred to as 'the respondents'). The appellant filed a review petition before the Settlement Officer seeking review of the revisional order dated 11th April, 1986 which was allowed on 16th October, 1987.

3. The respondents filed an application under Rule 2 framed under the Act before the Divisional Commissioner, Darbhanga challenging the aforesaid order dated 16th October, 1987 passed by the Settlement Officer, raising the ground that the Settlement Officer had got no jurisdiction to review his own order and hence, the order allowing the review application was bad in law. The said petition was dismissed by the Divisional Commissioner, Darbhanga vide order dated 20th June, 1990. The said order dated 20th June, 1990 passed by the Divisional Commissioner, Darbhanga and the order dated 16th October, 1987 passed by the Settlement Officer, Darbhanga were assailed before this Court by filing a writ petition being C.W.J.C. No. 4129 of

1990 under Article 226 of the Constitution of India by the respondents. The learned Single Judge allowed the said writ petition on 15th December, 2008 and quashed the impugned orders dated 16th October, 1987 and 20th June, 1990 relying upon a Full Bench judgment of this Court in the matter of Ram Kishun Mandal & Anr. Vs. The State of Bihar reported in MANU/BH/0312/1987 : 1987 PLJR 291 in which it has been held that the Revenue Officer acting under Section 103A(3) of the Act has no inherent power to review his own decision.

4. The appellant challenged the aforesaid order dated 15th December, 2008 passed in C.W.J.C. No. 4129 of 1990 by filing the present Letters Patent Appeal.

5. This Appeal came up for hearing before the Division Bench. The Division Bench vide order dated 3rd December, 2010 referred the matter to the Full Bench pursuant to which the appeal has come up before us for consideration.

6. For the sake of clarity and convenience, I would like to quote the reference made by the Division Bench in its order dated 3rd December, 2010 which is as under:-

"We have heard the parties at length and having regard to the issue in hand, we are of the considered view that the present case is required to be placed before a Full Bench. Our reasons for referring the matter to the Full Bench is as follows:-

Section 103A(3) of Bihar Tenancy Act as it was existing prior to the amendment made in the year 1967 read as follows:-

"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 therefrom, during the period of publication".

Considering the aforementioned provisions a Division Bench of this Court in the case of Ramdayal Missir and Ors. vs. The State of Bihar & Ors., reported in MANU/BH/0003/1958 : AIR 1958 Patna 4, had held that there was no power of review as against an order passed under Section 103A of the Act.

Let, it be noted that the said judgment was made subject matter of an appeal before the Constitution Bench and the Constitution Bench also in the case of State of Bihar and Another Vs. Ramdayal Missir etc., reported in 1962 BLJR 385 had upheld the judgment of the Division Bench in the case of Ramdayal Missir (supra).

It is only thereafter that there was an amendment made in Section 103A(3) of the Act which reads as follows:-

"103A[(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 subsection(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".]

The aforementioned provision under Section 103A(3) of the Act was considered by a Division Bench of this Court in the case of Devendra Prasad Gupta Vs. The State of Bihar and Ors., reported in MANU/BH/0043/1977 : 1977 PLJR 576, wherein, it was held that in view of the amended provision under Section 103A(3) of the Act, it has to be read that there was both power of review and revision vested in the authority.

Subsequently, the correctness of the said judgment in the case of Devendra Prasad Gupta (supra) was gone into in the Full Bench judgment of this Court in the case of Ram Kishun Mandal and Another Vs. The State of Bihar and Ors., reported in MANU/BH/0312/1987 : 1987 PLJR 291, wherein, following the earlier judgment of Ramdayal Missir (supra), it was held that there was no inherent power of review in a Revenue Officer in terms of Section 103A(3) of the Act.

In the present case, the learned Single Judge following the ratio of Ram Kishun Mandal (supra) has allowed the writ petition by holding that there was no power of review in the revisional Authority.

Before us Mr. Ajay Kumar Thakur, learned counsel appearing on behalf of the respondent-appellant has submitted that the Full Bench in the case of Ram Kishun Mandal (supra) though had quoted amended provision of Section 103A(3) of the Act but its reasoning and conclusion in paragraph 15 and 16 were based on the existing provisions as they were prior to the amendment in the year 1967 and therefore the Full Bench judgment would require a reconsideration.

Per contra, Mr. Arun Kumar Jha, learned counsel appearing on behalf of respondent-writ petitioner, would submit that once there is already an authoritative pronouncement of the Full Bench in the case of Ram Kishun Mandal (supra), there would be no occasion for now referring the matter, inasmuch as, the Full Bench judgment had considered the earlier view recorded in the case of Devendra Prasad Choudhary (supra).

We have also the assistance of learned Additional Advocate General-III, who too having examined the issue was prior was prima facie of the view that the judgment of the Full Bench in the case of Ram Kishun Mandal (supra) would require reconsideration.

We are also of the considered view that the subsequent Full Bench in the case of Ram Kishun Mandal (supra) has not taken into account the effect of the amended provision under Section 103A(3) of the Act but then we are mindful of the position in law as with regard to the procedure to be followed by a Division Bench of the High Court, when it considers a judgment of the Full Bench of the same High Court to be per incuriam i.e. either not in conformity of the precedence of the Supreme Court or in ignorance of the statutory

provisions. Thus, following the course suggested by the Apex Court in the case of the State of U.P. Vs. CL Aggarwal, reported in MANU/SC/0620/1997 : 1997(5) SCC 1, we think it appropriate that the records of the case should be placed before the Hon'ble Chief Justice for considering the desirability of placing it before the Full Bench for examining the correctness of the view recorded in paragraph no. 15 and 16 in the case of Ram Kishun Mandal (supra)."

7. While making reference, the Division Bench noticed the earlier judgments passed by this Court as well as the judgment of the Hon'ble Supreme Court. The Division Bench has doubted the judgment passed by the Full Bench of this Court in Ram Kishun Mandal (supra) to the extent that it had not considered the subsequent amendment made by Act I of 1963 in Section 103A of the Act.

8. The legislative history of the provision of Section 103A of the Act has been discussed in detail in the case of Ram Kishun Mandal (supra) and the present controversy hinges on the amendments made in Sub-section (3) of Section 103A of the Act.

9. The original Section 103A was introduced by the Bengal Act III of 1898 and prior to 1963 Section 103 was as follows:-

"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 therefrom, during the period of publication.

