

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.63 OF 2020

- 1 Mrs. Maria Thereza de Jesus alias
Anne Fernandes
- 2 Mrs. Valentina Carmelina Pauline
Fernandes alias Carmen
Fernandes
- 3 Mr. Angelo Caetano Fernandes
- 4 Juliana Fernandes
- 5 William Peter Fernandes
- 6 Mark Fernandes alias Albertine
Fernandes

All major of age
all represented by their Attorney
The petitioner no.5 Willian Peter
Fernandes
R/o. 126-B, Ground Floor,
Meurin House, Cavel Street,
Mumbai 400 002.

.... Petitioners

Versus

Maria Corinta Noronha e
Fernandes,
Major of age,
R/o. H.No.1321, Bamon Vaddo,
Siolim, Bardez, Goa.

.... Respondent

Mr. Valmiki Menezes, Advocate for the Petitioners.

Mr. J.A. Lobo, Advocate for the Respondent.

CORAM: MANISH PITALE, J.

Reserved on : 8th February 2022

Pronounced on : 16th February 2022

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of learned Counsel for the rival parties. Learned Counsel for the respondent waives service.

2. Although this litigation between the parties has a chequered history, the principal question raised on behalf of the petitioners is, as to what is the true scope of the power and jurisdiction of the Collector under Section 103 of the Goa, Daman and Diu Land Revenue Code, 1968, in the context of correcting errors in the record of rights or registers maintained under Chapter VIII of the said Code. The aforesaid provision specifically pertains to correction of clerical errors.

3. The respondent, in the present case, had initiated proceeding under Section 103 of the aforesaid Code in the year 1993, for correction of an error in the record of rights, claiming that the name of the predecessor of the petitioners, i.e. Joseph

Paulo, was wrongly recorded in the context of land bearing survey nos.43/8 and 44/2 at village Parra, Bardez. The respondent prayed for deletion of the name of the said Joseph Paulo from the record of rights and to add the name of the respondent in such record, in the context of the aforesaid property.

4. The Deputy Collector considered the said application and issued notice to Joseph Paulo. It was found that Joseph Paulo had expired and, therefore, the Deputy Collector permitted the respondent to carry out service of notice by publication in a daily newspaper to the legal heirs of Joseph Paulo. The Deputy Collector fixed the application filed by the respondent for consideration on various dates from 27.04.1993 to 24.11.1994. The application was then kept for hearing on 24.01.1995.

5. On 24.01.1995, the Deputy Collector passed the impugned order exercising power, ostensibly under Section 103 of the Code and directed the Mamlatdar of Bardez to delete the name of Joseph Paulo from the occupants' column in the aforesaid property and to record the name of the respondent. In the said order, it was specifically recorded that Joseph Paulo had expired and that publication was permitted for service on legal heirs of Joseph Paulo. Thereafter, it was recorded that the respondent, i.e. Joseph Paulo, remained absent on the date the

order was passed, though notice was issued through publication in newspaper.

6. Although, the said order dated 24.01.1995 was made subject matter of challenge by the petitioners under the provisions of the aforesaid Code, in the present Writ Petition, the very order dated 24.01.1995, is also challenged directly before this Court, on the ground that such an order is wholly without jurisdiction and that it is a nullity. It is contended that the nature of relief sought by the respondent could not have been granted by the Deputy Collector by exercising power under Section 103 of the Code, which pertains only to the correction of clerical errors in the record of rights or registers maintained under Chapter VIII of the aforesaid Code.

7. It was the contention of the petitioners that since they were not residing in Goa, they became aware of the aforesaid order dated 24.01.1995, in the year 2002, when they intended to carry out certain construction in the property. According to them, when they became aware of the aforesaid order, they followed up the matter in the office of the Deputy Collector and eventually the Talathi issued a certified copy of the order on 10.07.2002. Thereafter, the petitioners moved an application for setting aside the order dated 24.01.1995, along with an application for

condonation of delay. This application was purportedly filed under Section 175 of the aforesaid Code.

8. By judgment and order dated 05.07.2012, the Deputy Collector allowed the said application and directed that the petitioners could file their reply by 23.08.2012, so that their objections to the application filed by the respondent under Section 103 of the Code, could be considered.

