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chances of misuse are definitely eliminated and, in any case, regularity or otherwise of the actual division of the wards of the municipal area can be challenged or tested by the rules so framed. When no such general rules are framed, the result achieved can smack of favouritism or injustice as has happened in the case of Municipal Committee, Hissar, where the difference in the voters' strength of different wards is glaring and one of the single-member constituencies has even more voters than another double-member constituency. As I am agreeing with the order proposed, it is not necessary to further elaborate this point.

B.R.T.

FULL BENCH

Before Mehar Singh, R. P. Khosla, Inder Dev Dua, Prem Chand Pandit and H. R. Khanna, JJ.

CHAHAT KHAN AND OTHERS—*Petitioners*

versus

THE PUNJAB STATE AND OTHERS—*Respondents*

Civil Writ No. 579 of 1962.

1965

October, 15th.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—S. 36—"At any time"—Meaning of—Power under S. 36 —Whether can be exercised after the scheme comes into force—Order under S. 36—Whether administrative or quasi-judicial.

Held, by majority (Mehar Singh. R. P. Khosla, I. D. Dua and P. C. Pandit, JJ.; H. R. Khanna, J.. Contra)—That the context of section 36 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, itself provides material from which the conclusion can only be that those words have limitation as to time during which the power under this section can be exercised.

The setting in which this section appears in Chapter III of the Act. and having regard to the object and purpose of the statute and the consolidation of holdings, there is material which goes to show clearly the limitation placed on the expression 'at any time' in this section as being terminable with the coming to end of the jurisdiction of the Settlement Officer (Consolidation) in the estate. The consolidation of holdings comes to an end and completion by the coming into force of the scheme. That is the stage when both the Consolidation Officer and the Settlement Officer

(Consolidation) cease to have jurisdiction in the estate for by then the purpose and object of the notification under section 14 has served itself and reached an end. The power under section 36 is to be exercised by the Settlement Officer (Consolidation) subject to any order of the State Government that may be made in relation thereto from which it follows that this power can be exercised only during the period the Settlement Officer (Consolidation) retains his jurisdiction under the Act in respect of the particular estate. As that jurisdiction comes to end with the coming into force of the scheme, the power under section 36 cannot be exercised after the scheme has come into force.

Held, that the process for confirmation of the scheme by the Settlement Officer (Consolidation) is quasi-judicial and the confirmation of the scheme is a quasi-judicial Act. Any order made subsequently varying or revoking the scheme under section 36 of the Act cannot be termed an administrative order; it must be termed as quasi-judicial. Where proceedings are judicial and a quasi-judicial tribunal makes a quasi-judicial order, any provision giving jurisdiction for interference with such an order confers jurisdiction only to make a quasi-judicial order and nothing else, except in one case and that is the case of interference with a quasi-judicial order by legislation. In that event the legislature, if it acts within the scope and ambit of its power, has an overriding power and jurisdiction to make legislation taking away the effect of a quasi-judicial order. But if it does not do that and instead it makes provision for conferring jurisdiction for interference with such a quasi-judicial order or there is any jurisdiction claimed as interfering with such a quasi-judicial order, the exercise of that jurisdiction in itself is quasi-judicial in nature and the resulting order is in the nature of things a quasi-judicial order.

Case referred by the Hon'ble Mr. Justice Shamsher Bahadur on 4th September, 1964 to a Full Bench for decision owing to the importance of the question of law involved in the case.. The larger Bench consisting of the Hon'ble Mr. Justice Mehar Singh, the Hon'ble Mr. Justice R. P. Khosla, the Hon'ble Mr. Justice Inder Dev Dua, the Hon'ble Mr. Justice Prem Chand Pandit and the Hon'ble Mr. Justice H. R. Khanna, after deciding the question of law referred to them, finally disposed of the Writ Petition on 15th October, 1965.

Petition under Article 226 of the Constitution of India praying that a writ in the nature of certiorari, mandamus or any other suitable writ, order or direction be issued quashing the orders passed by the respondents.

ROOP CHAND CHAUDHARY with C. M. NAYAR, M. B. SINGH, SUBASH CHANDER AND VINOD SAGAR AGGARWAL, ADVOCATES, for the Petitioners.

L. D. KAUSHAL, SENIOR DEPUTY ADVOCATE-GENERAL WITH P. R. JAIN, ADVOCATE, for the Respondents.

ORDER

Mehar Singh, J.

MEHAR SINGH, J.—In this petition under Article 226 of the Constitution there are twenty-nine petitioners belonging to village Gulalta in Tehsil Ferozepore Jhirka of Gurgaon District. Consolidation of holdings began in that village with the publication of a notification for that purpose under section 14 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), hereinafter to be referred as 'the Act', sometime in 1956. On appointment of the Consolidation Officer under that very section, after advice of the land-owners of the estate, he prepared on May 4, 1957, a scheme for consolidation of holdings in that estate. After some objections to the scheme under section 19 of the Act. certain changes were made in it, and it was then finally confirmed by the Settlement Officer (Consolidation) under section 20 of the Act. There was an advisory committee of the land-owners in the village, and Zore Khan, Nur Mohd. and Zen Khan, respondents 4 to 6, were members of that committee. In pursuance of and in conformity with the scheme, repartition was carried out on November 12, 1957, according to section 21(1) of the Act. A number of land-owners, including respondents 4 to 6, stated in the return by respondents 1 to 3, the State of Punjab, the Director of Consolidation of Holdings, and the Settlement Officer (Consolidation), filed 115 objections to the repartition before the Consolidation Officer under subsection (2) of section 21 of the Act. After the decision of those objections the land-owners took possession of the new holdings allotted to them, some in the end of 1957 and others in the beginning of 1958. After that under section 22 of the Act a new record-of-rights in that respect was prepared for the year 1957-58. The proceedings for the consolidation of holdings in the village came to an end on or about February 16, 1959. On July 30, 1960, the Director of Consolidation of Holdings made a recommendation to the State Government for amendment of the scheme of consolidation of holdings in the village under section 36 of the Act so as to provide a separate *tak* or plot for allotment for *chahi* (well-irrigated) area. This recommendation of respondent 2 was accepted by respondent 1 on March 28, 1961. Pursuant to the order of respondent 1, the Settlement Officer (Consolidation) respondent 3, amended the scheme under section 36 of the Act, followed by proper and due proceedings under the provisions of the

Act for confirmation of the amended scheme. It was duly published in the village on September 21, 1961. So far the facts are not disputed.

The petitioners aver that respondents 4 to 6, though they were members of the advisory committee and responsible for the original scheme, with their friends and relations, for personal ends and to exhibit their influence, approached certain officers, probably the Consolidation Officer 'Flying Squad', and on that that officer made a move to favour those respondents. The result was that without the petitioners being heard, recommendation was made by respondent 2 to respondent 1 and accepted by the latter for amendment of the scheme of consolidation of holdings in the village. This is denied in the return of respondents 1 to 3. It is pointed out that some land-owners of the village made applications under section 42 of the Act praying that as they had not been given well-irrigated area in lieu of such area owned by them before repartition, so they be given relief in that respect. Their applications were sent to respondent 3 and it was thereafter that the matter was considered by respondent 2 and the recommendation made for amendment of the scheme which was accepted by respondent 1. This difference between the parties is not at all material for the purposes of the matter that arises for consideration out of the petition of the petitioners.

The other matter that may be noted here is that, while according to the petitioners the land-owners were satisfied with the scheme of consolidation of holdings in the beginning, finally confirmed and published, but in the return of respondents 1 to 3 it is pointed out that some such land-owners were not satisfied as they had not been allotted on repartition well-irrigated areas in lieu of such areas in their ownership and possession before the beginning of the consolidation of holdings in the village. In that return it is further stated that entries in the *misal-haqiat* of 1938-39 show nine wells in the village, of which there was none with sweet water, but there were two with average quality of water and seven with bitter or brackish water, and out of those nine wells six were in use and not the remaining three. In the Jamabandi of 1958-59, apparently prepared after the repartition, are shown ten wells out of which five are in use and not so the remaining five. Again there is no well with sweet water, but there are two wells with bitter or brackish water, four with saltish water and the

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remaining four have average quality of water. It is apparent that according to this statement in the return of respondents 1 to 3, before repartition there were only six wells in use and after repartition there are shown in the Jamabandi only five wells in use. A well with a bitter or brackish water leads to accumulation of alkalinity in the land which almost renders the land unfit for a crop. Saltish water is also detrimental to the rearing of crop. Average quality of water can be used for irrigation. Before repartition there were only two wells of average quality of water and after repartition there are shown four such wells in the Jamabandi, but it is not shown how many, if any, of those wells were not in use. The statement in the return in this respect is vague, unsatisfactory and consequently entirely unhelpful if its object has been to justify the amendment of the scheme under orders of respondent 1 on the recommendation of respondent No. 2. The petitioners aver that most of the wells in the village were not in use and as those in use are with brackish water, so they are turning the land into alkali and thus becoming a cause for destruction of crop. They further point out that Jamuna Link Canal has brought canal irrigation to the village and with that well irrigation has lost its meaning. This last statement is accepted by respondents 1 to 3 in the return. The parties are trying either to justify the amendment of the scheme or to show complete absence of such justification, but this approach, to my mind, is not relevant to the question that is under consideration in this petition. If a scheme of consolidation of holdings is amended in conformity with law, the reason or motive for that would ordinarily be not a justiciable matter in a petition of this type.

There are two main grievances of the petitioners (a) that they were not even informed of any intention to amend the scheme and consequently the amendment was made behind their back without hearing them, arbitrarily and against the principles of natural justice, and (b) that the amendment in the scheme is not authorised by law after the completion of the proceedings with regard to the consolidation of holdings in the village. In the return of respondents 1 to 3 the only reply given to these grievances is that amendment of the scheme has been made under section 36 of the Act after a thorough consideration of the whole matter, the amendment, is eminently just, and the request of the petitioners for a review of the order amending the scheme is without any merit. It is to be noted that it is

not denied that the petitioners were not heard before the proposed amendment was made. The learned counsel for the petitioners has, however, not pressed this matter probably in the wake of the provisions of section 36 of the Act, which do not provide for any such hearing. So the only substantial grievance of the petitioners is that the amendment of the scheme of consolidation of holdings in the village is not authorised by law after the completion of consolidation of holdings in it and the stand on the side of respondents 1 to 3 is that the amendment has been made in conformity with section 36 of the Act. It is common case of the parties that consolidation of holdings in the village came to an end and completed on or about February 16, 1959, that respondent 1 ordered amendment of the scheme on March 28, 1961, and that it was thereafter that respondent 3 proceeded to amend the scheme under section 36 of the Act.

The whole argument in the case thus centres round the meaning and scope of section 36 of the Act, which section reads—

> "36. A scheme for the consolidation of holdings confirmed under this Act may, at any time, be varied or revoked by the authority which confirms it subject to any order of the State Government that may be made in relation thereto and a subsequent scheme may be prepared, published and confirmed in accordance with the provisions of this Act."

There was criticism of certain provisions of the Act in *Jiwan Singh* v. *Consolidation Officer, Sunam* (1), 1962 P.L.R. 668, by Mahajan, J. (Pandit, J. concurring), and in consequence of that decision certain provisions of the Act were amended by the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Second Amendment and Validation Act, 1962 (Punjab Act 25 of 1962), which came into force on December 13, 1962. There has been no amendment of section 36 and whatever amendment is relevant for the purposes of the argument in this case will be referred to later. However, it may be made clear here that the consolidation proceedings ended and completed in the village long before the coming into force of Punjab Act 25

(1) I.L.R. (1962) 2 Punj. 726=1962 P.L.R. 668.

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of 1962 and the scheme was also amended under section 36 of the Act sometime before that. So that the provisions of the Act that come in for consideration are those before the Punjab Amending Act 25 of 1962.

This case came for hearing before Shamsher Bahadur J., and the learned counsel for the petitioners relying on a Full Bench decision in *Bhikan and others* v. *The Punjab State and others* (2), contended that the amended scheme in this case be quashed. In *Bhikan's case* Tek Chand J. (Dua J. concurring) held that the expression 'at any time' as used in section 36 of the Act calls for some limitation in it in point of time and that it does not mean that the Settlement Officer (Consolidation) can revoke or vary the scheme even after the purpose of consolidation of holdings is finally accomplished under the Act. The learned Judge went in detail and explained that after the enforcement of the scheme of consolidation of holdings and on completion of the consolidation of holdings in an estate, the officers doing that work under the Act (the Consolidation Officer and the Settlement Officer (Consolidation)) become *functus officio*. This is the real basis of the decision. The learned Judge has at considerable length pointed out the uncertainties, the difficulties and want of incentive arising out of a cloud on the title of the land-owners if there is no such limitation. My learned brother Khanna J. dissented from that view and his opinion was that "there is nothing in the section or the Act to warrant the proposition that the words 'at any time' should not receive their literal meaning, and the Courts would not be justified in assuming that the legislature intended that variation or revocation could only be made during consolidation of holdings before repartition and not subsequently." The learned Judges, however, agreed and repelled a contention in that case that variation or revocation of a scheme of consolidation of holdings is an administrative matter and held unanimously that it is a matter quasi-judicial in nature, and while exercising that power it is incumbent on the authority concerned to give notice to the parties concerned to present their case for consideration. In the wake of this decision of the Full Bench it is obvious that the learned Judge had no choice but to grant the relief prayed for by the petitioners. The learned Deputy Advocate-General appearing for respondents 1 to 3, pressed into service

(2) I.L.R. (1963)1 Punj. 660=1963 P.L.R. 368.

Laxman Purshottam Pimputkar v. *The State of Bombay* (3), and contended that the decision of the Full Bench of this Court in *Bhikan's case* can no longer be considered as laying down good law. In *Laxman Purshottam Pimputkar's case* the Bombay Government in exercise of its powers of revision under section 79 of the Bombay Hereditary Offices Act, 1874, resumed Watan lands, in dispute in that case, from the defendants, who had come by those lands in family partition, and directed restoration of the same to the plaintiff. Subsequently, on an approach by the defendants, that order was amended and it was then that the plaintiff came to Court seeking declaration that the subsequent order was null and void. Section 79 of that Act, as substantially reproduced at page 441, in paragraph 11, of the report, provides that the State Government may call for and examine the record of the proceedings of any officer for the purpose of satisfying itself as to the legality or propriety of any order passed and may reverse or modify the order as it deems fit or if it deems necessary may order a new enquiry. The frame of that provision is in the normal and ordinary form for conferring the powers of revision in a statute. The power is general and there is no time limit provided for its exercise. In that case it was exercised some twenty years after the order that was revised. An argument was urged before their Lordships that because the order was revised more than twenty years after it had been made, the Government could not be deemed to have dealt with the matter in a quasi-judicial capacity. In answer to this argument their Lordships observed—"It is sufficient to say that no period of limitation is specified in the Act for preferring an application for revision. Of course, normally the Government would not interfere unless moved within reasonable time. But, what should be considered as a reasonable time in a particular case would be a matter entirely for the Government to consider. Apparently in this case the Government thought that it had strong reasons for interfering even after a long lapse of time and that is why it interfered." The argument was not accepted. It is these observations of their Lordships that were relied upon by the learned Deputy Advocate-General to convince the learned Judge that the ratio in *Bhikan's case* can no longer be considered as applicable to a case like the present. The learned Deputy Advocate-General argued before the learned Judge that the words 'at any time'

(3) A.I.R. 1964 S.C. 436.