(2) When such objections have been considered and disposed of according to such rules as the State Government may prescribe, and if a settlement of land-revenue is being or is about to be made the Settlement Rent-roll has been incorporated with the record under Section 104F, Sub-section (3), the Revenue Officer shall finally frame the record, and shall cause it to be finally published in the prescribed manner and the publication shall be conclusive evidence that the record has been duly made under this Chapter.

(3) Separate draft or final records may be published under Sub-section (1) or Sub-section (2) for different local areas, estates, tenures or parts thereof"

10. By Act I of 1963 new Sub-sections (3) and (4) were added in Section 103A of the Act and the original Sub-Section (3) was made as Sub-section (5). However, Sub-section (4) was subsequently omitted by Act VII of 1969. The newly added Sub-sections (3) & (4) by Act I of 1963 read thus:-

"(3) A Revenue Officer specially empowered by the State Government in this behalf, may, on application or of his own motion, at any time after the publication of the draft record-of-rights and before its final publication, after reasonable notice to the parties concerned to appear and be heard in the matter, revise any entry in such draft or any order or decision under this Section, whether made by himself or by any other Revenue Officer.

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

11. In the year 1967, the aforesaid Sub-section (3) was again amended by Act I of 1967. By the said amendment for filing revision, a period of limitation of three months was prescribed. The amended Sub-section (3) reads thus:-

"[(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 or the record-of-rights, any such order or decision whether made by himself or by any other Revenue Officer.]"

12. The Section 103A of the Act, prior to its amendment in the year 1963, was a subject matter of judicial consideration by a Division Bench of this Court in the matter of Ramdayal Missir & Ors. v. The State of Bihar & Ors. reported in MANU/BH/0003/1958 : AIR 1958 Pat. 4 wherein it was laid down that the power of review was a statutory power and in absence of any such power having been conferred in writing in the statute, no power would vest within any authority to exercise the power of review. In the said case, the Division Bench held 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 under Section 103A of the Bihar Tenancy Act. It is true that Section 108A provides for correction by the Revenue Officers of mistakes in the records-of-rights, but the Section applies only to a case where an application is made after the final publication of the records-of-rights. It is also obvious that the Section provides for the correction of the records-of-rights only when there is a bona fide mistake."

13. The aforesaid judgment passed by a Division Bench of this Court in the case of Ramdayal Missir & Ors. (supra) was challenged in appeal by the State Government. The appeal was considered by a Constitution Bench of the Supreme Court and the Constitution Bench in the matter of State of Bihar & Anr. Vs. Ramdayal Missir & Ors. reported in 1962 BLJR 385 affirming the judgment of the High Court in the case of Ramdayal Missir (supra) 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 Code of Civil Procedure 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 Records-of-Rights, which has no finality insofar 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 Officers 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".

14. It is pertinent to note here that the case of Ramdayal Missir & Ors. (supra) was decided by this Court as well as by the Hon'ble Supreme Court on the basis of the provision of Section 103A of the Act as it stood prior to the amendment made by Act I of 1963.

15. However, after the amendments by Act I of 1963 and Act I of 1967 were brought

in Section 103A of the Act, the same question arose once again before this Court in the matter of Devendra Prasad Gupta Vs. The State of Bihar & Ors. reported in MANU/BH/0043/1977 : 1977 PLJR 576. A Division Bench of this Court considered the effect of the amended provision under Section 103A(3) of the Act and held in paragraph no. 4 as under:-

"In view of Sub-section (3) of Section 103A it has to be held that a Revenue Officer specially empowered by the State Government within three months of any order or decision on any objection may under Sub-Section (1) or on his own motion revise at any time before the final publication of record-of-rights, any order whether made by himself or by any other Revenue Officer. According to the learned counsel, in view of this Sub-section, on 3.7.1969, the Charge Officer was within his rights in directing the Assistant Settlement Officer to re-open the case and dispose of the same after hearing all the parties concerned. In my opinion, this contention has to be accepted. The Additional Member, Board of Revenue has relied on a decision of this Court in (1) Ramdayal Missir and others v. The State of Bihar (MANU/BH/0003/1958 : 1957 B.L.J.R. 292) for the proposition that a Settlement Officer has no power of review. It is well settled that power of review is creature of a Statute. Unless such power is vested by specific provision, a judicial authority cannot exercise any such power for correcting a wrong. The view expressed in the aforesaid Bench decision of this Court was affirmed by the Supreme Court also in the case of (2) State of Bihar V. Ram Dayal Missir and others (1962 B.L.J.R. 385) where it was observed that the law, as it stood on that day, the Revenue Officers, while exercising judicial powers, or quasi judicial powers, have no power of review. But, the Additional Member, Board of Revenue overlooked the fact that by the amendment by Act I of 1963, the Revenue Officer, who was specially empowered by the State Government, was vested with the power of revision and review. Under Sub-section (3) of Section 103A, he can review his own order as well as revise any other order passed by any other Revenue Officer. Of course, under the terms of that very Sub-section (3), he has to pass any such order only after giving a reasonable notice to the parties concerned to appear and to be heard in the matter. Learned counsel appearing for respondent no. 6 pointed out that the Charge Officer, while passing the order dated 3.7.1969, did not give him an opportunity of being heard, and, as such, the order dated 3.7.1969 was vitiated on that ground alone. It cannot be disputed that while passing the order dated 3.7.1969, the Charge Officer did not conform to the procedure prescribed by Subsection (3) of Section 103A. But, respondent no. 6 except filing an application to recall the said order, did not take any further steps in the matter, rather he appeared before the Assistant Settlement Officer where the whole matter was heard in presence of both the parties and before the application of respondent no. 6 could be disposed of the Assistant Settlement Officer passed the order on 25.7.1969. Respondent no. 6, thereafter, pursued different forums by way of revision and appeal only against the order dated 25.7.1969. He filed a revision before the Charge Officer; thereafter, an appeal before the Commissioner and then the revision before the Board of Revenue. Apart from that, on 3.7.1969, the Charge Officer did not pass any final order affecting any right of respondent no. 6. He simply directed the Assistant Settlement Officer to rehear both the parties and then to pass an order on the objection of respondent no. 6. In that view of the matter, I am of the view that order dated 3.7.1969 had been passed by the Charge Officer in exercise of the

power under Sub-section (3) of Section 103A and the Additional Member, Board of Revenue took an erroneous view of law when he held that it amounted to an order of review which was not sanctioned by the provisions of the Act".