9. Aggrieved by the said order, the respondent filed an appeal before the Revenue Secretary of the State under Section 188 of the Code. The aforesaid appeal was opposed by the petitioners and the arguments of the parties were heard by the Revenue Secretary. The petitioners raised the question of maintainability of the appeal, but before the said appeal could be disposed of, the respondent filed an application stating that the appeal had been mistakenly filed and that the error deserved to be corrected, to treat the same as a revision application under Section 192 of the aforesaid Code. Notice was issued on the said application. The Revenue Secretary heard the parties on the said aspect of the matter and it was stated that orders would be communicated to the parties.

10. Thereafter, on 11.09.2017, the petitioners received a notice from the Revenue Secretary, along with a memo of a revision application challenging the order dated 05.07.2012 passed by the Deputy Collector. It is a matter of record that there was no application for condonation of delay filed along with the revision application to justify filing of the said revision application after more than 5 years of the order dated 05.07.2012, passed by the Deputy Collector.

11. The petitioners opposed the said revision application on the ground that since remedy of appeal was already availed by the respondent, the revision application was not maintainable and further that such an application was clearly beyond the period of limitation provided under the Code. The petitioners were informed that the Revenue Minister would hear the matter and, accordingly, written arguments were filed before the said authority. On 24.01.2019, the Revenue Minister passed an order allowing the revision application and setting aside the order passed by the Deputy Collector on 05.07.2012.

12. Aggrieved by the same, the petitioners approached the Administrative Tribunal. By the order dated 25.04.2019, the Tribunal dismissed the appeal, holding that the same was not maintainable in view of the fact that the order passed by the

Revenue Minister was neither under Section 188(c) nor 188(2)(b) and (d) of the aforesaid Code.

13. It is in this backdrop that the petitioner has filed the present Writ Petition, challenging not only the orders passed by the Tribunal, but seeking dismissal of the very application filed by the respondent under Section 103 of the aforesaid Code. It is specifically contended on behalf of the petitioners that the Deputy Collector could not have exercised jurisdiction for entertaining the application filed by the respondent under Section 103 of the Code and, hence, the order dated 24.01.1995 was a nullity and it was passed wholly without jurisdiction. Consequently, all the subsequent orders passed by various authorities were rendered unsustainable. It was claimed that the respondent could have moved only the competent Civil Court, for first establishing title to the property in question and then approaching the concerned revenue authority under Section 96 of the Code for mutation in the revenue record.

14. Mr. V. Menezes, learned counsel has appeared on behalf of the petitioners. The learned Counsel has specifically invited the attention of this Court to Section 103 of the Code. It is submitted that the Collector could exercise power under the aforesaid provision only when clerical errors were sought to be

corrected or when correction of errors admitted by the interested parties were required to be carried out in the record or correction of any error that a Revenue Officer may notice during the course of an inspection. It is submitted that since the application of the respondent was not covered in any of the contingencies contemplated under Section 103 of the Code, the Deputy Collector, in the present case, ought not to have exercised jurisdiction for entertaining the application and, therefore, the present Writ Petition deserved to be allowed. The learned Counsel emphasized that even if the petitioners themselves had sought to invoke remedies under the aforesaid Code, they were entitled to cut across such proceedings and attack the order dated 24.01.1995, passed by the Deputy Collector on the ground that such an order was wholly without jurisdiction and an absolute nullity, considering the scope of Section 103 of the aforesaid Code.

15. The learned Counsel further submitted that even if the view of the Tribunal that the appeal filed against the order of the Revenue Minister was not maintainable, was to be accepted for the sake of arguments, the order of the Revenue Minister dated 24.01.2019, was wholly unsustainable because the Revenue Minister proceeded on the basis that the Deputy Collector did not have any power to reopen the matter after having passed the

order dated 24.01.1995. It was submitted that the Deputy Collector had power under Section 193 of the Code to review his own order, which the Revenue Minister completely failed to appreciate. It was then submitted that the aforesaid alternative argument about the Deputy Collector having the power of review was without prejudice to the first contention raised on behalf of the petitioners that this Court ought to hold that the application filed by the respondent under Section 103 of the Code was not maintainable and that the order dated 24.01.1995, itself deserved to be set aside, leaving the respondent to avail of the remedy of approaching the competent Civil Court to prove her case in accordance with law.