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give much wider scope and authority to the Government than that existed in the Bombay case where no period of limitation was prescribed. The learned Judge being of the opinion that the point raised is arguable, made reference of the whole case to a larger Bench for reconsideration of the question decided by the Full Bench in *Bhikan's case*. This is how the present petition comes before a Bench of five Judges.

The learned Deputy Advocate-General has not, however, before this Bench seriously relied upon the decision in *Laxman Purshottam Pimputkar's case* as affecting the ratio in the Full Bench decision of *Bhikan's case*. He has not relied upon that case to support his argument that the decision in *Bhikan's case* is not correct. *Laxman Purshottam Pimputkar's case* really has no direct bearing upon the meaning and scope and interpretation of section 36 of the Act, for the simple reason that the content of power given and the scope of the provision which was considered in that case are not at par with the content of power given in section 36 of the Act and the scope of that section. The learned Deputy Advocate-General has thus, even though no longer relying upon *Laxman Purshottam Pimputkar's case*, urged that the decision in *Bhikan's case* needs reconsideration in view of the language actually used by the Legislature in section 36 of the Act, as also of subsequent decision in *The State of Punjab* v. *Makhan Lal* (4), in which my Lord, the Chief Justice with whom Grover J. concurred, although considering a case under section 42 of the Act has doubted the correctness of the opinion of Tek Chand J., on the meaning and scope of section 36 of the Act in *Bhikan's case*. It may be pointed out that in *Makhan Lal's case* the learned Chief Justice, though expressing his agreement with the dissenting judgment of Khanna J., further takes the precaution of pointing out that in *Bhikan's case* Tek Chand J. has in so many words said that he was considering section 36 only and not section 42 of the Act.

The argument on the side of the petitioners is simple enough. What they say is that after the consolidation of holdings has completed and the proceedings for the same have come to an end in an estate and the scheme has come into force, the purpose of the notification with regard to consolidation of holdings in that particular estate has

(4) 1964 Current Law Journal (Pb.) 447.

been carried out, with consequences that all restrictions imposed on the exercise of the right of ownership of the owners of the land under the provisions of the Act disappear. The officers whose duty was to carry out and complete the consolidation of holdings cease to have jurisdiction. There is no occasion after that for the Settlement Officer (Consolidation) to exercise any power to vary or revoke the scheme. This is the view that prevailed with the majority in *Bhikan's case.* On the other hand, the learned Deputy Advocate-General, apart from relying on *Makhan Lal's case,* argues that the expression 'at any time' in section 36 of the Act admits of no limitation whatsoever and the power given in that section can be exercised at any time, completion of the consolidation of holdings in an estate or no completion. It is necessary to refer to the relevant provisions of the Act for consideration of the arguments of the learned counsel on both sides.

The preamble of the Act, so far relevant for the purposes of this case, says that the Act is 'to provide for the compulsory consolidation of agricultural holdings and for preventing the fragmentation of holdings in the State of Punjab .....'. In section 2(b) of the Act 'consolidation of holdings' is defined to mean 'the amalgamation and the redistribution of all or any of the lands in an estate or sub-division of an estate so as to reduce the number of plots in the holdings'. According to this definition, obviously as soon as the holdings in an estate, after amalgamation, have been redistributed in the wake of consolidation, the consolidation of holdings is complete and over. Chapter III in the Act deals with the consolidation of holdings from section 14 to section 36. Sub-sections (1) and (2) of section 14 are—

"(1) With the object of consolidating holdings in any estate or group of estates or any part thereof for the purpose of better cultivation of lands therein, the State Government may of its own motion or on application made in this behalf declare by notification and by publication in the prescribed manner in the estate or estates concerned its intention to make a scheme for the consolidation of holdings in such estate or estates or part thereof as may be specified.

(2) On such publication in the estate concerned the State Government may appoint a Consolidation

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Officer who shall after obtaining in the prescribed manner the advice of the land-owners of the estate or estates concerned, and of the non-proprietors and the Gram Panchayat, if any, constituted in such estate or estates under the Gram Panchayat Act, No. IV of 1953, prepare a scheme for the consolidation of holdings in such estate or estates or part thereof as the case may be."

Sub-section (3) of this section only deals with the consolidation of holdings in group of estates and is hence not relevant in this case. Sections 15 to 18 deal with the question of compensation in certain cases, occupancy tenancies, partition of joint lands and joint occupancy tenancies, amalgamation of public roads and the like, and reservation of land for common purposes. After the Consolidation Officer has prepared a scheme for consolidation of holdings in a given estate according to sub-section (2) of section 14, the draft scheme is published under sub-section (1) of section 19 and persons likely to be affected by it have thirty days within which to make objections to it to the Consolidation Officer, who is enjoined to consider those objections and then submit the scheme, with such amendments as he considers to be necessary, together with his remarks on the objections, to the Settlement Officer (Consolidation). Sub-section (1) of section 20 provides—

> "The State Government may by notification appoint one or more persons to be Settlement Officers (Consolidation) and, by like notification, specify the area in which each such officer shall have jurisdiction. The Consolidation Officers in the area under the jurisdiction of the Settlement Officer (Consolidation) shall be subordinate to him subject to any conditions which may be prescribed."

According to sub-section (2), if no objections are received to the draft scheme or to the amended scheme, the Settlement Officer (Consolidation) is to confirm it, but sub-section (3) provides that if objections are received, the settlement Officer (Consolidation) may after taking the same into consideration, together with the remarks thereon of the Consolidation Officer, either confirm the scheme, with or without modifications, or refuse to confirm it. In

the latter event the Settlement Officer (Consolidation) has to return the draft scheme, with such directions as may be necessary, to the Consolidation Officer for reconsideration and resubmission. Sub-section (4) of this section provides that upon confirmation of the scheme, it is to be published as confirmed in the prescribed manner in the estate concerned. A scheme for consolidation of holdings is prepared by the Consolidation Officer under sub-section (2) of section 14 after obtaining the advice of the land-owners of the estate, of the non-proprietors, and of the Gram Panchayat, if any, in such estate, the draft of the scheme is then published to enable the persons affected to file objections to it within the prescribed time according to sub-section (1) of section 19, a duty is cast on the Consolidation Officer to consider those objections and to comment on the same and then submit the scheme to the Settlement Officer (Consolidation) (sub-section (1) of Section 19); and a duty is then cast by sub-section (3) of section 20 on the Settlement Officer (Consolidation) to take into consideration the objections and the remarks thereon of the Consolidation Officer and then to either confirm the scheme, with or without modifications, or refuse to confirm it. The disposal of the objections of the persons affected by the scheme and thereafter the confirmation of the scheme are, in this scheme of things, matters which pertain to the sphere of exercise of quasi-judicial power by the Settlement Officer (Consolidation). The fact that a duty is cast on the Consolidation Officer to consider the objections to the scheme and record his remarks thereon and then a duty is cast on the Settlement Officer (Consolidation) to consider those objections and the remarks of the Consolidation Officer before confirmation of the scheme or refusal to confirm it, means that the intention of the legislature has been to require those officers to act fairly in making and confirming the scheme of consolidation. They are under the statutory provisions required to act fairly and thus they must do so, and when a statute requires an authority to act fairly, then that authority acts judicially. The disposal of the objections to the draft scheme and the confirmation of the same are, in my opinion, thus exercise of quasi-judicial functions by the Settlement Officer (Consolidation). After the scheme is confirmed then it can be interfered with, so far as the Settlement Officer (Consolidation) is concerned, only under section 36, though the State Government has power to do so under section 42 of the Act. No doubt even under sec-

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tion 36 the State Government can give order in that behalf to the Settlement Officer (Consolidation), but the power is, in any event, to be exercised under that section by that particular officer and not by the State Government, which, if it wishes to exercise any power itself with regard to a scheme, has to have recourse to section 42. After the scheme has confirmed and duly published under section 20, then arrives the stage of repartition.

Again under sub-section (1) of section 21 of the Act after obtaining advice of the land-owners of the estate, the Consolidation Officer is required to carry out repartition in accordance with the scheme as confirmed under section 20 and the boundaries of the holdings, on demarcation, are to be shown in the Shajra, which has to be published in the prescribed manner in the estate. According to sub-section (2) of this section, any person aggrieved by the repartition may file a written objection within fifteen days of the publication of the repartition. The objections are filed before the Consolidation Officer, who is required by the statute to give hearing to the objector before confirming or modifying the repartition. Under sub-section (3) of section 21, any person aggrieved by an order of the Consolidation Officer under sub-section (2) has the right to file an appeal within one month of that order before the Settlement Officer (Consolidation). This officer is also enjoined to hear the appellant and then pass an order in the appeal. There is a second appeal provided in sub-section (4) of section 21 to any person aggrieved by the order of the Settlement Officer (Consolidation) under sub-section (3), and that is to the State Government. This provision has subsequently been amended only to this extent that the second appeal now lies to the Assistant Director of Consolidation of Holdings. This amendment has no bearing so far as the present case is concerned. Sub-section (4) of section 21 also provides that the order in second appeal under sub-section (4), and subject only to such order, the order of the Settlement Officer (Consolidation) under sub-section (3), or, if the order of the Consolidation Officer under sub-section (2) was not appealed against, such order of the Consolidation Officer, shall be final and shall not be liable to be called in question in any Court. With the disposal of the second appeals, if any, with regard to repartition, the stage of repartition completes and takes final shape. On that sub-section (1) of section 22 says that the Consolidation Officer shall

cause to be prepared a new record-of-rights in accordance with the provisions contained in Chapter IV of the Punjab Land Revenue Act, 1887, in so far as those provisions may be applicable for the area under consolidation, giving effect to the repartition as finally sanctioned under the preceding section, that is to say, under section 21. Sub-section (2) of section 22 says that such record-of-rights shall be deemed to have been prepared under section 32 of the Punjab Land Revenue Act, 1887. The first stage is the publication of the confirmed scheme for consolidation of holdings, the second stage is the carrying out of repartition in accordance with the scheme, which is completed and reaches the next stage with the disposal of second appeals, if any, against repartition, and the third stage is the preparation of the record-of-rights giving effect to the repartition as finally sanctioned. There remains the last stage and that is of the delivery of possessions of the new holdings to the landowners. That is the subject of section 23. Sub-section (1) of that section says that if all the owners and tenants affected by the scheme of consolidation or, as the case may be, repartition, as finally confirmed, agree to enter into possession of holdings allotted to them thereunder, the Consolidation Officer may allow them to enter into such possession forthwith or from such date as may be specified by him. It is obvious that for this sub-section to be attracted, all the owners and tenants affected by the scheme of consolidation have to agree. If one does not agree, this sub-section does not come into play. The learned Deputy Advocate-General has argued that the meaning and scope of this sub-section is that when it refers to 'all the owners and tenants affected by the scheme of consolidation or, as the case may be, repartition, as finally confirmed', only those owners and tenants affected by the scheme of consolidation have to agree who have filed no objections to repartition under sub-section (2) of section 21; after that comes another batch of such persons whose objections under sub-section (2) of section 21 have been disposed of but who have not gone in appeal under sub-section (3), and, according to the learned Deputy Advocate-General, that is the second set of "all the owners and tenants affected by the scheme of consolidation or, as the case may be, repartition, as finally confirmed' ; and then, lastly, the learned Deputy Advocate-General says that there is a third batch of 'all the owners and tenants affected by the scheme of consolidation or, as the case may be, repartition, as finally con-

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firmed', who go in second appeal under sub-section (4) of section 21 against an order under sub-section (3) of that section. I think this approach has to be stated to be discarded as entirely untenable. The expression used in sub-section (1) of section 23 is 'all the owners and tenants', and it means all such persons and not batches of such persons. So, for the operation of sub-section (1) of section 23 all the owners and tenants have to agree. It follows that that stage must necessarily arrive only after the stage of the second appeals under sub-section (4) of section 21 is over, for if there is one single person, who has his second appeal pending under sub-section (4) of section 21, he will not be agreeing to the exchange of possession, with the result that 'all the owners and tenants affected' will not be agreeing to the delivery and exchange of possessions. Sub-section (2) of section 23 then concerns an eventuality in which all the owners and tenants do not agree to enter into possession under sub-section (1), and it provides that, in that case, they shall be entitled to possession of holdings and tenancies allotted to them from the commencement of the agricultural year next following the date of the publication of the scheme under sub-section (4) of section 20, or, as the case may be, of the preparation of the new record-of-rights under sub-section (1) of section 22, and the Consolidation Officer is then enjoined, if necessary, to put them in physical possession of the holdings to which they are so entitled including standing crops, if any, and for doing so he may exercise the powers of a Revenue Officer under the Punjab Land Revenue Act, 1887. This sub-section deals with two cases of delivery of possession of the holdings. One stage is next following the date of the publication of the scheme under sub-section (4) of section 20, and that obviously would be a case in which every conceivable question connected with consolidation of holdings and the repartition of the same is finally settled by the scheme itself. That is not the case here. The second case of delivery of possession, which is generally the normal case, is that after the stage of preparation of the record-of-rights under sub-section (1) of section 22, which is a stage after the disposal of the second appeals, if any, under sub-section (4) of section 21. So, in any event, the delivery of possessions never takes place before the disposal of the second appeals against repartition under sub-section (4) of section 21, except in one case under sub-section (2) of section 23 when the scheme settles even the question of repartition. It has been pointed out

that this is not the case here and this is not the normal way, how the proceedings in consolidation are conducted. For the present purpose it may be taken then that whether possessions are delivered under sub-section (1) or under sub-section (2) of section 23, the delivery takes place after the stage of second appeals against repartition under sub-section (4) of section 21. Section 23A deals with amendment and control of lands for common purposes vested in Panchayats and does not come in for consideration in this case. Section 24 is important and it is in this form—

> "(24)(1) As soon as the persons entitled to possession of holdings under this Act have entered into possession of the holdings, respectively allotted to them the scheme shall be deemed to have come into force and the possession of the allottees affected by the scheme of consolidation, or, as the case may be, by repartition, shall remain undisturbed until a fresh scheme is brought into force or a change is ordered in pursuance of provisions of sub-sections (2), (3) and (4) of section 21 or an order passed under section 36 or 42 of this Act.
>
> (2) A Consolidation Officer shall be competent to exercise all or any of the powers of a Revenue Officer under the Punjab Land Revenue Act, 1887 (Act XVII of 1887), for purposes of compliance with the provisions of sub-section (1)."