16. The law laid down in the case of Devendra Prasad Gupta Vs. The State of Bihar & Ors. (supra) in respect of interpretation of the provision of Section 103A(3) of the Act was doubted by a Division Bench of this Court in case of Ram Kishun Mandal (supra) and, thus, the said case was referred for consideration before the Full Bench. The Full Bench formulated three questions to be answered in the said case. Having heard the parties in great details and analyzed the provision of Sub-section (3) of Section 103A of the Act, as it stood prior to 1963 and the amendments made therein by Act No. I of 1963 and Act I of 1967, the Full Bench in the case of Ram Kishun Mandal (supra) in paragraph nos. 13 and 16 held as under:-

"(13) In the light of the aforesaid discussion, it is somewhat plain that the rationale of the Division Bench in Devendra Pd. Gupta v. The State of Bihar and others (MANU/BH/0043/1977 : 1978 BLJR 87 : 1977 PLJR 576) cannot be supported. With the deepest deference, the judgment does not lay down the law correctly and has, therefore, to be overruled.

(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 under section 103A(3) of the Act has no inherent power to review his own decision till the final publication of the record of rights".

17. Here, at this stage, before arriving at the conclusion in respect of the reference made to us, I would like to record the submissions made on behalf of the respective parties.

18. Learned counsel for the appellant, Mr. Ajay Kumar Thakur, has submitted that the learned single Judge while allowing the writ petition has erred in law by following the law laid down by a Full Bench of this Court in the case of Ram Kishun Mandal (supra). He has submitted that the Full Bench in the case of Ram Kishun Mandal (supra) has answered the reference made to it in paragraph no. 15 and 16 of the judgment relying upon the law laid down in Ramdayal Missir & Ors. (supra) wherein a Division Bench of this Court has held that an order made by a Settlement Officer under Section 103A of the Act is not liable to be reviewed. He has submitted that it is true that the decision of this Court in the matter of Ramdayal Missir & Ors. (supra) was upheld by a Constitution Bench of the Hon'ble Supreme Court in the matter of State of Bihar & Anr. Vs. Ramdayal Missir & Ors. (supra). However, the decisions in the case of Ramdayal Missir by the High Court and the Supreme Court were made considering the provision of Section 103A of the Act as it existed prior to the amendment made by Act I of 1963.

19. Mr. Thakur has submitted that the Full Bench of this Court in the matter of Ram Kishun Mandal (supra) did not take into consideration the subsequent amendments made in Sub-section 3 of Section 103A of the Act by which power of review was vested in the revenue authority and hence such a decision has no binding effect. Mr. Thakur has further submitted that while passing the impugned order dated 15th December, 2008, the learned single Judge had himself found that the ratio laid down by the Full Bench in the matter of Ram Kishun Mandal (supra) based on the decision of Ramdayal Missir (supra) may not be the correct law but still the learned single

Judge has relied on the said decision and allowed the prayer made in the writ petition. He has submitted that the learned single Judge ought not to have quashed the order passed by the Settlement Officer in review petition as he had reviewed his earlier order passed in the revisional jurisdiction in exercise of power conferred upon him under the amended provision of Sub-section (3) of Section 103A of the Act.

20. Learned counsel Mr. Madhukar Krishna Sinha appearing on behalf of the State has supported the submissions made by Mr. Thakur. He has also submitted that in view of the changes made under Sub-section (3) of Section 103A of the Act, the Settlement Officer has impliedly been vested with the power of review.

21. Per contra, Mr. Arun Kumar Jha appearing on behalf of the petitioners has submitted that there is no merit in the contention of the appellant. He has submitted that the Full Bench of this Court in the matter of Ram Kishun Mandal (supra) has not only considered the amended provision of Sub-section (3) of Section 103A of the Act but has also elaborately dealt with the same and concluded that the revenue authority is not vested with power of review.

22. Mr. Jha has contended that a power of review is a power which must be conferred on an authority by statute and unless such power is conferred, an authority has no inherent power to review its decision. He has submitted that in the present Act, there is no provision which expressly or by necessary intendment empowered the Settlement Officer to review his own order.

23. I have considered the rival submissions made on behalf of the parties. As noticed above, Section 103A of the Act as it stood prior to 1963 did not confer power of review upon the Settlement Officer/Revenue Officer. Similarly, even after the changes made in Section 103(A) (3) of the Act by Act I of 1963 and Act I of 1967 the Settlement Officer/Revenue Officer has not been expressly or by necessary intendment empowered to review his own decision or order either on his own motion or on the application of the party interested.

24. Having heard the parties and examined the provision of Section 103A of the Act as it stood prior to 1963 as also as it stands after the amendments made by Act I of 1963 and Act I of 1967, I am of the opinion that the learned counsel for the respondents is certainly right when he says that the Settlement Officer/Revenue Officer has no inherent power to review his own decision and if he has to have a power of review, such power must be found in some provision of the Statute. Such power of review may be conferred expressly or even by necessary implication but there must be some provision of a Statute which confers it, and if no provision of Statute can be found for supporting the power of review, the Settlement Officer/Revenue Officer cannot review his own decision in exercise of any inherent power. The respondent is also right in contending that there is no express provision under the Act which expressly or by necessary intendment confers a power of review on the Settlement Officer.

25. It is well settled that a right of review is a creature of Statute. In the absence of specific provision allowing a review under an enactment, a review petition does not lie. In the case of Kapra Mazdoor Ekta Union v. Birla Cotton Spinning and Weaving Mills Ltd. reported in MANU/SC/0208/2005 : (2005) 13 SCC 777, the Hon'ble Supreme Court in para 19 held as under:-

"Applying these principles it is apparent that where a Court or quasi Judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its

judgment or order can be reviewed on merit only if the Court or the quasi Judicial authority is vested with the power of review by express provision or by necessary implication."

26. The Hon'ble Supreme Court in *Kuntesh Gupta (Dr.) v. Hindu Kanya Mahavidyalaya* reported in MANU/SC/0104/1987 : (1987) 4 SCC 225 and *Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji* reported in MANU/SC/0433/1970 : (1971) 3 SCC 844 clearly held that the power of review is not an inherent power and must be conferred by law either expressly or by necessary implication.