16. It was submitted that while exercising superintending/supervisory jurisdiction under Article 227 of the Constitution of India, this Court did have power to cut across proceedings that were initiated under the Code by the rival parties and to examine the correctness of the order dated 24.01.1995, since the very proceeding initiated by the respondent under Section 103 of the Code was without jurisdiction. It was further submitted that the application for correction of an error other than a clerical error contemplated under Section 103 of the Code proceeds on the basis that the interested parties admit to such an error. It was submitted that in the present case, there was

no question of any such agreement or admission on the part of the interested parties. In this regard, the learned Counsel referred to Section 61 of the Code, to contend that this Court had held in *Writ Petition No.303 of 2016* in the case of *Shri Ramkrishna Janardan Bhat alias Shri Ramkrisha Janardan Pinge V/s. M/s. Gold Resorts & Hotels Pvt. Ltd. & Ors.* that even an application under Section 61(2) of the Code, concerning partition, could be entertained by the Collector only when there was consent of co-holders and not otherwise. The learned Counsel also relied upon the judgments of the Hon'ble Supreme Court in the context of the extent of power of this Court under Section 227 of the Constitution, in the cases of *Umaji Keshao Meshram & Ors. V/s. Radhikabai, widow of Anandrao Banapurkar & Anr.*¹, *Radhey Shyam & Anr. V/s. Chhabi Nath & Ors.*², *Surya Dev Rai V/s. Ram Chander Rai & Ors.*³ and *Shalini Shyam Shetty & Anr. V/s. Rajendra Shankar Patil*⁴.

17. On the other hand, Mr. Lobo, the learned Counsel appearing for the respondent submitted that since remedies were available under the Code, which had been availed by both the

¹ 1986 (Supp) SCC 401

² (2015) 5 SCC 423

³ (2003) 6 SCC 675

⁴ (2010) 8 SCC 329

parties in the context of the order dated 24.01.1995, passed by the Deputy Collector, there was no substance in the contention raised on behalf of the petitioners that this Court could set aside the order dated 24.01.1995 passed by the Deputy Collector, cutting across all subsequent proceedings undertaken at the behest of the rival parties. It was submitted that even in the judgments of the Hon'ble Supreme Court on which the petitioners had placed reliance, concerning the extent of supervisory jurisdiction under Article 227 of the Constitution, it was specifically held that such exercise of power would be subject to statutory remedies available to the parties. Therefore, it was submitted that the first contention raised on behalf of the petitioners does not deserve any consideration.

18. As regards the correctness or otherwise of the orders passed by the Tribunal and the Revenue Minister, it was submitted that no error could be attributed to the said orders. It was submitted that the Revenue Minister was justified in holding that the Deputy Collector had no power to recall the order dated 24.01.1995, by the order dated 05.07.2012. It was submitted that even if power of review was to be exercised in the context of Section 193 of the Code, under the proviso to the said Section, any application for review filed before the Deputy Collector would have to be sent to the Government for permission to

entertain such a review application. On this basis, it was submitted that when admittedly the Deputy Collector had not followed the said procedure, the order dated 05.07.2012, was wholly unsustainable and that the Revenue Minister was clearly justified in setting aside the said order passed by the Deputy Collector. In the alternative, it was submitted that if the petitioners desired to be heard in the matter, the procedure under Section 193 of the Code could be followed and the Deputy Collector could be directed to follow the procedure of seeking permission from the Government before entertaining the application of the petitioners seeking recall/review of the order dated 24.01.1995. The learned Counsel relied upon an order dated 07.10.2019 passed by the Division Bench of this Court in *Writ Petition No.886 of 2019* in the case of *The Comunidade of Taleigao V/s. State of Goa & Ors.* to contend that the Division Bench had held that an inquiry under Section 103 of the Code would include deciding a controversy concerning title between the parties.