This section deals with the stage when the scheme comes into force and obviously with that the consolidation of holdings in an estate comes to be completed and to an end. It also deals with the right of landowners to the possession of the holdings allotted to them and it is made subject to these matters, (a) until a fresh scheme is brought into force, or (b) a change is ordered in pursuance of provisions of sub-sections (2), (3) and (4) of section 21, or (c) an order is passed under section 36 or 42 of the Act. It is not clear what exactly is meant by 'until a fresh scheme is brought into force', possibly it means when a fresh scheme is prepared consequent upon a fresh notification under section 14 of the Act. However, this does not affect the present case. When sub-section (1) of section 24 makes the right to possession of allotted holdings subject to a condition where 'a change is ordered in pursuance of provisions of sub-sections (2), (3) and (4) of

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section 21', it is a statement which, in the nature of things having regard to the provisions of sections 21, 22 and 23, is an impossible statement. The reason is apparent, it is this, that the scheme comes to be confirmed under sub-section (1) of section 24 after all the stages under sub-sections (2), (3) and (4) of section 21 have passed and after that not only the record-of-rights has been prepared but possessions have also been delivered. This statement in sub-section (1) of section 24 is thus immediately and apparently contradictory to the very provisions in sections 21 to 23. As much has been pointed out very clearly by Mahajan J., in *Jiwan Singh's case*. The result of the criticism of these provisions in *Jiwan Singh's case* has not led to any amendment in sub-section (1) of section 24, but to the substitution of sub-section (2) of section 23 by a new sub-section, which now provides that if all the owners and tenants do not agree to enter into possession under sub-section (1) of section 23, they shall be entitled to possession of holdings and tenancies allotted to them from such date as may be determined by the Consolidation Officer and published in the prescribed manner in the estate or estates concerned. I have already said that this amendment, or in fact any other amendment, in Punjab Act, 25 of 1962 does not really concern the facts of the present case. By this amendment of sub-section (2) of section 23, an attempt has been made to make part of sub-section (1) of section 24 referring to sub-sections (2), (3) and (4) of section 21 as meaningful and I do not know whether that attempt has been successful. However, as I have already said, this does not come in for consideration in this case. This amendment only served the purpose of confirming the criticism of sub-section (1) of section 24 by Mahajan J., in *Jiwan Singh's case*. For the purposes of the present case the criticism is still there that part of sub-section (1) of section 24 making the possessions of the landowners on the coming into force of the scheme subject to changes in pursuance of sub-sections (2), (3) and (4) of section 21 is a meaningless provision. It is not a case of mere bad drafting, it is a case of a part of this sub-section being impossible of fulfilment in the scheme of consolidation of holdings beginning with section 14 and ending with the enforcement of the scheme under earlier part of sub-section (1) of section 24. The rule of harmonious construction in this respect is of no assistance for in no manner can this part of sub-section (1) of section 24 be reconciled with the provisions of sections 21 to 23. In substance what it

comes to is that part of sub-section (1) of section 24 making the delivery of possessions consequent upon the coming into force of the scheme subject to where 'a change is ordered in pursuance of provisions of sub-sections (2), (3) and (4) of section 21' is without meaning and thus redundant.

The consequences flowing from the coming into force of the scheme of consolidation of holdings with the delivery of possessions under the same are dealt with in some of the following sections. According to section 25 a landowner or a tenant has the same right in the land allotted to him in pursuance of the scheme of consolidation as he had in his original holding or tenancy, as the case may be. Sections 25-A, 26 and 27 deal, respectively with the effect of consolidation of holdings on evacuee property, encumbrances of landowners and tenants, and transfer of rights of landowners in holdings and of tenants in tenancies, all subjects not material for the purposes of the present case. Section 27-A says that notwithstanding anything contained in the Code of Civil Procedure, 1908, or any other law for the time being inforce, no decree for possession of land against a judgment-debtor, whose land has been included in a scheme for consolidation of holdings shall be executed except after repartition as finally confirmed under section 21 and against land allotted to him in pursuance of such repartition. Such a decree of a Civil Courts thus held in abeyance, during the continuance of the process of consolidation of holdings, but when it reaches the stage of repartition and that is completed, the decree becomes effective again and executable. Section 28 deals with cost of consolidation proceedings and section 29 with certain matters of compensation during consolidation and neither is in point in this case. Section 30, then provides that after a notification under sub-section (1) of section 14 has been issued and during the pendency of consolidation proceedings, no landowner or tenant having a right of occupancy, upon whom the scheme will be binding, shall have power without the sanction of the Consolidation Officer to transfer or otherwise deal with any portion of his original holding or other tenancy so as to affect the rights of any other landowner or tenant having a right of occupancy therein under the scheme of consolidation. Sections 30-A and 31 do not concern this case because the first deals with certain prohibitions with regard to cutting of trees and erection of buildings, and

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the second with transfers effected contrary to the Punjab Alienation of Land Act, 1900. Section 32 is relevant for it deals with suspension of partition proceedings, during the currency of consolidation proceedings. The embargo in sections 30 and 32 is lifted immediately as the scheme of consolidation of holdings comes into force, whereafter the holders can transfer property as ever without restrictions as in section 30, and where they are co-sharers they can go before revenue authorities under Chapter 9 of the Punjab Land Revenue Act, 1887, and claim partition according to the provisions of that chapter. Sections 33, 34 and 35 are again not material for they deal with subjects which do not concern the present controversy. Then comes section 36, which has already been reproduced. In the earlier part of this judgment reference has been made to three stages in the process of consolidation of holdings. Briefly, the first stage is the publication of the confirmed scheme for consolidation of holdings, the second of repartition according to that scheme, and the third the preparation of the record-of-rights in conformity with the repartition. The last stage is the stage of the delivery of possessions in accordance with the repartition done consistent with the provisions of the confirmed scheme and it is at this stage that the scheme is deemed to have come into force. When the scheme has come into force, the effects are, as already pointed out, the declaration of the title of the land-holders in regard to newly allotted lands as in section 25, the removal of the suspension of the execution of any decree for possession obtained against a judgment-debtor, whose land has been included in the scheme for consolidation of holdings as provided in section 27-A, and the removal of the embargo against transfers by section 30 and against obtaining partition from the revenue authorities under section 32. These consequences cannot flow unless and until a stage is reached when the consolidation of holdings in a particular estate reaches the final end and the object and purpose of the notification under section 14 is exhausted. In considering the provisions of section 36 of the Act, it is necessary to bear in mind that the power conferred of variation or revocation of the scheme is on the authority which confirms it. That authority according to section 20 is the Settlement Officer (Consolidation). No doubt section 36 does provide that the exercise of that power is subject to any order of the State Government in relation to the variation or revocation of a scheme. So that what this section provides is that the

jurisdiction to vary or revoke the scheme resides in the Settlement Officer (Consolidation) alone, though he may exercise it either of his own accord or under orders of the State Government. The emphasis, however, is on this, that he and he alone has the power and jurisdiction to vary or revoke the scheme under this section.

It has been necessary to go into some considerable detail of the scheme of things as provided in the Act, in Chapter III on the subject of 'consolidation of holdings', and it has been necessary because that scheme of things as a whole provides an aid to the understanding, interpretation and appreciation of the meaning and scope of section 36. This section says that the power and jurisdiction conferred by it on the Settlement Officer (Consolidation) may be used and exercised 'at any time'. The question arises what is the meaning and scope of this expression 'at any time' in the context of section 36 and in the context and general scheme of things of the provisions of the Act, relating to 'consolidation of holdings'? The expression 'at any time', in its literal and natural meaning, is without limitation either in frequency or in duration and length of time. However, it cannot be denied that this expression may have limitations as spelled out from the context in which it is used or the scheme of things of an instrument or a statute in connection with which it is used. The general tenure and purpose and scope of an instrument or a statute in a provision of which this expression may appear, may lead to the conclusion that the expression has not unlimited and uncontrolled literal and natural meaning, but has limitations as emerge from the context and general scope not only of the particular provision in which the expression appears but also in the scheme of things in an instrument or a statute of which such a provision is an integral part. Some cases illustrating this may be referred to. In *Bridges* v. *Potts* (5), the question for consideration was, whether a tenancy under an agreement to grant a mining lease from year to year, for a period of twenty-one years, was subject to the terms stipulated in article 9 of the agreement which provided that the tenant may terminate the tenancy with six months' notice and 'at any time hereafter', and what was being considered was whether the notice terminating the tenancy could expire at any time or a notice terminating with the end of a year from the date

(5) (1864) Common Pleas 33; Law Journal Rep. 338.

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of the tenancy. Willes, J., observed—"The words upon which a construction is to be put are the words 'six months' notice' and 'at any time hereafter'. The tenant may 'at any time hereafter', but an end to the term by six months' notice. Now, as it is the tenant, who is to give the notice, he is, of course, *prima facie* to elect the time at which he is to give it; and inasmuch as the words are 'at any time', he is *prima facie* to select the time out of all time during the pendency of the lease. Therefore, looking at that clause alone, there can be no doubt that the tenant may give notice at any time of the year just as well as at any time of the month, or at any time of the week, or at any hour of the day, at which he can find the landlord and give him the notice, ... On the other hand, it is clear that these words may be cut down by the language used in other parts of the instrument; and as was aptly pointed out by my Brother Williams, this would be so, if the words 'at any time hereafter' were followed by the words 'by the usual notice given by tenants from year to year'; in that case the generality of the words 'at any time' would be limited by the condition imposed by the other words, that it should be a time at which the usual notice is given by a tenant from year to year; that is, six months from the end of a year corresponding with the date of the lease ..... I entirely agree with what has been stated by my Brother Williams as to what the question is, namely, whether we can find upon the face of this document words to which we ought to give the same construction as we would to such words as I have been considering the effect of. I do not consider that we are bound absolutely by the ordinary, or, as it is sometimes called, the natural meaning of the words; we must rather look at the general scope of the instrument. Now, the character of the agreement being so speculative, it would rather lead one to suppose the tenant would naturally wish to have an absolute option of putting an end to it at the end of any six months after he had discovered he could make nothing of the mine. And, again, looking at the nature of this instrument as appearing from the clauses it contains, I find it is not contrary to its nature that there should be a notice to put an end to it not expiring at the end of a year, because article 7 provides for such a notice being given in some cases by the landlord. But deriving no assistance from this consideration, which is a very important one-because, no doubt, the general object and intention of the instrument are most

important to be considered in settling what is the meaning of the words—deriving no assistance from that at all in the present case, I feel that I must look to the clauses of the instrument itself to see whether I can find any such qualification of these indefinite, or general, or rather universal words." In *Ex parte Norris: In re Sadler* (6), the question for consideration was the meaning of this very expression 'at any time' as appearing in Rule 13 of Schedule II of the Bankruptcy Act, 1883. Rule 12(a) provides that where a security is valued by a creditor in his proof. the trustee may at any time redeem it on payment to the creditor of the assessed value. And Rule 13 provides that a creditor, who has valued his security may 'at any time' amend the valuation and proof, on shewing' to the satisfaction of the trustee, or the Court, that the valuation and proof were made *bona fide* on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation.' The creditor had estimated the value of a policy of assurance on the life of the bankrupt at a small amount, but subsequently the bankrupt died, and in consequence of the death of the bankrupt the value of the policy increased. It was in these circumstances that the creditor applied for amendment of the valuation and proof. that the security had increased in value; Lord Esher, M. R. observes—"It was obvious that by reason of the death of the bankrupt the policy had increased in value. Thereupon the creditor gave notice that he desired to amend the valuation which he had put upon the policy. The trustee insists that the creditor was too late; the creditor insists that he came in time. Now that depends simply on the construction of the Act of Parliament and the rules made under it, which have the force of an Act of Parliament ..... The 13th rule of the 2nd Schedule to the Act, is that which deals with this matter and the only question is, when is it too late for the creditor to act under that rule by amending his valuation and proof? The rule says that he may do so 'at any time' on shewing to the satisfaction of the trustee, or the Court, that the valuation and proof were made *bona fide* on a mistaken estimate, or that the security had diminished or increased in value since its previous valuation'. It is not pretended that there was any mistaken estimate in the present case, but the creditor has shown to the satisfaction of the Court that the security has increased in value since its previous valuation. Then the

(6) (1886) 17 Q.B.D. 728.

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rule says that he may amend the valuation and proof 'at any time', and we have no right to diminish the full force of those words 'at any time', unless from the Act, itself or the Rules we can find some necessary implication to limit the force of the words. That they are to have some limitation cannot, I think, be doubted; it cannot be that the right is to go on for ever. One necessary implication, at all events, I think is, that the right is at an end, if the trustee, acting upon the valuation put upon the security by the creditor, has exercised the right given to him by the 12th rule, to redeem the security 'on payment to the creditor of the assessed value'. It is impossible to suppose that, after the trustee has paid the amount of the valuation, and has thus on behalf of the general body of the creditors become the purchaser of the security, the creditor can undo all that. Is there any other implied limitation ? I think there may be another with reference to the right which by clause (c) of rule 12 is given to the creditor to require the trustee to elect whether he will redeem the security". This case was followed in *In re Newton: Ex. parte National Provincial Bank of England* (7). The learned counsel for the petitioner has referred to *Mare Gowd* v. *Emperor* (8), a Full Bench of Madras High Court, in which, in considering the use of this very expression 'at any time' in section 125 of the Code of Criminal Procedure, at page 155 of the report, Tybji J., accepted the interpretation suggested by both the counsel that those words mean 'however early or however late'. This, however, needs a slight explanation. The provision in section 112 of that Code is that when a magistrate acting under section 107, section 108, section 109 or section 110 deems it necessary to require any person to show cause under such section, he is enjoined to make an order in writing, set forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required. An enquiry then follows under section 117 of the same Code, and sub-section (1) of section 118 with first proviso says that if, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of wohm the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly; provided

(7) (1896) 2 Q.B. 403.
(8) (1913) 21 I.C. 146 (F.B.).

(first) that no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 112. Section 125 of that Code says that the Chief Judicial Magistrate or District Magistrate may at any time, for sufficient reasons to be recorded in writing cancel any bond for keeping the peace or for good behaviour executed under Chapter VIII of the Code by order of any Court in his district not superior to his Court. It is obvious that the words 'at any time' in section 125 of that Code have not and cannot have literal and natural meaning so as to make the provisions of that section operative for all times. The reason is simple, the power is given to the Chief Judicial Magistrate or the District Magitsrate to cancel the bond, it is a bond taken by the Magistrate under section 118 of that Code of which the duration as to period is fixed by an earlier order under section 112 of that Code. So that the Chief Judicial Magistrate or the District Magistrate has power of cancellation of such a bond 'at any time' during the period of the currency of the bond itself. It would be almost ridiculous to suggest that after the period of bond has expired, the power under section 125 of that Code can still be exercised, for in that event there is no occasion for the exercise of that power. It is in the wake of these provisions that the observation of the learned Judge has to be considered. These provisions rather show more clearly that whenever in a provision of a statute or an instrument the words 'at any time' are used, the context in which those words are used and the general scope and tenure of the statute or the instrument in which the same are used may spell limitation on those words. These illustrations have been given just to support what appears to be quite plain that the expression 'at any time' in a provision of a statute may attract limitation from the context of the particular provision, or the general scheme and scope of the pattern of things in which that provision appears, or the object and purpose of the provision and the statute, or, all or any of these considerations combined.