27. The rule that a Court or quasi judicial authority can not review its own decision except so far as it is permitted to do so by statute, is of general authority, since it is recognized alike for over 100 years in England, for instance in *Drew v. Willis* reported in (1891) 1 Q.B. 450; *Charles Bright and Co. Ltd. v. Sellar* (1904) 1 K.B. 6; *Hession v. Joves* (1914) 2 K.B. 421.

28. In my opinion, in view of what I have discussed above, there appears to be no infirmity in the order passed by the Full Bench in the case of *Ram Kishun Mandal* (supra) for even under the amended provision no power of review was vested in the Revenue Officer under Section 103A(3) of the Act.

29. I have no hesitation in holding that the Full Bench of the Patna High Court in the matter of *Ram Kishun Mandal* (supra) rightly relied on the authoritative pronouncement of the Constitution Bench of the Hon'ble Supreme Court in the matter of *State of Bihar and another v. Ram Dayal Missir* (supra) wherein it has been held that the Settlement Officers or the Assistant Settlement Officers have no power of review during the course of preparation of record-of-rights under Section 103A of the Act. It has correctly laid down the law that the Revenue Officer under Section 103A(3) of the Act has no inherent power to review his own decision till the final publication of the record-of-rights. In addition, I further hold that the Revenue Officer has not also been expressly or by necessary implication vested with the power of review under the amended provision of Section 103A(3) of the Act.

30. The Full Bench judgment in the matter of *Ram Kishun Mandal* (supra) was delivered after the said amendment made by Act I of 1963 in Section 103A of the Act but it appears that the said judgment confined itself to the reference that had been made to it viz.,-"whether the Revenue Officer specially empowered by the State Government can under Section 103A(3) of the Act exercise inherent power to review his own decision till the final publication of the record-of-rights?"

31. The subsequent amendment made in the year 1963, vesting the Revenue Officer with the power to "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 officer" was not decided by the Full Bench in case of *Ram Kishun Mandal*, being not the subject matter of reference in that case.

32. The context in which the present case has been referred to us specifically focuses on the import and purport of power vested in the Revenue Officer to revise order or decision of his own or that of any other Revenue Officer in the light of the amendment made in Sub-section (3) of Section 103A of the Act by Act I of 1963.

33. In the order of reference, the Division Bench has extensively referred to the reasoning of the earlier Division Bench in the matter of *Devendra Prasad Gupta vs. State of Bihar & Ors.* (supra) which had considered the import of the power that had

been vested in the Revenue Officer by Act I of 1963 in Section 103A of the Act-"to revise the order or decision of his own or that of any other Revenue Officer". The Division Bench in that case held that two fold powers had been vested by Act I of 1963 in Sub-Section (3) of Section 103(A) of the Act and it was a considered opinion that the amended provision conferred upon the Revenue Officer a power of review over his own order which was apart from the power of revision over the order or decision of any other Revenue Officer. The Division Bench was of the opinion that the newly conferred power of review was not a subject matter of consideration in the case of Ramdayal Missir either before the High Court or before the Supreme Court.

34. Even ignoring for the moment the fact that the said Division Bench judgment has already been overruled in Ram Kishun Mandal (supra), I must respectfully disagree with the opinion of the Division Bench for the added reason that inferring a power of review in amended Section 103A(3) of the Act would amount to reading words which are not there in the Statute and would amount to overreaching the intention of the legislature. The word "revise" and "review" are not inter-changeable. To instill the attributes of review to the word revise would amount to treating the two terms as interchangeable which in my view would be impermissible.

35. It is clear as day-light that the power that has been conferred upon the Revenue Officer under the amended Sub-section (3) of Section 103A of the Act is specifically a power of revision. The powers of review are not inherent powers and are statutory powers as has rightly been considered and laid down in the case of Ramdayal Missir by the Supreme Court. The powers of review come with their own limitations as provided in Order XLVII of the Code of Civil Procedure and in contradistinction to the same, the powers of revision, unless hedged by the rules themselves, are in the nature of supervisory powers to be exercised by the superior authority and the same are in the nature of appellate powers. I am fortified in my opinion by consistent lines of judgment of the Hon'ble Supreme Court and one of the earliest judgments laying down the ambit and scope of revisional powers is the case of Ram Kanai Jamini Ranjan Pal Pvt. Ltd. Vs. Member Board of Revenue, reported in MANU/SC/0342/1976 : AIR 1976 SC 1545 wherein the Board of Revenue in exercise of power conferred upon it under Section 21(1) of the Bengal Finance (Sales Tax) Act, 1941 referred the following question of law for decision to the High Court " Whether on the facts and circumstances of the case, in exercise of his powers under Section 20(3) of the Bengal Finance (Sales Tax) Act, 1941, the Additional Commissioner was competent to reassess the gross turnover of the petitioner by taking into consideration additional material which had not been made available to the assessing officer?" After hearing the parties, the High Court at Calcutta answered the aforementioned question in affirmative. Aggrieved by the judgment of the High Court, the appellant applied and obtained special leave to appeal before the Supreme Court. After hearing the parties in appeal, the Hon'ble Supreme Court held as under:-

"11. Turning to the first contention, we wish to make it clear that the scope and ambit of the revisional jurisdiction varies from statute to statute and it is difficult to make general observations in regard thereto. For ascertaining the true scope, content and ambit of the revisional jurisdiction of the Commissioner or the Additional Commissioner, as the case may be, of Commercial Taxes, under the Act, it is necessary to notice Section 20 thereof which insofar as is material for the purpose of these appeals stood thus at the relevant time:-

"20. (3) Subject to such rules as may be prescribed and for reasons

to be recorded in writing, the Commissioner upon application or of his own motion may revise any assessment made or order passed under this Act or the rules thereunder by a person appointed under Section 3 to assist him, and subject as aforesaid, the Board of Revenue may, in like manner, revise any order passed by the Commissioner:

Provided that before rejecting any application for the revision of any such order the Commissioner or the Board of Revenue, as the case may be, shall consider it and shall record reasons for such rejection:

Provided further that no application for revision shall lie to the Commissioner in respect of any assessment if an appeal lies under sub-section (1) to the Commissioner in respect of such assessment...

(5) Before any order is passed under this section which is likely to affect any person adversely, such person shall be given reasonable opportunity of being heard."