19. Heard learned Counsel for the rival parties and perused the material on record.

20. This Court needs to first consider the contention raised on behalf of the petitioners that the order dated 24.01.1995, passed

by the Deputy Collector, was a nullity and that it was passed wholly without jurisdiction, as the very application moved by the respondent in the year 1992 under Section 103 of the Code was not maintainable. In order to examine the said contention, it would be necessary to refer to Section 103 of the Code, which reads thus:

“103. Correction of clerical errors — The Collector may, at any time, correct or cause to be corrected any clerical errors and any errors which the parties interested admit to having been made in the record of rights or registers maintained under this Chapter or which a revenue officer may notice during the course of his inspection:

Provided that, when an error is noticed by a revenue officer during the course of his inspection, no such error shall be corrected unless a notice has been given to the parties and objections, if any, have been disposed of finally in accordance with the procedure relating to disputed entries.”

21. A bare perusal of the above quoted provision would show that there are three contingencies in which the Collector can exercise power. Firstly, for correction of a clerical error; secondly, correction of an error which the parties interested admit to having been made in the record of rights; and thirdly, any clerical error or any error which a Revenue Officer may notice during the course of his inspection. It needs to be examined whether the

respondent approached the Deputy Collector in the present case under any of the aforesaid three contingencies.

22. A perusal of the order dated 24.01.1995, shows that the respondent had moved an application in the year 1992 seeking deletion of the name of the predecessor of the petitioners from the record of rights and entry of her name in the said place. This was clearly not an attempt on the part of the respondent for correction of a clerical error, obviously, because a substantive correction was sought to be made in the record of rights by deletion of the name of the predecessor of the petitioners and entering the name of the respondent in respect of the said properties. The said application could also not be covered under the contingency of the interested parties admitting to correction of any clerical error or any other error in the record of rights. The predecessor of the petitioners and the petitioners themselves were the interested parties and, obviously, there was no admission on their part for carrying out any such correction. It was also not the case of the respondent that such a clerical error or any other error was noticed by a Revenue Officer during the course of an inspection. Thus, it becomes clear that on a plain reading of Section 103 of the Code and applying the same to the admitted position on record, the Deputy Collector could not have invoked power under the said provision, for entertaining the application

filed by the respondent. This makes it amply clear that the application moved by the respondent in the year 1992 could not have been entertained by the Deputy Collector and on this sole ground the order dated 24.01.1995, is found to be wholly without jurisdiction and a nullity.

23. It is significant that even in the body of the order dated 24.01.1995, the Deputy Collector recorded that the predecessor of the petitioners had expired. Publication of notice was permitted on the legal heirs of the said person, without specifying the details of the legal heirs. Yet, the Deputy Collector in the order dated 24.01.1995, recorded that while the respondent was present on the date when the order was passed, i.e. the deceased predecessor of the petitioners, remained absent, although notice was purportedly issued through the newspaper. This further goes to show that the order dated 24.01.1995, passed by the Collector, not only suffered from the vice of the absence of jurisdiction but also the defect of flagrant violation of the principles of natural justice.

24. The further question that arises for consideration, is whether, in such circumstances, this Court should refrain from exercising power to set aside the order dated 24.01.1995, despite finding that the said order is wholly without jurisdiction and that

Section 103 of the Code does not apply, only because the petitioners as well as the respondent had resorted to various remedies of appeal/revision under the provisions of the said Code. This is particularly significant because in the present case this Court is exercising supervisory jurisdiction under Article 227 of the Constitution of India.

25. At this stage, it would be apposite to refer to judgments of the Supreme Court, relied upon by the learned Counsel for the parties. In the case of *Surya Dev Rai* (supra), while considering the nature of supervisory jurisdiction exercised by the High Courts under Article 227 of the Constitution, the Supreme Court, *inter alia*, held as follows:

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4. *Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.*

5. *Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (iii) a grave injustice or gross failure of justice has occasioned thereby.*

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7. *The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.*

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39. *Though we have tried to lay down broad principles and working rules, the fact remains that the parameters for exercise of jurisdiction under*

Articles 226 or 227 of the Constitution cannot be tied down in a straitjacket formula or rigid rules. Not less than often the High Court would be faced with dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where 'a stitch in time would save nine'. At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the Judge."