The question then is, is there anything in the context of section 36 or the scheme of Chapter III of the Act concerning consolidation of holdings or the object and purpose of the Act itself, or one or more of these considerations taken together, that provides limitation on the words 'at any time' in that section? The context of the section itself, in my opinion, provides material from which the

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conclusion can only be that those words have limitation. The power and jurisdiction conferred by the section is only on the Settlement Officer (Consolidation). It follows from this that the time during which the words 'at any time' have force is the time of the duration of the jurisdiction of the Settlement Officer (Consolidation). Apparently when that officer ceases to have jurisdiction, he ceases to exercise power under section 36, and with that comes in the limitation on the words 'at any time' in the section. The start of the consolidation of holdings in a given estate is with a notification under section 14 of the Act, under which section is also given the power to the State Government to appoint a Consolidation Officer with the object of preparing the scheme for the consolidation of holdings. What is to be particularly noted is that such a notifictaion is confined to a particular estate or to a group of estates of which the consolidation is to be done at one and the same time. The appointment of the Consolidation Officer is for the purpose of preparing the scheme of consolidation of holdings. With the completion of the consolidation of holdings the notification under section 14 obviously serves out its purpose. The jurisdiction of the Consolidation Officer has exhausted itself with the fulfilment of the purpose of the notification. There is no difficulty so far the notification is for a particular estate or estates for the matter of consolidation of holdings and the appointment of a Consolidation Officer is in pursuance of and in conformity with that notification to prepare a scheme of consolidation of holdings for that particular estate or estates. When that purpose has been achieved, when the consolidation of holdings in the estate is complete, the notification under section 14 has served out its purpose and so has the appointment of a Consolidation Officer. He no longer after that as such has jurisdiction in the estate or the estates and the reason is immediately simple, because the purpose of the notification having been achieved, the Consolidation Officer has no longer anything to do in the estate, not only factual but even under the provisions of the statute. According to subsection (1) of section 20 of the Act, one or more persons may be appointed by a notification to be Settlement Officer (Consolidation) and by a like notification the area in which each such officer is to have jurisdiction may be specified. Consolidation Officers in the area under the jurisdiction of a Settlement Officer (Consolidation) are

subordinate to him. The word 'area' is not defined in the Act, but it is obvious from the provisions of sub-section (1) of section 20 that the word 'area' has in its ambit more than an estate or a unit of estates in which consolidation of holdings may be carried out at any given time, and it may include an estate or estates in which either consolidation has been carried out in the terms of the statute and completed, or in which that is yet to be done. Whenever, proceedings are taken for consolidation of holdings under Chapter III of the Act in a given estate and a Consolidation Officer is appointed for the purpose under section 14, he becomes immediately subordinate to the Settlement Officer (Consolidation) in whose area that particular estate lies. A notification is to specify the area of jurisdiction of a Settlement Officer (Consolidation). But section 20 of the Act cannot be read in isolation, it is an integral part of the scheme of the statute in Chapter III in regard to the consolidation of holdings. The nature and character of the jurisdiction of the Settlement Officer (Consolidation) has the limitation of being confined to that scheme of the statute in that Chapter for the matter of consolidation of holdings. It is in this context that there comes a limitation on the jurisdiction of the Settlement Officer (Consolidation) both territorial as also in duration of time. It is limited in regard to territory of such estate or estates in respect of which notification under section 14 has been issued and Consolidation Officer for preparation of the scheme for consolidation of holdings has been appointed. Suppose in the area in which a Settlement Officer (Consolidation) is notified to have jurisdiction, there are a number of estates with regard to which no notification under section 14 has yet been issued, while with regard to some such a notification has been issued, and with regard to the third category the consolidation of holdings has been completed and the purpose and object of such a notification has been exhausted and has come to an end. In the terms of sub-section (1) of section 20 the Settlement Officer (Consolidation) has jurisdiction over the whole area, but in the actual exercise of jurisdiction, in the case of first category the occasion has not yet arisen and cannot arise until a notification under section 14 has been issued so that in the case of that category the jurisdiction of the Settlement Officer (Consolidation) has really not come into existence, and in the case of second category such a notification having been issued, his jurisdiction

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immediately comes into existence with the issue of the notification and the Consolidation Officer or officers appointed under section 14 become his subordinates, and again in regard to the third category his jurisdiction no longer subsists, because the consolidation of holdings has completed and the purpose and object of section 14 has been served and there is nothing left on which the jurisdiction can operate. It cannot possibly be said that a Settlement Officer (Consolidation), though a particular estate lies within the area to which he has been appointed and over which his jurisdiction has been notified, has still jurisdiction in it although no notification under section 14 has yet been issued with regard to such an estate. A statement that he has jurisdiction in regard to such an estate is basically devoid of any meaning whatsoever, for as no steps can be taken in the matter of consolidation of holdings in that estate until a notification under section 14 has been issued, there is nothing with regard to which the Settlement Officer (Consolidation) can possibly have any jurisdiction. The position is exactly the same, and not a jot different, when the consolidation of holdings has been completed in the terms of the statute and the object and purpose of notification under section 14 has been exhausted with the result that the Consolidation Officer has ceased to have jurisdiction and there is no more to be done. In that case also with the Consolidation Officer ceasing to have jurisdiction in the particular estate, the jurisdiction of the Settlement Officer (Consolidation) also vanishes. The stage is the stage of the coming into force of the scheme when the process of consolidation, after going through various stages has come to a completion and end, and the rights of the landowners, which were made dormant by the statute, have become alive and normalcy prevails with regard to the same. It follows then logically that with the end of the jurisdiction of the Settlement Officer (Consolidation) in an estate, after the completion of the consolidation of holdings in the terms of the statute, he becomes *functus officio*, he is no longer a person who has any power or jurisdiction under the statute in regard to that estate, and he is no longer an officer who can anywise interfere with what has gone out of jurisdiction. The words 'at any time' in the scheme of things as these must have limitation *terminating* with the jurisdiction of the Settlement Officer (Consolidation). This is the limitation which inheres in the

very provision and words of section 36. The other parts of Chapter III of the Act and the scheme of the Act merely heighten this conclusion. The provisions of Part III of the Act beginning with a notification under section 14 for consolidation of holdings in an estate and ending with the coming into force of the scheme under the first part of sub-section (1) of section 24, envisage a defined and definite state of circumstances, which begins and ends. It does not envisage an indefinite continuation of a process of consolidation of holdings with a cloud on the title of the landholders spreading endlessly. I agree with every single observation of Tek Chand, J. in *Bhikan's case* (2) giving in detail the detrimental consequences of such an approach. However, I have not based my conclusion being influenced by such consequences. The conclusion I have reached is on the very context and scope of section 36. When that is considered in the context and scope of other sections in Chapter III of the Act, it becomes clear that there is a definite stage of the starting of consolidation proceedings and there is a definite stage of the closing of the same, and that the consequences flowing out of one or the other on the rights of the landowners in the land are entirely different. With the closing of the consolidation of holdings there is lifted any restriction or embargo on the rights of the landowners and they reach a stage exactly the same in which they were before any move for the consolidation of holdings by a notification under section 14 of the Act. The preamble of the Act provides the limitations of the Act for the matter of consolidation of holdings, the definition of the expression 'consolidation of holdings' in section 2(b) of the Act limits it to the carrying out of the process of consolidation and with that the matter comes to an end, and sections 14 to 24 provide various stages or rather steps from the beginning to the end for the completion of consolidation of holdings in an estate, and when that purpose and object has been attained, everything which started and came into existence solely for that purpose ceases to exist. In other words, the notification under section 14 of the Act exhaust itself and the jurisdiction of the Consolidation Officer and the Settlement Officer (Consolidation) goes with that. It has been said during the arguments that while a Consolidation Officer is appointed to a particular estate to carry out consolidation of holdings in it, a Settlement Officer (Consolidation) is appointed to a larger area covering a

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number of estates, and, therefore, even if in a particular estate consolidation of holdings has completed and come to an end and the Consolidation Officer has become *functus officio*, there still remains the Settlement Officer (Consolidation) with jurisdiction over the estate. I have already shown that this is a fallacy, for the Settlement Officer (Consolidation) has no more jurisdiction in an estate than during the currency of the consolidation of holdings under Chapter III and with the completion and end of the consolidation of holdings, his jurisdiction comes to an end just as much as that of the Consolidation Officer. Now, let it be assumed for a moment that while the jurisdiction of the Consolidation Officer comes to an end with the completion and end of the consolidation of holdings, some kind of jurisdiction continues to reside with the Settlement Officer (Consolidation) and in such state of circumstances the Settlement Officer (Consolidation) acts under section 36 to vary or revoke the scheme. He has immediately reached an impossible state of affairs in which nothing further can be done under the Act, and why, because there is no Consolidation Officer who can carry out the provisions of the Act. The Consolidation Officer has ceased to have jurisdiction, there is no power in the Settlement Officer (Consolidation) to revive that jurisdiction in the Consolidation Officer, and there is no power anywhere in the statute for bringing back the jurisdiction of the Consolidation Officer. The only possible course that can then be taken is to proceed by a fresh notification under section 14 and then reappoint a Consolidation Officer. If so, and this appears to be inescapable from the provisions of the Act, the Settlement Officer (Consolidation) has exercised his so-called jurisdiction in the void. He is unable to effectuate the order passed by him. That in the circumstances is an impossibility. There is another matter which has come for consideration during the arguments and that is that what is to happen if, after the scheme of consolidation of holdings has come into force and the Consolidation Officer and the Settlement Officer (Consolidation) have ceased to have jurisdiction this Court interferes under Article 226 of the Constitution either with the scheme or with the repartition consequent upon scheme with a direction, on a finding of certain illegality in one or the other, that the matter should be redone in the wake of its conclusions and directions. It has been said that in that event the orders and directions of this

Court will be quite as infructuous as the order of the Settlement Officer (Consolidation) after the completion of the consolidation of holdings, because there will be nobody having jurisdiction to carry out the orders and directions. This is a mistake. The reason is that when this Court interferes in the manner stated under Article 226 and quashed a part of the scheme or a part of the repartition and then issues a direction that the consolidation be completed in the wake of its decision, the result of such an order is that the consolidation of holdings in the estate is not complete and has not come to an end, and the scheme that appeared to have come into force in the circumstances shall not be taken to have done so. So that the effect of the order of this Court will be to show that the scheme of consolidation has not come to a completion or end and its orders and directions can be carried out under the provisions of the Act. In this connection another matter that has been urged by the learned Deputy Advocate-General is that when an expression is used more than once in the same statute, ordinarily it is to have the same meaning. He then points out that in section 42 of the Act also appears the expression 'at any time' and in *Makhan Lal's case* (4), the learned Judges while doubting the correctness of the opinion of Tek Chand, J. in *Bhikan's case* have given the widest-possible meaning to those words; in other words, have given those words their literal or natural meaning. The learned Deputy Advocate-General has pressed that the same meaning should be given to this very expression in section 36. Their Lordships have in *Shamrao Vishnu Parulekar* v. *The District Magistrate, Thana* (9), held that the presumption that the same words are used in the same meaning is however very slight and it is proper if sufficient reason can be assigned to construe a word in one part of an Act, in a different sense from that which it bears in another part of an Act, and that the same word may be used in different senses in the same statute, and even in the same section. In this respect, the learned counsel has also laid emphasis on the observations of my Lord, the Chief Justice, in *Makhan Lal's case*. The context of section 36, the setting in which it appears in Chapter III, and the power that it confers upon the officer whose duty is to attend to part of the consolidation of holdings, are considerations

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which clearly show that the expression 'at any time' in this section, is to be read with those circumstances in view and the same are not attracted to the provision in section 42 of the Act. With regard to the decision in *Makhan Lal's case,* I may say, with the greatest respect to the learned Judges, that the basis of the ratio of the opinion of Tek Chand, J. *Bhikan's case* probably did not receive as much consideration as it deserved, because it was stated along with the facts detailed by the learned Judge showing the detrimental effects of continuing the process of consolidation of holdings interminably and without an end. It was probably the long discourse, with every word of which I respectfully agree, of the learned Judge that did not immediately bring forth the force of the basis of the opinion of the learned judge. In any case, the learned Judges in *Makhan Lal's case* were only concerned with section 42 and not with section 36, and, therefore, there was not an occasion sufficient enough for a detailed appraisal of the basis of opinion of Tek Chand, J. in *Bhikan's case*, nor for the consideration of the provisions of section 36 with the import and implication of its language as such and of its provisions taken in the setting of things in Chapter III of the Act. With respect, in my opinion, *Makhan Lal's case* must be confined only to the provisions of section 42 of the Act. In the present case the argument has only been confined to section 36. No considered opinion can be given on the meaning and scope and ambit of section 42 of the Act, because it does not come in for consideration directly and because the minds of the counsel have not been tuned to presenting arguments with regard to that section, and so it is not possible, in the circumstances, to give a considered opinion in regard to the scope and effect of section 42 of the Act in this case. It would not be correct to base a decision on the consideration of another section in the statute, although employing the same expression, when it has not been properly under consideration in this case and when proper and detailed arguments with regard to it have not been addressed. So, in my opinion, in the context of section 36, the setting in which it appears in Chapter III of the Act, and having regard to the object and purpose of the statute and the consolidation of holdings, there is material which goes to show clearly the limitation placed on the expression 'at any time' in this section as being terminable with the coming to end of the jurisdiction of

the Settlement Officer (Consolidation) in the estate. It has already been shown that the consolidation of holdings comes to an end and completion by the coming into force of the scheme. That is the stage when both the Consolidation Officer and the Settlement Officer (Consolidation) cease to have jurisdiction in the estate, for by then, as stated, the purpose and object of the notification under section 14 has served itself and reached an end.