12. The section as extracted above is very widely worded. The word "revise" occurring therein which in dictionary is described as meaning to "re-examine, to review, to correct, or to amend the fault" is not hedged or qualified by any condition or limitation. The controlling expressions like "for the purpose of satisfying himself as to the legality or propriety of the order passed" or "regularity of the proceeding" which are susceptible of being construed as restricting the revisional power to rectification of an illegality or impropriety of the order or of irregularity in the proceeding are also not to be found therein. There is also nothing in the Bengal Sales Tax Rules, 1941 (hereinafter called 'the Rules') to circumscribe or limit the power. It is not, therefore, unreasonable to infer that the amplitude of the power conferred on the Commissioner or the Additional Commissioner is more extensive than the power exercisable by the High Court under Section 115 of the Code of Civil Procedure. In fact, it can be easily equated with the power exercisable by the Appellate Authority in an appeal under sub-section (2) of Section 20 of the Act. We are fortified in this view by the following observations made by this Court in *Indira Sohanlal v. Custodian of Evacuee Property, Delhi*, MANU/SC/0063/1955 : AIR 1956 SC 77:

"Section 27 is very wide in its terms and it cannot be construed as being subject to any limitation such as filing of an appeal. Nor can the scope of revisional powers be confined only to matters of jurisdiction or illegality, because under Section 27 the Custodian General, can exercise revisional powers for the purpose of satisfying himself as to "the legality or propriety" of any order of the Custodian."

13. The following observations made by Ramaswami, J. in *East Asiatic Co. (India) Ltd. v. State of Madras* MANU/TN/0476/1954 : 7 STC 299 : (AIR 1956 Mad 168) are also relevant:-

"The purposes of this Act are twofold viz. the levy of a general tax on the sale of goods to supplement the lost revenues and for

promoting the general public good; and secondly, to see that this is done under the provisions of the Act and not by carrying out in a capricious or arbitrary manner. Therefore, a revisional authority has to be created. What is revision? The essence of revisional jurisdiction lies in the duty of the superior tribunal or officer entrusted with such jurisdiction to see that the subordinate tribunals or officers keep themselves within the bounds prescribed by law and that they do what their duty requires them to do and that they do it in a legal manner. This jurisdiction being one of superintendence and correction in appropriate cases, it is exercisable even suo motu as is clear from the numerous statutory provisions relating to revision found in various Acts and Regulations such as the Civil Procedure Code, Criminal Procedure Code, Income Tax Act, etc. The jurisdiction of suo motu revision is not cribbed and cabined or confined by conditions and qualifications. The purpose of such amplitude being given suo motu revisions appears to be as much to safeguard the interests of the exchequer as in the interests of the assessee. The State can never be the appellant and if there is an order against the State to its prejudice, and naturally the assessee in whose favour the order is passed does not prefer an appeal, the State would suffer unless its interests are safeguarded by the exercise of such supervisory jurisdiction as the one given to the authorities abovementioned."

14. Thus the Commissioner or the Additional Commissioner can, in exercise of his revisional power, reassess the turnover and while doing so rope in escaped items of turnover and thereby enhance the gross turnover.

15. Having found that the power of revision exercisable by the Commissioner, Commercial Taxes is not trammled by any limitation, let us now see whether the Commissioner while exercising the revisional power is confined to the order of assessment and the record of proceedings of the Assessing Officer or can he travel outside the same and reassess the gross turnover by taking additional material into consideration. The following observations made in the majority judgment of this Court in the State of Kerala v. KM. Cheria Abdulla & Co. MANU/SC/0265/1964 : (1965) 16 STC 875 : (AIR 1965 SC 1585) are helpful in deciding this matter:

"The words of Section 12(2) of the Madras General Sales Tax Act, 1939, that the Deputy Commissioner "may pass such order with respect thereto as he thinks fit" means such order as may in the circumstances of the case for rectifying the defect be regarded by him as just. Power to pass such order as the revising authority thinks fit may in some cases include power to make or direct such further enquiry as the Deputy Commissioner may find necessary for rectifying the illegality or impropriety of the order, or irregularity in the proceeding. It is therefore not right baldly to propound that in passing an order in the exercise of his revisional jurisdiction, the Deputy Commissioner must in all cases be restricted to the record maintained by the officer subordinate to him, and can never make enquiry outside that record. Therefore, conferment of power under Rule 14-A of the Madras General Sales Tax Rules, 1939, to make further enquiry in cases where after being satisfied about the

illegality or impropriety of the order or irregularity in the proceeding, the revising authority thinks it just for rectifying the defect to do so does not amount to enlarging the jurisdiction conferred by Section 12(2).

16. It will also be apposite in this connection to refer to the following observations made by the Madras High Court in *State of Madras v. Madura Knitting Co. Ltd.* (MANU/TN/0008/1958 : 1959 10 STC 155 (Mad)):

"The powers given to the revising authority under Section 12(2) were not confined to errors patent on the face of the record but would extend to probing further into the records like calling for despatch registers and other evidence."

17. It will also be useful in this connection to refer to the decision of this Court in *Swastik Oil Mills Ltd. v. H.B. Munshi* MANU/SC/0317/1967 : (1968) 2 SCR 492 : (AIR 1968 SC 843) where this Court did not accept the principle laid down by the Andhra Pradesh High Court in *State of Andhra Pradesh v. T.G. Lakshmaiah Setty & Sons* MANU/AP/0297/1960 : (1961) 12 STC 663 (Andh Pra) that the Deputy Commissioner of Sales Tax while exercising revisional powers under the Sales Tax Act of 1946 or of 1953 or of 1959 could not travel beyond the material or record that is available to the assessing authority and was not entitled to find data to institute an enquiry so as to include additional material in order to judge the correctness of the order sought to be revised and held:

"Whenever a power is conferred on an authority to revise an order, the authority is entitled to examine the correctness, legality and propriety of the order and to pass such suitable orders as the authority may think fit in the circumstances of the particular case before it. When exercising such powers, there is no reason why the authority should not be entitled to hold an enquiry or direct an enquiry to be held and, for that purpose, admit additional material. The proceedings for revision, if started suo motu, must not of course be based on a mere conjecture and there should be some ground for invoking the revisional powers. Once these powers are invoked, the actual interference must be based on sufficient grounds, and, if it is considered necessary that some additional enquiry should be made to arrive at a proper and just decision, there can be no bar to the revising authority holding a further enquiry or directing such an enquiry to be held by some other appropriate authority. This principle has been clearly recognised by this Court in the *State of Kerala v. Abdulla and Company* (MANU/SC/0265/1964 : (1965) 16 STC 875 : AIR 1965 SC 1585)."