26. The above quoted portions of the said judgment of the Supreme Court show that although the High Court may exercise power under Article 227 of the Constitution, it may do so only in cases where the judicial conscience impels exercise of such power in the interest of justice. In the case of ***Shalini Shetty*** (supra), the Supreme Court reiterated the said position of law and held as follows:

“46. Articles 226 and 227 stand on substantially different footing. As noted above, prior to the Constitution, the Chartered High Courts as also the Judicial Committee of the Privy Council could issue prerogative writs in exercise of their original jurisdiction. [See Umaji Keshao Meshram v. Radhikabai - 1986 Supp SCC 401 at page 469)]. However, after the Constitution every High Court has been conferred with the power to issue writs under Article 226 and these are original proceeding. [State of U.P. and others vs. Dr. Vijay Anand Maharaj - AIR 1963 SC 946, page 951].

47. The jurisdiction under Article 227 on the other hand is not original nor is it appellate. This jurisdiction of superintendence under Article 227 is for both administrative and judicial superintendence. Therefore, the powers conferred under Articles 226 and 227 are separate and distinct and operate in different fields. Another distinction between these two jurisdictions is that under Article 226, the High Court normally annuls or quashes an order or proceeding but in exercise of its jurisdiction under Article 227, the High Court, apart from annulling the proceeding, can also substitute the impugned order by the order which the inferior tribunal should have made. (See Surya Dev Rai (supra), para 25 page 690 and also the decision of the Constitution Bench of this Court in Hari Vishnu Kamath vs. Ahmad Ishaque and others - [AIR 1955 SC 233, para 20 page 243].

48. The Jurisdiction under Article 226 normally is exercised where a party is affected but power under Article 227 can be exercised by the High Court suo

motu as a custodian of justice. In fact, the power under Article 226 is exercised in favour of persons or citizens for vindication of their fundamental rights or other statutory rights. The jurisdiction under Article 227 is exercised by the High Court for vindication of its position as the highest judicial authority in the State. In certain cases where there is infringement of fundamental right, the relief under Article 226 of the Constitution can be claimed ex-debito justitia or as a matter of right. But in cases where the High Court exercises its jurisdiction under Article 227, such exercise is entirely discretionary and no person can claim it as a matter of right. From an order of a Single Judge passed under Article 226, a letters patent appeal or an intra-court appeal is maintainable. But no such appeal is maintainable from an order passed by a Single Judge of a High Court in exercise of power under Article 227. In almost all the High Courts, rules have been framed for regulating the exercise of jurisdiction under Article 226. No such rule appears to have been framed for exercise of High Court's power under Article 227 possibly to keep such exercise entirely in the domain of the discretion of High Court.”

27. It becomes evident from the said position of law laid down by the Supreme Court that while exercising supervisory jurisdiction under Article 227 of the Constitution, apart from annulling a proceeding the High Court can substitute the impugned order with an order which ought to have been passed. It is laid down that the High Court, as a custodian of justice, can

exercise its discretionary power, although no person can claim it as a matter of right.

28. The learned Counsel appearing for the respondent has sought to rely on part of the aforesaid judgment in the case of ***Shalini Shetty*** (supra), wherein it has been held as follows:

“49(c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.”

29. This Court is not impressed with the aforesaid submission, indicating that since alternative remedy of review is available under the Code, this Court may not exercise jurisdiction to set aside the order dated 24.01.1995, because in the facts of the present case, this Court has come to the conclusion that Section 103 of the Code is itself not applicable and that the application filed by the respondent under the said provision could not have been entertained by the Deputy Collector, in the first place. In such a situation, the availability of alternative statutory modes of redressal to the parties would be of no consequence.

30. It is relevant that in the very same judgment in the case of *Shalini Shetty* (supra), the Supreme Court has held as follows:

“(g) Apart from the situations pointed in (e) and (f), High Court can interfere in the exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(i) High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of L. Chandra Kumar vs. Union of India & others, reported in (1997) 3 SCC 261 and therefore abridgement by a Constitutional amendment is also very doubtful.”

31. The above quoted portion makes it clear that the power of superintendence available to the High Court under Article 227, cannot be curtailed by provisions of any statute.

32. This Court is not specifically referring to the judgment in the case of *Umaji Keshao Meshram* (supra), for the reason that ratio of the said judgment has been considered in the above quoted judgments of the Supreme Court, which have followed and elaborated upon the dictum laid down in *Umaji Keshao Meshram* (supra).