There is one provision to which, although reference has already been made, but in connection with the argument that has been considered above, I have so far purposely refrained from referring. And that provision is sub-section (1) of section 24 of the Act. It has already been reproduced above. It has been shown that a part of it, referring to the delivery of possessions of holdings on the coming into force of the scheme being subject to 'a change ordered in pursuance of provisions of sub-sections (2), (3) and (4) of section 21', is meaningless and redundant and irreconcilable with the provisions of sections 21 to 23. This sub-section also refers to the delivery of possessions to landowners with the coming into force of the scheme being subject to 'an order passed under section 36'. It has been contended on the side of the respondents that as possessions delivered of holdings in conformity with the scheme of consolidation of holdings, on the coming into force of the scheme, are subject to an order passed under section 36, it means that an order can be passed under section 36 after the consolidation of holdings has completed and come to an end with the coming into force of the scheme. It has been pressed that this being inferable from sub-section (1) of section 24, it follows that irrespective of whether the consolidation of holdings has completed and come to an end with the coming into force of the scheme or not, at all times, whether before such situation or after, the order can be made under section 36 of the Act, and that being so, the only harmonious manner of construing sub-section (1) of section 24 with section 36 is to hold that the expression 'at any time' in section 36 means literally at any time without limitation in frequency or duration. This argument ignores a patent fact that after the completion and coming to end of the consolidation of holdings, the notification under section 14 of the Act comes to be exhausted, its object and purpose having been fully served

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and done with. A further consequence follows that the officers appointed in the wake of that notification and to serve the object and purpose of that notification ceases to have jurisdiction with the realisation of that object and purpose when the consolidation of holdings has completed and come to an end with the coming into force of the scheme. After that those officers, including the Settlement Officer (Consolidation), cease to have jurisdiction. Nothing stated in sub-section (1) of section 24 can revive such jurisdiction. The only manner in which such jurisdiction can be resuscitated, and I think this is not the accurate way of putting it, the only manner in which the jurisdiction in the Consolidation Officer and the Settlement Officer (Consolidation) can come into existence again is by the issue of a fresh notification under section 14. There is no power in the Settlement Officer (Consolidation) acting in exercise of his powers and jurisdiction under section 36, either to confer power and jurisdiction upon himself or to confer any such power or jurisdiction on a Consolidation Officer, to revive a notification under section 14 which has come to an end with its object and purpose having been realised and served by the completion and coming to end of the consolidation of holdings with the coming into force of the scheme. Sub-section (1) of section 24 has reference to quite an impossible situation when it makes reference to 'an order passed under section 36', and to 'a change ordered in pursuance of provisions of sub-sections (2), (3) and (4) of section 21'. In either case the provisions are not, in the wake of the other provisions of the statute, workable and there is no manner of creating any harmony between sub-section (1) of section 24 in this respect and section 36 of the Act, for, as already pointed out, when sub-section (1) of section 24 refers to an order passed under section 36 of the Act, it refers to such an order at a stage when the authority which can pass an order under section 36 has ceased to have power and jurisdiction and thus this statement even with regard to section 36 in sub-secion (1) of section 24 is an impossible statement. This section, which is drafted without having regard to the sequence of the preceding provisons, has a part of it which has been found to be meaningless and redundant, and, similarly, another part of it referring to section 36 is of the same nature and character. Such a provision cannot possibly be an aid to the interpretation of another provision like

section 36 of the Act. It has further been said on the side of the respondents that sub-section (1) of section 24 refers to section 42 of the Act as well, but, as already stated, section 42 is not under consideration in this case, and that section appears in a different setting, its language is quite different and much more wide than that of section 36, and it deals with the powers of the State Government and not of an officer like Settlement Officer (Consolidation). So that nothing turns upon this.

In the earlier part of the judgment it has been pointed out that the learned Deputy Advocate-General has really not placed reliance upon the decision in *Laxman Purshottam Pimputkar's case* during the arguments. In that case the revisional power was exercised some twenty years after. Subsequently in the *State of Orissa* v. *Debaki Debi* (10), their Lordships have pointed out that a limitation applicable to an Assessing Authority may be a limit on the exercise of the power of the revising authority. So that the learned Deputy Advocate-General was quite right in no longer relying upon the decision in *Laxman Purshottam Pimputkar's* case to support the conclusion that the expression 'at any time' in section 36 of the Act must be read in its literal and natural meaning and not as limited by the context of that section and the general scope and ambit of the provisions among which it appears and the purpose and scope of the statute itself.

There has been one other argument by the learned Deputy Advocate-General that an order made under section 36 of the Act is an order administrative in nature and hence there can be no interference with such an order in a petition like the present. The argument to my mind is not tenable. It has already been shown that the Consolidation Officer must hear objections to the scheme. It is his duty to forward the scheme to the Settlement Officer (Consolidation) with his recommendations and with his remarks on the objections to the scheme. It is then the statutory duty of the latter to take into consideration the objections along with the remarks of the Consolidation Officer on them and then proceed to confirm the scheme. This process is a quasi-judicial process and the confirmation of the scheme is a quasi-judicial act. This has not been questioned on the side of the respondents. All the

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same, the learned Deputy Advocate-General has pressed that an order made subsequently varying or revoking the scheme under section 36 of the Act is an administrative order. Where proceedings are judicial and a quasi-judicial tribunal makes a quasi-judicial order, any provision giving jurisdiction for interference with such an order confers jurisdiction only to make a quasi-judicial order and nothing else, except in one case and that is the case of interference with quasi-judicial order by legislation. In that event the legislature, if it acts within the scope and ambit of its power, has an overriding power and jurisdiction to make legislation taking away the effect of a quasi-judicial order. But if it does not do that and instead it makes provision for conferring jurisdiction for interference with such a quasi-judicial order or there is any jurisdiction claimed as interfering with such a quasi-judicial order, the exercise of that jurisdiction in itself is quasi-judicial in nature and the resulting order is in the nature of things a quasi-judicial order. There is no manner of interfering by an administrative order with a quasi-judicial order. So that this approach of the learned Deputy Advocate-General is not correct.

The consequence is that the decision in *Bhikan's case* is correct and respondent 3, Settlement Officer (Consolidation), had no jurisdiction to make the impugned order varying or modifying the scheme of consolidation in the village after the consolidation proceedings completed and came to an end on the coming into force of the scheme of consolidation of holdings and the taking of possessions of the lands allotted to the land-holders on or about February 16, 1959. Respondent 3 had no jurisdiction to vary or amend the scheme more than a year after the coming into force of the same. The order of respondent 3 in that respect made on May 25, 1961, Annexure 'C', is quashed. The petitioners succeed in their petition and respondent I will bear their costs in this petition.

Khosla, J.

KHOSLA, J.—I am in entire agreement with the opinions expressed, reasoning adopted and conclusions arrived at in his judgment by my esteemed and learned brother Mehar Singh J. and have nothing to add.

Dua, J.

DUA, J.—I have very carefully read the separate judgments prepared by my learned brethren Mehar Singh

J. and H. R. Khanna, J. respectively. The arguments addressed at the bar on the present occasion are practically the same which were addressed before the Full Bench in *Bhikan and others* v. *The Punjab State and others* (2), by the learned counsel for the State. It is true that the correctness of the earlier Full Bench decision was questioned before Shamsher Bahadur, J. on the authority of the Supreme Court decision in *Laxman Purshottam* v. *The State of Bombay* (3), but no serious effort was made before us to seek support from this decision, and indeed the attempt was soon given up. Reference has, however, been made at the bar to a decision of this Court by a Bench consisting of my Lord the Chief Justice and Grover, J., in the *State of Punjab* v. *Makhan Lal* (4), in which, while construing the expression "at any time" occurring in section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (hereinafter called the Act), some doubt was cast in the course of the judgment on the majority view in the Full Bench decision in *Bhikan's case*, to which I was a party. I have accordingly thought fit again to consider the matter afresh and have devoted serious attention to the arguments addressed. But I regret to observe that I have not been persuaded to hold that the expression "at any time", as used in section 36 of the Act, gives a completely unrestricted power in respect of duration of time, to the authority confirming the scheme or to the State Government acting under this section, to vary or revoke the scheme. I still feel that absolute indefiniteness in point of time for exercising this power could not reasonably have been intended by the Legislature to be available to the administrative authorities created and functioning for the purpose of merely consolidating the fragmented holdings under the Act. It is true that in *Bhikan's case* (2) as the concluding portion of my short order shows, it was with a certain degree of hesitation that I had agreed with the contention approved by Tek Chand, J., but this hesitation was clearly due to the language used by the Legislature in section 24 of the Act, as construed by a Division Bench in *Jiwan Singh* v. *Consolidation Officer, Sunam* (1). I was otherwise firmly of the view that the expression "at any time" as used in section 36 called for some limitation in point of time, the widest amplitude of the expression notwithstanding. I expressed myself in unequivocal terms that "to concede to the Settlement Officer the power of varying or revoking the scheme 'at

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any time' without any limitation seems to me to be more objectionable, and such a construction may perhaps expose this provision to a more serious constitutional challenge, for it would clearly expose the title to the holding to a permanent uncertainty, a result not in accord with the fundamentals of our Republican jurisprudence and, therefore, not readily agreeable to our instincts." I added that the expression "at any time" used in section 36 calls for a construction in the light of the constitutional guarantees and not on bald literalness. Nothing has been urged at the bar on the present occasion which has persuaded me to change my approach to the problem and the alignment of my judicial vision in the search for the legislative intent.

Now, a few words about the background in which the Statute before us calls for construction. I need not repeat the facts of the case: they are sufficiently clear from the orders of my learned brethren, Mehar Singh, J., and Khanna, J. The duty of the Court, when in discharging its judicial function, it is confronted with conflicting or opposing view points in regard to the meaning of a given provision of law, is to ascertain the legislative intent. The intention of the Legislature is a common, but may at times give the impression of a slippery, phrase which, properly understood, may signify anything from expressed words to a somewhat speculative opinion as to what the Legislature probably would have meant, although there has been omission to enact it. The purpose of statutory construction, broadly speaking, is to ascertain the sense of statutory language and, as it is sometimes said, not to put sense into it: in other words, to expound, not to improve the statute. Law reports and books on interpretation of statutes disclose a number of general rules of statutory construction, but, in my view, at best, such rules serve only as a very general guide in the Court's attempt to ascertain the real intent of those that made the statute. The rules of construction, as I view them, are neither iron-clad nor inflexible. To get at the real intended meaning of the Legislature, I think, all the rules should be considered and kept in view in construing the statutory language and no particular rule should be followed to the exclusion of all others, particularly when to do so would lead to illogical conclusions. Broadly speaking, no intent may be imputed to the Legislature in the enactment of law other than the one which is supported by the face

of the law itself, and the Courts are not justified in speculating as to the probable legislative intent apart from the words. A statute has to be taken, construed and applied in the form enacted, but when the Court, in the discharge of its judicial function, is required to discover the meaning of words used therein, it must decline to be guided solely by the mere bald literalness of the statutory phrasing taken in isolation and out of the context: to consider mere letter of a provision of law, is, as has often been said, to go but skin deep into its meaning. Some degree of implication or inference may well be necessary to aid the discovery of the intention of the Legislature, for, it often speaks as plainly by inference as in any other manner, what is clearly implied from the expression of the statute being as much its part as what is expressed. Such implication or inference may arise as a result of comparison of the clause or the phrase requiring interpretation with the other provisions of the statute and the setting in which the clause or the phrase in question occurs. Aim, object and scope of the statute read in its entirety and in the background of our constitutional set-up, must always be kept in view in construing the words requiring interpretation, because indisputably they get colour and content from these factors. The constitutional policy may, in my opinion, appropriately provide a very valuable aid in fixing legitimate boundaries of statutory meaning. To quote from Maxwell on Interpretation of Statutes (Eleventh Edition pp. 16-17): It is an elementary rule that a thing which is within the letter of a statute will, generally, be construed as not within the statute unless it be also within the real intention of the legislature, and the words, if sufficiently flexible, must be construed in the sense which, if less correct grammatically, is more in harmony with that intention." The use of the expression "at any time" in section 36 of the Act, therefore, cannot be considered to be conclusive on its bald literalness.

Now the purpose and object of the Act is to provide for the compulsory consolidation and for preventing the fragmentation of agricultural holdings and for the assignment or reservation of land for common purposes of the village. This legislative purpose is sought to be accomplished by schemes for the consolidation of holdings. Such a scheme is to be deemed to come into force as soon as

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persons entitled to possession of holdings enter into possession of their respective allotted holdings thereunder. In Chapter III, the scheme is published and finally confirmed after disposal of objections. Section 21 provides for repartition in accordance with the confirmed scheme including appeals by aggrieved parties up to the Assistant Director, Consolidation, appointed under section 21(7). The scheme is deemed to come into force as soon as the persons entitled to possession of holdings take it: section 24. The rights of the landowners and tenants are the same in the land allotted to them under the scheme as they had in their original holdings or tenancies. This has been expressly guaranteed to them by section 25, of course subject to the provisions of sections 16 and 16-A. Section 16 deals with the problem of distribution of land between occupancy tenants and the landlords and conferment of ownership rights on the tenants; section 16-A tackles the problem of joint owners and joint occupancy tenants. Section 26 provides for the transfer of lease, mortgage or other encumbrance from the original holding or tenancy to the newly allotted holding or tenancy under the scheme. Section 27 embodies an overriding provision permitting transfer of holdings and tenancies for giving effect to the scheme, notwithstanding anything contained in the Punjab Land Revenue Act, and the Punjab Tenancy Act. Under section 28, costs of consolidation proceedings are to be received from the persons whose holdings are affected by the scheme. Section 30 provides that after notification, under section 14(1), no landowner or occupancy-tenant on whom the scheme will be binding, shall have a power during the pendency of the consolidation proceedings, without the sanction of the Consolidation Officer, to transfer or otherwise deal with any portion of his original holding or tenancy, so as to affect the rights of landowners or tenants under the scheme. Section 30-A similarly prohibits cutting of trees and erection of buildings, etc., after notification under section 14(1), rendering contravention of this provision a cognizable offence. Section 32 prohibits initiation of proceedings under Chapter III, Punjab Land Revenue Act, after a notification under section 14(1) and provides for pending proceedings to be kept in abeyance during the pendency of consolidation proceedings. Chapter III of the Act, providing for the machinery of consolidation of holdings, starts with section 14 and concludes with section 36, the last section permitting variation or revocation of the

scheme by the authority confirming it, subject to the orders of the State Government, and providing that a subsequent scheme may be prepared, published and confirmed in accordance with the Act. Repartition, it is noteworthy, has not been mentioned in section 36. Whether this omission is designed or accidental has not been properly debated at the bar. I have emphasised only those sections which seem to me to have same bearing on the additional aspect which has also weighed with me, to some extent, in construing this section.

In the background of the above statutory scheme, if the respondents' contention is to be upheld and the Settlement Officer is to be conceded the power to vary or revoke the scheme *at any time* without any outside limit in point of duration, in other words, everlasting or interminable power in point of time, then the title of the holders in the allotted holding must for ever remain virtually insecure, even after the consolidation proceedings are completely terminated, thereby bringing to end the purpose for which the Settlement Officer was appointed, and, even though, as expressly provided by section 25, the holders are assured the same rights as they had in their original holdings. Such a construction appears to me to be so unreasonable that in the absence of the clearest expression of the legislative intent, I would be extremely hesitant and reluctant to uphold it. And then section 36, which need not be read again, it having been reproduced both by Mehar Singh, J., and Khanna, J., in their judgments, seems to me to contemplate in case of revocation of scheme, initiation of fresh proceedings from the stage only subsequent to the notification under section 14(1). This apparently means that whenever this power is exercised, the consolidation proceedings would be deemed to have been pending all this while, and the variation or the revocation, as the case may be, should be intended to have the effect of reopening the proceedings, and the scheme would, in terms of section 24, be deemed again to come into force after further change of possession. The confusion which this construction is likely to create in applying and enforcing the various sections noted above, leave alone the uncertainty of title and additional costs to the holder. appears to me to be so harsh and unjust on the citizen affected, that I feel great reluctance in accepting it.