18. The decisions of this Court in *Deputy Commissioner of Agricultural Income Tax and Sales Tax, Quilon v. Dhanalakshmi Vilas Cashew Co.* MANU/SC/0411/1969 : (1969) 24 STC 491 (SC) the *State of Kerala v. M. Appukutty* MANU/SC/0348/1962 : (1963) 14 STC 242 : (AIR 1963 SC 796) and *Commissioner of Income-tax, Bombay v. Shapoorji Pallonji Mistry*, MANU/SC/0233/1962 : (1962) 44 ITR 891 : (AIR 1962 SC 1086) relied upon by Mr. Desai in support of his contention that while exercising his revisional power under Section 20(3) of the Act, the Commissioner cannot travel

outside the return made by the assessee and the assessment order passed by the Sales Tax Officer with a view to finding out suppressed or escaped items of turnover and enhance the assessment are distinguishable as in all those cases, there were specific and separate provisions which enabled escaped turnover or income being brought to tax after following a special procedure. In Dhanalakshmi Vilas Cashew Co. case, there was Rule 33 of Kerala General Sales Tax Rules, 1950, in M. Appukutty case, there was Rule 17 of the Madras General Sales Tax Rules, 1939, and in Shapoorji Pallonji Mistry case, there were Sections 34 and 33B of the Income Tax Act, 1922 which enabled escaped turnover or escaped income to be brought to tax. In the Act before us, however, there are no separate or specific provisions for assessment of escaped turnover which may, by implication, be said to exclude from the ambit of the revisional jurisdiction of the Commissioner the taking of additional facts into consideration and enhancing the gross turnover.

19. In view of the foregoing discussion, we have no hesitation in repelling the first contention raised on behalf of the appellant by Mr. Desai and in holding that the High Court was right in answering the first question referred to it by the Board of Revenue in the affirmative."

36. The aforesaid view that the revisional jurisdiction involves exercise of appellate jurisdiction has found reiteration in the case of United India Insurance Co. Ltd. Vs. Narinder Mohan Arya. To quote:-

"A revisional jurisdiction as is well known involves exercise of appellate jurisdiction. (See Shankar Ramchandra Abhyankar v. Krishanji Dattatreya Bapat reported in MANU/SC/0456/1969 : (1969) 2 SCC 74 : AIR 1970 SC 1 and Nalakath Sainuddin v. Koorikadan Sulaiman reported in MANU/SC/0564/2002 : (2002) 6 SCC 1.)"

37. I find reiteration of the aforesaid view again in the matter of G.L. Vijain v. K. Shankar reported in MANU/SC/8724/2006 : 2006 13 SCC 136. To quote:-

"The revisional jurisdiction, however, in effect and substance is an appellate jurisdiction."

38. From the aforesaid delineation of the powers conferred under the revisional jurisdiction it is apparent that the same is not vested with the same said authority passing the order or decision but being an appellate and supervisory jurisdiction, the same has to be vested with another superior officer. I am, thus, of the considered opinion that while the Revenue Officer under Sub-section (3) of Section 103A of the Act has been conferred with power to revise the order passed by any other subordinate authority but he is not empowered to revise his own order and the word "revise" has to be read down-in so far as the Section allows the revision of his own order or decision-to mean to revise his order only to the extent of clerical mistakes or errors apparent on the face of the records and, while doing so, not to examine the correctness, legality and propriety of the order which are ordinarily the attributes of the supervisory revisional jurisdiction.

Jayanandan Singh, J.

39. I have the advantage of going through the judgment of Brother Ashwani Kumar Singh, J, which contains all the relevant facts of the case and elaborately deals with the judgments and legal provisions of the Bihar Tenancy Act connected with the

issue. I have been benefited by the detailed discussions of law in reference to the provisions of Section 103A of the Bihar Tenancy Act and the law emanating from the earlier judgments in connection with the issue for consideration by us on reference.

40. The order of reference dated 3rd December, 2010 of the Division Bench in this Appeal has been reproduced in his Lordship's judgment in extenso. From the said order, it is apparent that the core issue raised and referred to us by the Division Bench is whether the Full Bench in the case of Ram Kishun Mandal & another Vs. The State of Bihar [MANU/BH/0312/1987 : 1987 PLJR 291] has taken into account the effect of amended provisions under Section 103A(3) of the Act or not before coming to its findings that the Revenue Officer acting under section 103A(3) of the Act has no inherent powers to review his own decision till the final publication of the record of rights.

41. The legislative history of Section 103A, amendments therein, and judgments of this Court as well of a Constitution Bench of the Apex Court, delivered prior to the judgments of the said Full Bench, have been noticed in the judgment of the Brother Ashwani Kumar Singh, J. and, hence, they need not be dealt with by me in much detail. The legislative history noticed by his Lordship shows that, prior to amendment introduced by Bihar Act 1 of 1963, Section 103A contained only three sub-sections, out of which, sub-sections (1) and (2) are still in existence in the statute book. It was by Act 1 of 1963 that two sub-sections were inserted in Section 103A and numbered as sub-sections (3) and (4) after original sub-section (2) and the original sub-section (3) was re-numbered as sub-section (5). Objects and reasons of Act 1 of 1963 are contained in Bihar Gazette Extraordinary No. 337 dated 11th September, 1962, which are being reproduced herein below:

"STATEMENT OF OBJECTS AND REASONS

At present, there is no provision in the Bihar Tenancy Act, 1885 (VIII of 1885), for revision of any wrong order passed under sub-section (1) of section 103A in respect of any entry made in draft record-of-rights or for making any correction of mistakes found in such record-of-rights after draft publication and before final publication. In consequence to this, even if it is found after draft publication that there are certain mistakes in the record-of-rights or any wrong order has been passed in respect thereto under sub-section (1) of section 103A, there is no provision in the Act to correct it at the draft publication stage. In the Chota Nagpur Tenancy Act, 1908 (Ben. Act VI of 1908), however, there is a provision in section 89 that any Revenue Officer specially empowered by the State Government in this behalf may on application or of his own motion, within twelve months from the making of any entry in the draft record-of-rights or of any order or decision under section 83, revise the same, whether it was made by himself or by any other Revenue Officer. An appeal against such order lies in the prescribed manner and to the prescribed officer.