33. As regards the order of the Division Bench dated 07.10.2019 passed in the case of *Comunidade of Taleigao* (supra), a perusal of the same would show that in the said order, merely a direction given by the Administrative Tribunal to the Deputy Collector to dispose of an application under Section 103 in accordance with law has been upheld. There is no discussion on the true scope and purport of Section 103 of the Code. There is no ratio laid down in the said order as regards the aspects being considered by this Court in the context of Section 103 of the Code. The said order would have applied as a precedent only if there was any point that arose in the said matter concerning the width and amplitude of Section 103 of the Code, or any point was framed for discussion and decision in that regard and if there was discussion as regards various aspects of the matter. An order or a judgment can be a precedent only for the point that it decides. A perusal of the aforesaid order of the Division Bench does not show any such specific point or issue being framed or decided. It is merely an order which confirms the order given to the Deputy Collector to dispose of the application under Section 103 of the Code, in accordance with law. Therefore, reliance placed on the said order can be of no assistance to the respondent.

34. This Court also finds substance in the contention raised on behalf of the petitioners that under Section 103 of the Code, the

respondent could never have claimed deletion of the name of the predecessor of the petitioners from the record of rights and recording of her name, instead. In order to do so, the respondent would have to move the competent Civil Court to first establish title in the said property. After having obtained a favourable decision in her favour in such proceeding, the respondent could certainly invoke Section 96 of the Code for mutation of her name in the record of rights. It is also correctly pointed out that Section 106 of the Code would not be a bar for the respondent to approach the Civil Court, because the bar under the said provision is against filing a suit against the Government or any officer of the Government with respect to any entry made in the record of rights or concerned register.

35. Reliance placed on the judgment in the case of *Shri Ramkrishna Janardan Bhat* (supra) also appears to be justified as in the said judgment, this Court has held in the context of Section 61(2) of the Code that consent of the co-holders would be necessary for invoking the jurisdiction of the Collector while seeking partition. The said view has been recently confirmed in a judgment of this Court dated 04.01.2022 passed in the *Writ Petition No.592 of 2015* in the case of *Shri Divakar R. Dalvi V/s. The Deputy Collector & SDO & Ors.* This Court has read consent under Section 61(2) of the Code, holding that when

a dispute as to title arises, the Collector has to keep the proceedings in abeyance, waiting for an order of a competent civil Court.

36. Section 103 of the Code expressly refers to a situation where the interested parties admit to any clerical or other error requiring correction in the record of rights. Thus, Section 103 of the Code clearly contemplates an application on the basis of an admission of the interested parties as regards error or clerical error pertaining to an entry in the record of rights. In the present case, no such admission exists and, therefore, Section 103 could not have been invoked by the respondent in the first place. Therefore, this Court finds the present case to be a fit case for exercise of superintending/supervisory jurisdiction under Article 227 of the Constitution to hold that the order dated 24.01.1995 passed by the Deputy Collector was wholly without jurisdiction, as the application filed by the respondent itself could not have been entertained under Section 103 of the Code. Consequently, all subsequent proceedings initiated by the parties leading to the subsequent order of the Deputy Collector as well as the Revenue Minister and the Tribunal are rendered unsustainable and deserve to be consequentially set aside.

37. This is a fit case for this Court to exercise superintending/supervisory jurisdiction and hold that the application itself filed by the respondent Section 103 of the Code was not maintainable and therefore, the order dated 24.01.1995, was passed without jurisdiction. This is certainly a case where ‘a stitch in time would save nine’ rather than relegating the parties to the labyrinthine process of appeals/reviews/revisions under the Code, when the said proceeding initiated by the respondent under Section 103 of the Code was a stillborn proceeding.

38. In view of the above, the Writ Petition is allowed. It is held that the application dated 04.06.1992, filed by the respondent under Section 103 of the Code before the Deputy Collector was not maintainable and could not have been entertained by the Deputy Collector. Consequently, the order dated 24.01.1995, passed by the Deputy Collector is quashed and set aside, as being wholly without jurisdiction. As a consequence, subsequent orders passed by the Revenue Minister and the Administrative Tribunal also stand set aside. Needless to say, the respondent is at liberty to avail of appropriate remedy for proving her claim in the said property, in accordance with law. Rule made absolute in the above terms.

MANISH PITALE, J.