And then what is the basis for adopting this construction ? Only the literal meaning of the expression "at any

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time" and the inclusion of section 36 also in section 24 ? Both these factors seem to me to be not only legally inconclusive, but also extremely weak to sustain the construction which is apt to lead to, what may appear to be, somewhat extraordinary, and also unjust, consequences. Considering the precise language of section 36 and contrasting it with that of section 42, it is apparent, as observed earlier, that it is not designed *prima facie* to touch the repartition proceedings, which obviously take place after the confirmation of the scheme. This may well be with some purpose which the Legislature had in view: and that purpose may be, to an extent, to limit the operation of the expression "at any time". The inclusion of the words "or an order passed under section 36" in section 24 does undoubtedly suggest that the Legislature visualized the possibility of interference under section 36 after the transfer of possessions on repartition, but this by itself does not seem to me to be a sufficiently strong and cogent circumstance to counter-balance or outweight the other considerations of far-reaching consequences. It does not furnish a compelling reason to adopt the construction canvassed by the respondents. Keeping in view the constitutional guarantee of fundamental right to property, I find it somewhat difficult to impute of the Legislature an intention to keep the title of the land-holders to their new holdings permanently in suspense and in somewhat unsettled state. The argument that the Settlement Officer will exercise his judicial discretion to interfere only in a fit case after a long lapse of time, is possessed of feeble persuasive cogency, because conferment of quasi-judicial power of such wide magnitude on an administrator holding an office temporarily for accomplishing only a statutory purpose which is expected to be accomplished within a short period, is not free from serious objection or easy to comprehend. It must not be forgotten that the office of the Settlement Officer, created as it is for a limited purpose under the Act, cannot in this context be safely compared or equated with the ordinary established Courts of law and justice, and any analogy taken from statutes dealing with the discharge of judicial functions by Courts would obviously be inapt and perhaps misleading. Incidentally, I may point out that section 36 is not meant for correction of clerical errors, which power is reserved by section 43-A.

Finally, it may be recalled that the decision in *Bhikan's case* was given on 4th January, 1963. The Act was retrospectively amended by Punjab Act, No. 39 of 1963

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in November, 1963, for the purpose of validating certain schemes in which assignment of land for certain common purposes had been made. It is permissible to assume that the Legislature knew of the view taken by a Full Bench of this Court in *Bhikan's case* (2). If that view was considered to be incorrect and not in accord with the legislative intent, then, in my opinion, the Legislature would have clarified the position, particularly when there was a dissent among the Judges constituting the Full Bench itself, clearly suggesting the possibility of two divergent judicial view points. In this Republic which is governed by Rule of Law, certainty of the law is basic and of paramount importance, and the Legislature is under a solemn obligation to the citizens to take anxious care and see that the laws made by it, which affect citizens' rights to property, are drafted and expressed in clear and unambiguous language. Any ambiguity or uncertainty of expression in material particulars must, in fairness, be set right without undue delay. That the Legislature in this State has been vigilant in setting right errors in the Act is clear beyond doubt. On an earlier occasion, Punjab Act No. 25 of 1962, was passed and enforced in December, 1962 to undo the effect of the judgment of this Court in *Jiwan Singh's case* (1) given in April, 1962. The omission of the Legislature to intervene and to clarify its intent in respect of the interpretation of section 36 in Act 39 of 1963, or otherwise, may also be not wholly irrelevant, though this factor may not be given exaggerated importance. It only serves to further fortify the view I have taken.

I need not touch the grounds covered by my learned brother Mehar Singh, J., in his exhaustive judgment. I have only referred to some additional aspects which have also, to an extent, weighed with me in construing section 36. With the foregoing observations, I express my concurrence with him.

Pandit, J.

P. C. PANDIT, J.—This Bench has been constituted for the re-examination of the question of law decided by the Full Bench in *Bhikan and others* v. *The Punjab State* (2), where it was held—

> ".....that the expression 'at any time' as used in section 36 of the Act calls for some limitation in them in point of time. They do not mean that the Settlement Officer can revoke or vary the scheme even after the purpose of consolidating the holdings is finally accomplished under the Act."

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It was argued by the learned counsel for the State before the learned Single Judge, who made this reference, that the authority of this Full Bench has been considerably affected by a recent decision of the Supreme Court in *Laxman Purshottam Pimputkar* v. *The State of Bombay* (3), in which it was held that if in a relative enactment no period of limitation was specified, the petition for revision could be entertained *at any time* at the discretion of the revising authority. The order in that particular case was revised after a number of years and it was observed by the Supreme Court—

> "It is sufficient to say that no period of limitation is specified in the Act for preferring an application for revision. Of course, normally, the Government would not interfere unless moved within reasonable time. But what should be considered as a reasonable time in a particular case would be a matter entirely for the Government to consider. Apparently, in this case the Government thought that it had strong reasons for interfering even after a long lapse of time and that is why it interfered."

On the basis of this ruling, it was argued that the words "at any time" a occurring in section 36 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (hereinafter referred to as the Act) should be of much wider scope and authority to the Government than existed in the case dealt with by the Supreme Court, where no period of limitation was prescribed at all. So the short point for consideration is whether the law laid down in *Bhikan's case* (2) still holds good, even after the Supreme Court's decision in *Laxman Purshottam Pimputkar's case* (3).

Sections 36 of the Act runs as under:—

> "S. 36. A scheme for the consolidation of holdings confirmed under this Act may, at any time, be varied or revoked by the authority which confirms it subject to any order of the State Government that may be made in relation thereto and a subsequent scheme may be prepared, published and confirmed in accordance with the provisions of this Act."

The point for decision is whether the words "at any time" occurring in this section have to be given their literal meaning, that is to say, the Settlement Officer, who confirms the scheme for consolidation, can, at any time, vary or revoke that scheme, subject, of course, to any order of the State Government that may be made in relation to it. In other words, can he take action under this section even after a number of years when the entire consolidation work in the village had been finished, because that would obviously be the result if these words have to be given their literal meaning. The submission of the learned counsel for the petitioner is that the Settlement Officer has no jurisdiction to act under this section when the entire consolidation proceedings are over, that is to say, the repartition had been completed in the village, the landowners had taken possession of their respective holdings and the new record-of-rights had been prepared. He argued that after that stage was reached, the Settlement Officer becomes *functus officio*. Counsel for the State, on the other hand, contends that under this section no time limit can be fixed for the Settlement Officer to take action and he can act *at any time* and vary or revoke the consolidation scheme. The question arises as to which of the two rival contentions is correct. In order to determine this matter, it is necessary to examine the relevant provisions of the Act. Under section 14(1) of the Act, the Government can, either on its own motion or on an application having been made declare by notification its intention to make a scheme for the consolidation of holdings in a particular area. For that purpose, under section 14(2), it appoints a Consolidation Officer, who after obtaining the advice of the landowners, the non-proprietors and the Gram Panchayat of that area, prepares a draft scheme of consolidation. This draft scheme under section 19(1) is then published. Any person who is likely to be affected by this scheme can then file objections within 30 days' of its publication. The Consolidation Officer then considers those objections and submits the scheme with such amendments as he considers to be necessary together with his remarks on the objections made thereto to the Settlement Officer (Consolidation). Under section 20(1) the State Government may by notification appoint one or more persons to be Settlement Officers (Consolidation) and specify the area in which each such Officer shall have jurisdiction. Objections against the draft scheme can then also be

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filed before the Settlement Officer under section 20(3). If no such objections are received by the Consolidation Officer as well as the Settlement Officer, then the latter will confirm the scheme. If, on the other hand, objections had been filed before the Consolidation Officer or the Settlement Officer, then the latter will consider them together with the remarks made by the Consolidation Officer thereon and will either confirm the scheme with or without modifications or refuse to confirm it. If latter be the case, he will return the draft scheme to the Consolidation Officer with such directions as may be necessary for reconsideration and resubmission. When this scheme is confirmed, it shall be published in the prescribed manner in the area concerned. Then comes section 21, Under sub-section (1) thereof, the Consolidation Officer is authorised to carry out repartition in accordance with the scheme which was confirmed under section 20, but this he will do after having obtained the advice of the landowners of that estate. The boundaries of the holdings as demarcated shall then be shown on the *shajra,* which shall be given due publication in that area. If any person is aggrieved by this repartition, he can under sub-section (2) thereof file written objections before the Consolidation Officer within 15 days' of its publication. The Consolidation Officer will then hear the objector and pass suitable orders either confirming or modifying the repartition. If somebody is dissatisfied by the order of the Consolidation Officer under sub-section (2), he has a remedy of going up in appeal before the Settlement Officer under sub-section (3) within one month and the Settlement Officer would then after hearing the appellant pass such orders as he deems proper. The order of the Settlement Officer is liable to be challenged in appeal within 60 days' under sub-section (4). Before the year 1962, the power under sub-section (4) was conferred on the State Government or its delegate and after the coming into force of Punjab Act No. 25 of 1962, this power is being exercised by the Assistant Director of Consolidation. The appellate authorities both under sub-sections (3) and (4) have been authorised to entertain an appeal after the expiry of period of limitation, if they are satisfied that the appellant was prevented by sufficient cause from filing the same within time. It may be mentioned that the decision in *Bhikan's case* (2) was made before the enactment of Punjab Act No. 25 of 1962. By the passing of the order under sub-section (4), the repartition becomes final. Now comes

section 22. This section was also amended by Punjab Act No. 25 of 1962. Before its amendment, it provided that the Consolidation Officer shall cause to be prepared a new record-of-rights in accordance with the provisions contained in Chapter IV of the Punjab Land Revenue Act, in so far as those provisions may be applicable, for the area under consolidation, giving affect to the repartition as finally sanctioned under section 21. According to the amended section, however, these record-of-rights shall be prepared by the Consolidation Officer giving effect to the repartition and orders in respect thereof made under section 21. After that comes section 23, which relates to the right to possession of new holdings. This section too was amended by Act No. 25 of 1962. Before amendment, subsection 1 thereof provided that if all the owners and tenants affected by the scheme or the repartition, as finally confirmed, agreed to enter into possession of the holding allotted to them thereunder, the Consolidation Officer could allow them to enter into such possession forthwith or from such date as might be specified by him. According to sub-section (2), if all the owners and tenants, did not agree to enter into possession under sub-section (1), they were entitled to possession of the holdings and tenancies allotted to them from the commencement of the agricultural year next following the date of the publication of the scheme under sub-section (4) of section 20, or, as the case may be, of the preparation of the new record-of rights under sub-section (1) of section 22, and the Consolidation Officer should, if necessary, put them in physical possession of the holdings to which they were so entitled. For the present controversy, we are not concerned with the rest of the sub-clauses of this section. According to the amended section 23, sub-section (1) thereof provides that if all the owners and tenants affected by the repartition as carried out under sub-section (1) of section 21 agree to enter into possession of the holdings allotted to them thereunder, the Consolidation Officer may allow them to enter into such possession forthwith or from such date as may be specified by him. Sub-section (2) now states that if all the owners and tenants as aforesaid do not agree to enter into possession under sub-section (1), they shall be entitled to possession of the holdings and tenancies allotted to them from such date as may be determined by the Consolidation Officer and published in the prescribed manner; and the Consolidation Officer shall, if necessary, put them in physical possession of the holding to which

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they are so entitled. The effect of sub-section (1) as amended by Act No. 25 of 1962 is that previously the landowners and tenants could be put in possession of the holdings allotted to them after all objections against the repartition had been finally decided under sub-section (4) of section 21, but now they can be so put when the repartition is effected under sub-section (1) of section 21. The effect of amendment in sub-section (2) is that previously the possession could only be transferred after the commencement of the agricultural year next following the preparation of the record-of-rights as held in a Bench decision of this Court, to which I was a party, in *Jiwan Singh and others* v. *Consolidation Officer, Sonam and others* (1), while according to the amended sub-section, the owners and the tenants will be entitled to possession from such date as may be determined by the Consolidation Officer, who shall, if necessary, put them in physical possession of the holdings to which they are so entitled. Then comes section 24. It provides that as soon as the persons entitled to possession have entered into possession of the holdings, respectively, allotted to them, the scheme shall be deemed to have come into force and the possession of the allottees affected by the scheme of consolidation, or, as the case may be, by repartition, shall remain undisturbed until a fresh scheme is brought into force or a change is ordered in pursuance of provisions of sub-sections (2), (3) and (4) of section 21 or an order passed under section 36 or 42 of this Act. It may be mentioned that section 42 says that the State Government may at any time for the purpose of satisfying itself as to the legality or propriety of any order passed, scheme prepared or confirmed or repartition made by any officer under this Act, call for and examine the record of any case pending before or disposed of by such officer and may pass such order in reference thereto as it thinks fit. There is, of course, a proviso to this section, according to which no order, scheme or repartition shall be varied or reversed without giving the parties interested notice to appear and opportunity to be heard, except in cases where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration. A reading of these provisions would show that there are four important stages in consolidation proceedings. First is the confirmation of the scheme under section 20. Second is the commencement of the repartition proceedings in accordance with that scheme under section 21(1). Third is the transfer of possession and the

fourth is the completion of the repartition proceedings under section 21(4) and the preparation of the new record-of-rights. After all these four stages are over, the consolidation proceedings in the village concerned come to an end. All that section 36 says is that the Settlement Officer is at any time empowered to vary or revoke the consolidation scheme. What is the significance of the words *at any time* in this section? Do they mean that the Settlement Officer can take action under this section even after the four stages, as mentioned above, are over and the entire consolidation work is finished? If it were held that he could act even after that stage, then obviously the repartition proceedings, which had been completed, would also have to be reopened, but the section does not mention that the Settlement Officer can make any change in the repartition, as it is specifically stated in section 42, where the State Government is authorised to do so. Since the word "repartition" is mentioned in section 42, it cannot be held that the Legislature was not aware of the difference between the varying of the scheme and the modification of the repartition, which had been effected in pursuance thereof. The absence of the word "repartition" in section 36 is a clear pointer to the intention of the Legislature to the effect that they had only empowered the Settlement Officer to vary or revoke the scheme *at any time*, but not at the stage when the effect of his order would be that the repartition would stand varied or revoked, when the same had become final under section 21 of the Act, because when that stage was reached, it could not be changed by anybody except perhaps (because this precise point is not for consideration before the Full Bench) the State Government under section 42 of the Act. The reason is obvious because the moment the repartition becomes complete under section 21, the consolidation scheme has been fully given effect to and ceased to exist, since nothing remains to be done thereunder. It merely remains on the record and, as a matter of fact, its place is taken by the repartition. Since the Settlement Officer under section 36 can only change this scheme, therefore, he cannot do so, once the repartition becomes final and the scheme has practically lost its existence by its having been merged in the repartition. The reason for doing so is plain. The Legislature could never intend that the rights and title of the allottees of the properties should remain in suspense at the sweet will of the Settlement Officer, when the consolidation scheme was fully complied with, the repartition

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had been completed, the consolidation work in the village had ended, the new record-of-rights had been prepared and various owners had been placed in possession of their respective holdings allotted to them.