It is proposed to make similar amendment in section 103A of the Bihar Tenancy Act 1885, so that mistakes, if any, found in the record-of-rights after draft publication or any wrong order passed in respect of any entry in such draft record-of-rights may be corrected by a specially empowered Revenue Officer at any time before its

final publication after giving reasonable notice to the parties concerned to appear and be heard in the matter.

Section 108A of the Bihar Tenancy Act, 1885 provides that any bona fide error in the finally published record-of-rights may be corrected by the Revenue Officer specially empowered by the State Government, either on application or on his own motion, within a period of twelve months from the date of the certificate of final publication of the record-of-rights under sub-section (2) of section 103A of the Act. It has, however, been found that certain bona fide and material errors have occurred in the record-of-rights finally published in the year 1958 during the last Revisional Settlement of the district of Purnea which could not be discovered within the period of twelve months from the date of certificate of final publication either by the Revenue authorities or by the parties concerned. The result is that for correction of such bona fide or material errors the parties have to file civil suits which are necessarily expensive. In some other States the period within which such errors in the record-of-rights can be corrected, has been extended to five years from the date of the certificate of final publication. In order to avoid unnecessary litigation and expenses to the raiyats it is considered necessary to make a similar provision in the Bihar Tenancy Act, 1885, by amendment of section 108A. No such correction shall, however, be made if a suit or an appeal affecting such entry is pending nor any such correction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter."

(Emphasis is mine)

42. From the object and reasons of the Act, as extracted above, it is clear that the Law Makers found that, in between the consideration of objections to the entries in the record of rights by the Revenue Officer in terms of sub-section (1) of Section 103A, and its final publication in terms of sub-section (2), there should be some expeditious remedy to an aggrieved raiyat against orders passed by a Revenue Officer on an objection of a party, than only to wait for its final publication and then seek his remedy through an appeal or in a suit. Hence, by proposing insertion of sub-section (3) after sub-section (2), the Law Makers ensured that the aggrieved party gets another opportunity for redressal of his grievances before a Revenue Officer, specially empowered by the Government, against any order passed by him in terms of sub-section (1), or any order passed by any other Revenue Officer also, till the time of final publication of record of rights. By sub-section (4) the Law Makers also prescribed right of appeal against any order passed under newly inserted sub-section (3). Thus, by this amendment before final publication of record of rights and after any order passed under sub-section (1), 2-tier remedy was provided to an aggrieved party. This amendment was published in the extraordinary issue of Bihar Gazette dated January 15, 1963.

43. By Act 1 of 1967 an amendment was introduced by replacing the newly inserted sub-section (3) with another sub-section, containing time limit for any application by any party under its provisions. Subsequently by Act 7 of 1969, sub-section (4) inserted by Act 1 of 1963, providing for a forum of appeal, was deleted.

44. Prior to insertion of sub-section (3) by Act 1 of 1963 with effect from January 25,

1963, provisions of Section 103A, as it then existed, fell for consideration before a Division Bench of this Court in the case of Ram Dayal Missir Vs. The State of Bihar & Others [MANU/BH/0003/1958 : AIR 1958 Pat 4]. The Division Bench found that under the existing provisions of the Section there was no power of review. An appeal was preferred by the State of Bihar against the said judgment and matter came up for consideration by a Constitution Bench of the Apex Court also, which also by its judgment reported in 1962 BLJR 385 held the same. Findings of the Courts have been reproduced in the judgment by Brother Ashwani Kumar Singh, J. and they need not be reproduced again here. Apparently thereafter, amendment was introduced in the Section and by Act 1 of 1963, sub-section (3) as well as sub-section (4) (as it was then) were introduced in Section 103A. After the amendment, provisions of Section 103A, as it stood amended, fell for consideration before a Division Bench of this Court in the case of Devendra Prasad Gupta Vs. State of Bihar [MANU/BH/0043/1977 : 1977 PLJR 576] and the Division Bench held that by Amendment Act 1 of 1963 Revenue Officer has been vested with the power of revision and review, for review of his own order, as well as, for revision of any other order passed by any other Revenue Officer. Correctness of this judgment of the Division Bench was doubted by another Division Bench in the case of Ram Kishun Mandal and hence the matter was referred to a Full Bench.

45. Judgment of the Full Bench, correctness of which has been doubted by the Division Bench by the order under reference before us, formulated three questions. First two questions are not relevant for consideration by us. However, third question, formulated in the leading judgment of the then Hon'ble the Chief Justice, was thus:

"Whether the revenue officer specially empowered by the State Government can, under section 103A(3) of the Bihar Tenancy Act, exercise an inherent power to review his own decision till the final publication of the record of rights?"

46. After formulating the questions, the then Hon'ble the Chief Justice very elaborately considered question nos. 1 and 2 from paragraph 2 upto paragraph 14, in which His Lordship noticed the changes made in Section 103A of the Act from time to time as well as some other provisions and answered the first two questions in paragraph 14 of the judgment in the negative. Thereafter, His Lordship took up question no. 3 and His Lordship's discussion in respect of this question is confined in paragraphs 15 and 16. For more clarity, paragraphs 15 and 16 of the judgment of Hon'ble the then Chief Justice are reproduced herein below:-

"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 MANU/BH/0003/1958 : 1957 BLJR 292 : (AIR 1958 Pat 4) (Ramdayal Missir V/s. State of Bihar) 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 under 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/s. 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 O. 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 under S. 103A(3) of the Act has no inherent power to review his own decision till the final publication of the record of rights."

47. Thereafter from paragraph 17 onwards His Lordship took notice of another submission of learned counsel for the respondents, for which no question had been formulated, and answered the same also in negative in paragraph 21. Hon'ble Mr. Justice L.M. Sharma (as His Lordship then was) in his concurring judgment, from paragraph 22 onwards, concurred with the findings of the then Hon'ble the Chief Justice in respect of all the three questions, but on the additional issue raised by learned counsel for the respondents, differed and held that the Commissioner of the Division had the inherent supervisory powers. Hon'ble Mr. Justice S. Shamsul Hasan, the third Hon'ble Judge of the Full Bench, only agreed with the judgment of Hon'ble the then Chief Justice.