An argument was, however, raised by the learned counsel for the State that the above interpretation will come in conflict with the provisions of section 24 of the Act, which laid down that when the landowners had entered into possession of the holdings allotted to them, the scheme shall be deemed to have come into force and their possession shall remain undisturbed until (1) a fresh scheme was brought into force under section 14 of the Act or (2) a change was ordered under sub-sections (2), (3) and (4) of section 21 or (3) an order was passed under section 36 or (4) an order was passed under section 42 of the Act. The argument was that the language of this section indicated that the possession of the allottees could be changed by an order under section 36, even after the stage of section 21(4) was over, because in this section itself an order under section 36 is mentioned in addition to the one passed under sub-section 4 of section 21. This showed that the stage for an order under section 36 was not limited to the final order regarding repartition passed under section 21(4), but it was even beyond that. He further contended that it was provided in section 22(1), as it stood before the amendment of 1962, that the new record-of-rights would be prepared after the repartition was finally sanctioned under section 21. This meant that the record-of-rights would be prepared after the stage of section 21(4) was over. Since the possession of the allottees could only be delivered after the new record-of-rights had been prepared, according to the decision in *Jiwan Singh and others' case* (1), therefore, the language employed in sub-section (1) of section 24 contemplated the exercise of power of varying/revoking the scheme under section 36, even after the delivery of possession subsequent to the final repartition and preparation of record-of-rights.

There is no force in these contentions. No doubt, section 36 is mentioned in addition to section 21(4) in section 24, but the reason for the same is clear, because the objects of both these provisions are different. Section 21(4) relates to the final stage of repartition proceedings, whereas section 36 deals with the variation/revocation of the scheme by the Settlement Officer. The Settlement Officer could vary or

revoke the scheme even though the proceedings under section 21 were pending. Further, it is not correct to say that in *Jiwan Singh and others' case* it was held that *in all cases* possession could be delivered only after the repartition was finally sanctioned under section 21(4) and new record-of-rights had been prepared. All that was held therein was that where there was no agreement between the owners and the tenants, possession in the case of holdings allotted under repartition could only be transferred after the commencement of the agricultural year next following the preparation of the record-of-rights. This interpretation was given before the amendment of 1962 came into operation. Possession of the holdings could be given earlier also, in cases covered by the provisions of section 23(1) where an agreement was arrived at between the owners and the tenants. Since the possession could be delivered even before the repartition was finally sanctioned, therefore, the proceedings under section 36 could be taken by the Settlement Officer in those cases and it was for this purpose also that section 36 had been mentioned in section 24. It would not be out of place to mention that by the amendment of 1962, the language of both sections 22 and 23 has been so changed that the possession in all types of cases can be delivered before the repartition had become final.

Even if it be assumed for the sake of argument that the language employed in section 24 is not very happily worded, I would with great respect adopt the reasoning of Tek Chand, J., in *Bhikan's case*, where the learned Judge observed as under:—

> "Despite the rather unhappy language which is not very easy to reconcile, section 36 cannot be so construed as to vest in the authority confirming the scheme a residue of power to amend or end the scheme after any length of time and even recurrently. The Legislature could not have intended to confer upon the Settlement Officer power of exercising a substantive discretion whereby rights and title to property could be left in constant state of precariousness with resultant insecurity and instability. On this assumption the very purpose of the Act will be defeated and the result would be not consolidation, which is the manifest intention of the statute, but indetermination and fluctuation. A statutory provision

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must be construed to effectuate the declared intention of the Act rather than to hinder it from its known purpose and such a drastic provision ought, therefore, to be construed narrowly and strictly."

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Now coming to the decision of the Supreme Court in *Laxman Purshottam Pimputkar's case* (3), which has necessitated this reference, I am of the view that that authority has no application to the facts of the present case. No similar provision, as we have in section 36, was the subject-matter of dispute in that case. As a matter of fact, the interpretation of the words "at any time" was not at all involved there. In that ruling, a revision lay to the Government against the order of the Commissioner passed on appeal against that of the Collector. No period of limitation was prescribed for filing that revision. Under these circumstances, the Supreme Court observed that normally the Government would not interfere unless moved within reasonable time and what should be considered as reasonable time in a particular case would be a matter entirely for the Government to consider. These observations are of no assistance in construing the expression "at any time" occurring in section 36 of the Act.

During the course of arguments, a reference was made by the learned counsel for the State to a Bench decision of this Court decided by Falshaw, C.J. and Grover, J., in the *State of Punjab* v. *Makhan Lal etc.* (4), wherein the learned Judges agreed with the dissenting judgment of Khanna, J., in *Bhikan's case* (2). Suffice it to say, that this Division Bench was concerned with the interpretation of section 42 of the Act and not section 36 and the observations made by the learned Chief Justice were merely *obiter* and the learned Judge had himself remarked that it was clear from the judgment of Tek Chand J., in *Bhikan's case* that he was considering section 36 only and not section 42, which he conceded was a much broader-based section than section 36.

Before I conclude, I must make it clear that in the present reference we are not concerned with the interpretation of section 42 of the Act and anything said by me in this judgment to interpret the words "at any time" in section 36 of the Act would not automatically apply to the expression "at any time" occurring in section 42 of the Act.

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With these observations, I agree with my learned brother Mehar Singh, J.

KHANNA, J.—I have perused the judgment proposed to be pronounced by my learned brother Mehar Singh, J., and with due respect I express my inability to agree.

The brief facts of the case are that a notification expressing an intention to make a scheme for consolidation of holdings in village Gulalta, tehsil Ferozepore Jhirka, district Gurgaon, was published in 1956. A Consolidation Officer was appointed who prepared the scheme after the advice of the land-owners for the estate on 4th of May, 1957. The scheme was published, and after objections had been invited and necessary formalities gone through, an amended scheme was published. Repartition proceedings were thereafter started, and various land-owners took possession of their new allotments in the end of 1957 and beginning of 1958. The record-of-rights was prepared for the year 1957-58 and repartition was given effect as finally sanctioned. The consolidation proceedings came to an end on or about 16th February, 1959. According to the petitioners, respondents 4 to 6 and their relatives approached certain officers of the consolidation department who made a report in favour of those respondents. After some correspondence had passed, the Punjab Government,—*vide* its memorandum No. 12377-D-III-60/1510, dated the 28th of March, 1961 approved the recommendation of the Director of Consolidation dated the 30th of July, 1960, and ordered the scheme of village Gulalta to be amended under section 36 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the Act) to provide separate *Tak* for *Chahi* area. The petitioners claim that they were never heard before the said order was passed. It is also stated that the above order was made to please some influential land-owners. Prayer has, accordingly, been made for quashing the order about the amendment of the scheme.

The State of Punjab, the Director, Consolidation of Holdings, and the Settlement Officer (Consolidation), Gurgaon, who were impleaded as respondents 1 to 3, in the course of their reply have averred that some right-holders of village Gulalta filed an application under section 42 of the Act stating that they had not been given *chahi* area in lieu of the *chahi* land owned by them before consolidation. The application was sent to the Settlement Officer

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for necessary action. The Settlement Officer heard the right-holders who stated that they should be given *chahi* land in lieu of the land owned by them before consolidation. The number of such right-holders was 70. After considering the merits of the case, the Settlement Officer recommended for the revocation of the scheme and sent a detailed note to that effect to the Director, Consolidation of Holdings. The matter was then entrusted for further satisfaction to the Assistant Director, Consolidation of Holdings, who too endorsed the view of the Settlement Officer. Thereafter, the case was referred to the Government for amendment of the scheme under section 36 of the Act. Agreeing with the suggestion of the Settlement Officer, Assistant Director and Director, Consolidation of Holdings, the Government ordered that the scheme might be amended under section 36 of the Act. The scheme was, accordingly, amended by the Settlement Officer and the amended scheme was duly published by the Consolidation Officer in the prescribed manner. The petitioners 4, 6, 11, 13, 16, 19 and 23 along with others signed the amended scheme. The scheme, according to the respondents, was rightly amended. The other allegation made in the petition, that the order for amendment of the scheme was made to please some influential land-owners, has been controverted.

When the matter came up before Shamsher Bahadur, J., reliance was placed on behalf of the petitioners upon the decision of this Court in *Bhikan and others* v. *The Punjab State and others* (2), wherein it was held by Tek Chand and Dua, JJ. (myself dissenting) that the power given to the State Government under section 36 of the Act to vary or revoke a scheme "at any time" does not mean that the authorities can revoke or vary the scheme even after the purpose of consolidating the holdings is finally accomplished under the Act. Mr. Kaushal, on behalf of the State, then submitted that the correctness of the dictum laid down in the above Full Bench case had been affected by recent decision of the Supreme Court in *Laxman Purshottam Pimputkar* v. *The State of Bombay and others* (3). Shamsher Bahadur, J., thereupon expressed the view that the question should be re-examined by a Full Bench. It is, in these circumstances, that the matter has been referred to this Bench.

The Act was enacted, as its preamble shows, to provide "for the compulsory consolidation of agricultural

holdings and for preventing the fragmentation of agricultural holdings in the State of Punjab and for the assignment or reservation of land for common purposes of the village." Consolidation of holdings has been defined in clause (b) of section 2 to mean "the amalgamation and the redistribution of all or any of the lands in an estate or sub-division of an estate so as to reduce the number of plots in the holdings." Chapter III of the Act, which is entitled "Consolidation of Holdings" and contains sections 14 to 36, deals with the various steps which have to be taken for consolidation of holdings. According to section 14, the Government may of its own motion or on an application made in this behalf declare its intention by a public notification to make a scheme for the consolidation of holdings in an estate or group of estates or part thereof for the purpose of better cultivation of land therein. On such publication the State Government may appoint a Consolidation Officer who shall, after obtaining the advice of the land-owners and of the non-proprietors and the Gram Panchayat, prepare a scheme for consolidation. Sections 15 to 18 deal with provisions for compensation, occupancy tenancies, joint lands, amalgamation of public roads and land reserved for common purposes, but we are not concerned with these matters in the present case. Section 19 provides for the publication of the draft scheme and the filing of objections to that scheme before the Consolidation Officer. The Consolidation Officer has then to submit his scheme to the Settlement Officer along with his remarks on the objections. The Settlement Officer, who is appointed by the State Government under section 20, then considers the objections, if any, with regard to the scheme and thereafter he may either confirm the scheme with or without modification or refuse to confirm it. In case of such refusal, the Settlement Officer returns the draft scheme to the Consolidation Officer for reconsideration and re-submission. Upon the confirmation of the scheme he gets it published. Section 21 provides that the Consolidation Officer shall after obtaining the advice of land-owners of the estate carry out repartition in accordance with the confirmed scheme of consolidation. The boundaries of the holdings as demarcated have then to be shown in a *shajra* which has to be published. Any person aggrieved by the repartition may file objections within fifteen days of the publication before the Consolidation Officer who may then pass such orders as he considers proper for confirming or modifying the repartition. An appeal lies against the above order

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of the Consolidation Officer to the Settlement Officer. A second appeal is provided by sub-section (4) of section 21 to the State Government. Section 22 provides for the preparation of record-of-rights giving effect to repartition as finally sanctioned. Section 23 provides for the right to possession of the new holdings in accordance with the repartition finally sanctioned. According to section 23-A, the management and control of lands for common purposes would vest in the Panchayat. Section 24, which has a great bearing in the matter, reads as under :—

[His Lordship read section 24(1) and (2) and continued:]

Sections 25 to 35 deal with matters with which we are not concerned and need not be referred to. Section 36, with which we are again concerned, reads as under:—

[His Lordship read section 36 and continued:]

Chapter IV, which contains sections 37 to 40, deals with certain powers of Consolidation Officer, but we are not concerned with them. Under section 41, the State Government may for the administration of the Act appoint such persons as it thinks fit, and may by notification delegate any of its powers to any of its officers either by name or designation. Likewise a power of delegation is given to Consolidation Officer or Settlement Officer with the sanction of the State Government. Section 42 empowers the State Government to call for the records of any proceedings under the Act and reads as below:—

[His Lordship read section 42 and continued:]

The various provisions of the Act were considered by a Division Bench of this Court in *Jiwan Singh and others* v. *The Consolidation Officer, Sunam and another* (1), and it was held that possession in pursuance of a finally sanctioned scheme in case parties were not in agreement could only be transferred after the preparation of the new record-of-rights. Changes were made after the decision of the above case in some of the provisions of the Act by amending Act 25 of 1962. It has, however, not been disputed before us that the present case has to be decided in accordance with the state of law as it existed before the change in law brought about by Act 25 of 1962. It would, in my opinion, be consequently not necessary to go into the provisions of the Act as they have emerged as a result of the amendment by Act 25 of 1962.

Section 36 has been enacted to provide for setting right any defect in a scheme of consolidation which may subsequently come to light. The defect may be noticed soon after the scheme is put into operation, it may also in other cases become apparent after the lapse of some time. It is not difficult to visualise a situation where in due to complexities of human affairs, the authorities concerned may find that the working of a scheme of consolidation has resulted in grave miscarriage of justice. To meet such an eventuality, it has been provided in section 36 that such a scheme may be varied or revoked, by the authority and a subsequent scheme may be published and confirmed. A rider is also added to prevent any abuse by an individual officer that his order in this respect would be subject to any order of the State Government. The use of the words "at any time" in the section goes to show that no time limit is fixed for the exercise of the power under section 36, and it would not, in my view, be a correct approach to read in the section a limitation of time when none is indicated by the Legislature. The words used have a wide amplitude, they contain no restrictions in point of time and, in my opinion, it is not open to the Court to apply an axe which may result in curtailment and abridgment of their scope. What is stated in the section is that an existing scheme can be varied or revoked at any time, and in the face of the plain language employed by the Legislature I find myself unable to subscribe to the proposition that though the Legislature stated in the section that the scheme could be varied or revoked at any time, the Legislature in fact intended that such variation or revocation could only be made during consolidation proceedings and before delivery of possession and not subsequently. It is a cardinal rule of construction that the intention of the Legislature in making an enactment should be gathered from the language employed by it and that where words are clear and unambiguous, it is the duty of the Court to give effect to them, according to their plain meaning, and not add to or subtract from them. It is also not open to the Court to travel outside the words used in the statute to discover a secret intention not expressed therein. I may in this context refer to *Sri Ram Ram Narain Medhi* v. *The State of Bombay* (11), wherein their Lordships observed:—

> "If the language of the enactment is clear and unambiguous, it would not be legitimate for the

(11) A.I.R. 1959 S.C. 459.

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Courts to add any words thereto and evolve therefrom some sense which may be said to carry out the supposed intentions of the Legislature. The intention of the Legislature is to be gathered only from the words used by it and no such liberties can be taken by the Courts for effectuating a supposed intention of the Legislature."

Again in *Shri Ram* v. *The State of Maharashtra* (12) it was observed—

> "One of the fundamental rules of interpretation is that if the words of a statute are in themselves precise and unambiguous 'no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the Legislature'."

See also *The Sales Tax Officer, Banaras and others* v. *Kanhaiya Lal-Makund Lal Saral* (13) and *Sehat Ali Khan and another* v. *Abdul Qavi Khan and others* (14).

In *M. S. M. Sharma* v. *Sri Krishna Sinha and others* (15), their Lordships of the Supreme Court had the occasion to consider the words "at any time" occurring in Rule 215 of the Rules of Procedure made in exercise of powers conferred by Article 208 of the Constitution. An argument was advanced in that case that the report of the Committee of Privileges of the Bihar Legislative Assembly had not been submitted in time and, therefore, the Committee became *functus officio*. Das, C.J., who spoke for the majority, referred to second proviso to clause (i) of Rule 215 according to which the House may at any time on a motion being made direct that the time for presentation of the report by the Committee be extended to a date specified in the motion and observed:

> "The words 'at any time' occurring in the second proviso quite clearly indicate that this extension of time may be within the time fixed by the

(12) A.I.R. 1961 S.C. 674.
(13) A.I.R. 1959 S.C. 135.
(14) A.I.R. 1956 All. 273 (F.B.).
(15) A.I.R. 1959 S.C. 395.

House or, on its failure to do so, within the time fixed by the first proviso or even thereafter, but before the report is actually made or presented to the House (*Cf. Har Narain Singh* v. *Chaudhrain Bhagwant Kaur* (16). Further, the question of time within which the Committee of Privileges is to make its report to the House is a matter of internal management of the affairs of the House and a matter between the House and its Committee and confers no right on the party whose conduct is the subject-matter of investigation and this is so particularly when the House has the power to extend time 'at any time'."

It would appear from the above that a liberal construction was placed upon the words "at any time", and the only limitation, which was placed upon those words, was such as in the very nature of things inhered in the situation, viz., that the extension of time for presenting the report should be before the presentation of the report.

Although, as observed above, no limitation of time is placed within which power under section 36 is to be exercised, it can be assumed that this would be done within a reasonable time. What is reasonable time would depend upon the circumstances of the particular case, and this would be a matter entirely for the authority concerned to consider. I may in this context refer to case *Laxman Purshottam Pimputkar* v. *The State of Bombay and others* (3), which was under the Bombay Hereditary Offices Act. Section 79 of that Act provided for a right of revision by the State Government against the order of Collector. No period of limitation is prescribed in that Act for preferring an application for revision. It was argued in that case that an order passed by the Government under section 79 could not be deemed to be a quasi-judicial one because the order revised by it was more than twenty years old. This contention was repelled and it was held that the order under the above section was quasi-judicial. It was further observed as under:—

"It is sufficient to say that no period of limitation is specified in the Act for preferring an application for revision. Of course, normally the

(16) 18 Ind. App. 55 at p. 58.

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Government would not interfere unless moved within reasonable time. But what should be considered as a reasonable time in a particular case would be a matter entirely for the Government to consider. Apparently in this case the Government thought that it had strong reasons for interfering even after a long lapse of time and that is why it interfered."

The argument that the power of varying or revoking the scheme under section 36 can only be exercised before the stage of repartition or delivery of possession, in my opinion, is also untenable in view of the plain language of sub-section (1) of section 24, of the Act reproduced above. It has been held in the case of *Jiwan Singh and others* v. *The Consolidation Officer, Sunam and another* (1) (Supra that possession in pursuance of the finally sanctioned scheme in case parties are not in agreement can only be transferred after the preparation of the new record-of-rights. The correctness of the dictum laid down in the above Division Bench case has not been assailed before us on behalf of the petitioners. According to section 22 of the Act record-of-rights are prepared to give effect to the repartition as finally sanctioned. As delivery of possession is to follow the preparation of the record-of-rights, as laid down in *Jiwan Singh's* case, it is obvious that except in cases where the parties are agreed, the repartition must precede the delivery of possession. It is expressly stated in sub-section (1) of section 24 of the Act that possession of the allottees affected by the scheme of consolidation or by repartition would remain undisturbed until a fresh scheme is brought into force or a change is ordered in pursuance of the provisions of sub-section (2), (3), and (4), of section 21 or an order passed under section 36 or 42 of the Act. It clearly follows from the above provision of law that an order under section 36 of the Act can be passed after the repartition and delivery of possession and after the coming into force of the scheme. Sub-section (1) of section 24 and section 36, being parts of the same enactment, should be construed in harmony with each other and keeping these provisions together I find that there is inherent material in the Act to show that the power under section 36 to vary or revoke the scheme can be exercised after the coming into force of the scheme of consolidation and the delivery of possession. To take any other view is bound to

result in a conflict between section 24(1) and section 36 of the Act and it would be difficult to reconcile the two sections. It is an established principle of law that the different provisions of an enactment should be construed harmoniously. In *The State of Andhra Pradesh* v. *Chhemalapti Ganeswara Rao and another* (17) it was observed:

> "It is a rule of construction that all the provisions of a statute are to be read together and given effect to and that it is, therefore, the duty of the Court to construe a statute harmoniously."

Similar views were expressed than in *S. C. Prashar and another* v. *Vasantsen Dwarkadas and others* (18), *M. S. M. Sharma* v. *Sri Krishna Sinha and others* (15), and *Babulal Bhuramal and another* v. *Nandram Shivram and others* (19).

The view that an order for varying or revoking the scheme under section 36 cannot be made after the delivery of possession in accordance with the repartition would have also the effect of rendering the concluding words of sub-section (1) of section 24 to be absolutely redundant, otiose and meaningless. Such a course, in my opinion, is not permitted because an essential principle of the construction of statutes is that no part of a statute is to be deemed superfluous and that effect should be given to every part of the statute. Reference in this connection may be made to *Suraj-ul-Haq Khan and others* v. *The Sunni Central Board of Waqf, U. P. and others* (20), the head-note of which is based upon observations in the body of the judgment and reads as under:—

> "It is well settled that in construing the provisions of a statute courts should be slow to adopt a construction which tends to make any part of the statute meaningless or ineffective; an attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute. In such a case, it is legitimate and even necessary to adopt the rule

(17) A.I.R. 1963 S.C. 1850.
(18) A.I.R. 1963 S.C. 1356.
(19) A.I.R. 1958 S.C. 677.
(20) A.I.R. 1959 S.C. 198.

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of liberal construction so as to give meaning to all parts of the provision and to make the whole of it effective and operative."

Reference in the above context may also be made to *J. K. Cotton Spinning and Weaving Mills, Co., Ltd.* v. *State of Uttar Pradesh and others* (21), and *S. Gurmej Singh* v. *S. Partap Singh Kairon,* (22), wherein also similar views were expressed.

Argument is then advanced that an order made under section 36 would have the effect of disturbing titles which were acquired in pursuance of the earlier scheme of consolidation and, therefore, a view which has the effect of restricting the exercise of power under that section should be adopted. In this respect I find that consolidation necessarily has the effect of disturbing the existing titles. If despite that aspect of the matter, consolidation because of its ultimate benefit of preventing the fragmentation of agricultural holdings is considered to be a boon and a piece of agrarian reform, I fail to understand as to how an attempt to improve a scheme of consolidation can be frowned upon or looked with disfavour on the ground of being an enslaught upon existing titles. Apart from that, I am of the view that even if the working of section 36 would result in some inconvenience or hardship, it would not justify the Court in not giving effect to the plain language of the section. As has been observed in *Bengal Immunity Co., Ltd.* v. *The State of Bihar* (23), if there is any real hardship of the kind referred to, there is Parliament which is expressly invested with the power of lifting the ban under clause (2) either wholly or to the extent it thinks fit to do. Why should the Court be called upon to discard the cardinal rule of interpretation for mitigating a hardship, which after all may be entirely fanciful when the Constitution itself has expressly provided for another authority more competent to evaluate the correct position to do the needful?" Again in *Mysore State Electricity Board* v. *Bangalore Woollen Cotton and Silk Mills, Ltd., and others* (24), it was observed that inconvenience is not a decisive factor in interpreting a statute. Reference in

(21) A.I.R. 1961 S.C. 1170.
(22) A.I.R. 1960 S.C. 122.
(23) A.I.R. 1955 S.C. 661.
(24) A.I.R. 1963 S.C. 1128.

the above context may also be made to the following observations on page 89 of *Craies* on Statute Law, Sixth Edition:—

> "The argument from inconvenience and hardship is a dangerous one and is only admissible in construction where the meaning of the statute is obscure and there are alternative methods of construction. Lord Birkenhead said in *Sutters* v. *Briggs* (25). "The consequences of this view (of section 2 of the Gaming Act, 1835) will no doubt be extremely inconvenient to many persons. But this is not a matter proper to influence the House unless in a doubtful case affording foothold for balanced speculation as to the probable, intention of the legislature."

Argument has also been advanced that the power under section 36 may be abused or used *mala fide* to favour certain parties. In that respect I find that section 36 provides that orders made under that section would be subject to any order of the State Government. The words "subject to any order of the State Government" have been incorporated in the section with a view plainly to obviate any abuse of the provisions of the section by an individual officer. The section itself thus contains a safeguard to prevent such abuse. Apart from that, I am of the view that if an order is made under the section *male fide* or in abuse of powers conferred by that section, it would be liable to be struck down on that ground alone. In construing section 36, the Court cannot assume that the provisions of the section would be abused or worked in dishonest manner and would not allow such a consideration to influence its interpretation of the section, more so when the language used is plain and unambiguous. Reference may be made to a Division Bench case *E. H. Ginwalla* v. *The State of Bombay and others* (26), wherein Chagla, C., observed as under:—

> "Now, when we are called upon to construe a statute, we must always assume that the power conferred upon various authorities under the Statute will be used properly and not in an arbitrary or capricious manner."

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(25) (1922) I.A.C. 18.
(26) A.I.R. 1954 Bom. 151.

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Argument is then advanced that if a scheme of consolidation has come into force and possession delivered after the preparation of record-of-rights in accordance with the scheme, the Consolidation Officer would cease to function in that village. Subsequent to that, if the Settlement Officer passes an order for variation or revocation of the scheme, the previous Consolidation Officer, it is contended, would be *functus officio* because his functions to act as such came to an end as soon as the previous scheme came into force. No new appointment can also be made of a Consolidation Officer, according to this argument, unless a fresh notification is issued under sub-section (1) of section 14 of the Act expressing an intention to make a new scheme for consolidation of holdings.

The above argument, in my opinion, is not wellfounded. A Consolidation Officer appointed under the Act does not become *functus officio* as soon as the scheme comes into force. Cases can always arise wherein as a result of some proceeding further action may be necessary to be taken after the coming into force of the scheme for the purpose of consolidation. Such a contingency can well be visualized if, after the coming into force of a scheme, a revision application under section 42 of the Act is accepted or a writ petition questioning the validity of certain orders made in consolidation proceedings is allowed and a direction is issued which may need to be implemented. Can it be said that because the consolidation scheme has come into force the Consolidation Officer becomes *functus officio* and cannot carry out the directions contained in the order made on the revision application or the writ petition? Apart from that, I am of the view that once a notification is issued under sub-section (1) of section 14 of the Act, the notification shall hold good for all subsequent proceedings which may be taken in accordance with the different provisions of the Act in pursuance of that notification. An order under section 36 is one of the series of steps which can be taken for the purpose of consolidation and there can, in my opinion, be no legal bar for either the previous Consolidation Officer to carry out in pursuance of the order under section 36 the subsequent scheme of consolidation, or if he be somehow not available, to the appointment of a new Consolidation Officer for the purpose. Whatever doubts there may be in the matter of making a fresh appointment, are dispelled by the definition of Consolidation

Officer as contained in clause (a) of section 2 of the Act which reads as under:—

> "2(a) "Consolidation Officer" means an officer appointed as such under section 14 by the State Government and includes any person authorised by the State Government to perform all or any of the functions of the Consolidation Officer under this Act."

The above definition makes it clear that Consolidation Officer includes any person who may be authorised by the State Government to perform all or any of the functions of the Consolidation Officer under the Act. The said provision obviously contemplates that there can be *ad hoc* appointments of the Consolidation Officers. I, therefore, find myself unable to subscribe to the view that if an order is made under section 36 of the Act after the coming into force of the scheme and the delivery of possession, it cannot be worked and carried out.

Likewise, I find myself unable to hold that if a scheme comes into force in an estate, a Settlement Officer becomes *functus officio qua* that estate. Settlement Officer (Consolidation) are appointed under section 20 of the Act. The notification has to specify the area in which each such officer shall have jurisdiction. The Consolidation Officers in the area under the jurisdiction of the Settlement Officer (Consolidation), according to the above-mentioned section, shall be subordinate to him subject to any conditions which may be prescribed. It is, therefore, plain that the jurisdiction of Settlement Officer (Consolidation) would cover a number of estates or groups of estates or parts thereof. The fact that a scheme has come into force in an estate which is situated within the area of jurisdiction of a Settlement Officer (Consolidation), would not, in my opinion, divest the Settlement Officer (Consolidation) of his jurisdiction in that estate. As already stated above, an order under section 36 is one of the series of steps which can be taken for the purpose of consolidation, and there is, in my opinion, no legal impediment in the way of the Settlement Officer (Consolidation) making an order under section 36 in respect of an estate in which scheme has already come into force. The definition of Settlement Officer

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(Consolidation) given in section 2(h) of the Act read as under:—

> "2(h) 'Settlement Officer (Consolidation)' means an officer appointed as such under section 20 by the State Government and includes any person authorised by the State Government to perform all or any of the functions of the Settlement Officer (Consolidation) under this Act;"

The above definition goes to show that apart from persons who are appointed as Settlement Officers (Consolidation), under section 20 of the Act, the State Government can, if necessary, make *ad hoc* appointments of Settlement Officers. It, therefore, cannot be said that when section 24(1) states that possession of an allottee affected by the scheme of consolidation shall remain undisturbed until an order passed under section 36 of the Act, it creates an impossible situation and that the Settlement Officer (Consolidation) would be unable to effectuate the order made by him.

As the only ground on which the impugned order has been sought to be challenged at the hearing of the case is that order under section 36 of the Act could not be made after the coming into force of the scheme and this contention has not been found by me to be well-founded, I would dismiss the petition, leaving the parties to bear their own costs.

FINAL ORDER

In view of the majority opinions, the petitioners' petition succeeds and the order of May 25, 1961, Annexure 'C', of respondent 3 is quashed. The parties are left to their own costs.

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