48. Thus, from a bare reading of the judgment of the Full Bench in Ram Kishun Mandal (Supra), it is apparent that the entire discussion, in respect of question no. 3, framed in the judgment and as reproduced above, was confined in paragraphs 15 and 16 in the judgment of Hon'ble the then Chief Justice, as reproduced above.

49. Now coming to the said discussion, it is clear that Hon'ble the then Chief Justice answered the question in negative taking into account only, and only, the said judgment of the Constitution Bench of the Apex Court in the case of State of Bihar Vs. Ram Dayal Missir (Supra).

50. I have considered the judgment of the Full Bench in great detail and carefully, but have failed to find out a single sentence in the judgment of any of their Lordships from which it could be evident that the changes in the law by the amendments introduced by Act 1 of 1963 subsequent to the said judgment of the Constitution Bench of the Apex Court was at all taken into account and the effect and import of newly inserted sub-section (3) on the powers of the Revenue Officer was examined before answering the question in negative on the basis of said Constitution Bench Judgment of the Apex Court. Thus, it is apparent that the Full Bench in the case of Ram Kishun Mandal (Supra) totally failed to examine question no. 3 formulated by it, after taking into account and examining the effect and import of insertion of sub-section (3) in section 103A of the Act by Amendment Act 1 of 1963.

51. In the circumstances, with regrets, I am unable to agree with the conclusions and

findings of Brother Ashwani Kumar Singh, J. in his judgment. I am of the opinion that the matter requires to be referred to and heard by a larger Bench for an authoritative pronouncement on the issue.

R.M. Doshit, C.J.

52. I have had the privilege of the judgment delivered by the learned brother Hon'ble Mr. Justice Ashwani Kumar Singh and also the dissenting view of the learned brother Hon'ble Mr. Justice Jayanandan Singh.

53. The reference made to the Full Bench lies in a narrow compass. The Division Bench has referred this Appeal to the Full Bench for examining the correctness of a Full Bench judgment in the matter of Ram Kishun Mandal & Anr. Vs. The State of Bihar [MANU/BH/0312/1987 : 1987 PLJR 291].

54. The matter at issue is whether the Revenue Officer especially empowered in that behalf has power or authority to review or revise his own order or the order made by any other officer.

55. Brother Mr. Ashwani Kumar Singh, J. has dealt with the issue in extenso. The relevant provisions and the judgments have been considered in great detail. Brother Mr. Ashwani Kumar Singh, J. has held against such authority. He has held, "I am, thus, of the considered opinion that while the Revenue Officer under Subsection (3) of Section 103A of the Act has been conferred with power to revise the order passed by any other subordinate authority but he is not empowered to revise his own order and the word "revise" has to be read down-in so far as the Section allows the revision of his own order or decision-to mean to revise his order only to the extent of clerical mistakes or errors apparent on the face of the records and, while doing so, not to examine the correctness, legality and propriety of the order which are ordinarily the attributes of the supervisory revisional jurisdiction."

56. Brother Mr. Jayanandan Singh, J. has considered the amendment to Section 103A of the Bihar Tenancy Act, 1885 made under the Bihar Act 1 of 1963; the statement of objects and reasons for the said Act of 1 of 1963 and has expressed his dissent. Brother Mr. Jayanandan Singh, J. has held that in the matter of Ram Kishun Mandal and another (supra), the Full Bench has not consciously considered Section 103A of the Bihar Tenancy Act as it stands after amendment made under the Act 1 of 1963.

57. Since the facts, the relevant provisions and the judgments under consideration have been considered by the Brother Judges Mr. Ashwani Kumar Singh, J. and Mr. Jayanandan Singh J., I do not propose to reiterate the facts or the law on the point.

58. I completely agree with the proposition of law canvassed by Brother Mr. Ashwani Kumar Singh, J. in respect of power of review or revision conferred by a statutory provision. It is too late in a day to hold otherwise. It is but settled law that the power of review/revision is creature of law. No Court, Tribunal or authority exercising quasi judicial functions has inherent right/power to review its own order. Power of review or revision is such which can be exercised only under the authority of law. In absence of express provision for review or revision, the order cannot be reviewed or revised, except for correction of inadvertent or accidental mistake or of typographical or clerical error.

59. I am, however, unable to agree with the view expressed by Brother Mr. Ashwani Kumar Singh, J. that the Revenue Officer especially empowered in that behalf does

not have power to review his own order.

60. It is evident that it was the judgment of this Court in the matter of Ramdayal Missir & Ors. Vs. The State of Bihar & Ors. [MANU/BH/0003/1958 : AIR 1958 Pat. 4 and the judgment of the Hon'ble Supreme Court in the matter of State of Bihar & Anr. Vs. Ramdayal Missir & Ors. [1962 BLJR 385], the State Government was mobilized to amend Section 103A of the Bihar Tenancy Act to confer the power of review or revision on the Revenue Officers. The express provision contained in sub-section (3) of Section 103A of the Bihar Tenancy Act, "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" leaves no doubt about the legislative intent. For once, the legislature is clear and unambiguous. The Revenue Officer so authorized can review his own order or may revise the order made by any other officer. Once the power of revision of his own order has been expressly conferred upon a Revenue Officer, this Court is not justified in overlooking the said provision and in holding that no such power vests in the Revenue Officer. Brother Mr. Jayanandan Singh, J. has considered the provision elaborately. Further deliberation is not necessary.

61. True, the above referred sub-section (3) of Section 103A does not use the word "review" expressly. When the said Section says that the Revenue Officer may revise his own order, what is contemplated is review of Officer's own order. The aforesaid power of review conferred by Section 103A of the Tenancy Act is not the same as the power of review under Section 114 or Order XLVII of the Code of Civil Procedure; nor it is circumscribed by the conditions mentioned by Section 114 or Order XLVII of the Code of Civil Procedure.

62. I agree with Brother Mr. Jayanandan Singh, J. that the Full Bench of this Court has, in the matter of Ram Kishun Mandal & Anr. (supra) failed to consider the amended Section 103A of the Tenancy Act.

63. As the judgment in the matter of Ram Kishun Mandal & Anr. (supra) has been delivered by a co-lateral bench of three Judges, I do agree with the Brother Mr. Jayanandan Singh, J. that the matter requires consideration by a larger Bench.

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