weapon assigned to him. The prosecution wanted the Court to believe that at the time of arrest each one of them was asked to pick up his respective weapon and then hand it over to Sub-Inspector Rajbir Singh (PW 9). That process, on the face of it, would have been very risky. The acquittal of the appellants for the said charges, however, would not recoil on the bulk recovery of the weapons at the time of their arrest with their hands up. Rest is a matter of inference especially when no explanation is forthcoming from the appellants as to how they came by the aforesaid weaponry. Thus for all those circumstances the inference, legitimately deducible is that the appellants had assembled there with the purpose of committing dacoity. The view taken by the trial Judge was right and deserves to be affirmed.

(8) For the foregoing reasons, this appeal fails and is hereby dismissed.

S.C.K.

Before S. S. Sandhawalia C.J. and I. S. Tiwana, J.

HAQIQAT SINGH,—*Petitioner.*

versus

ADDITIONAL DIRECTOR and others,—*Respondents.*

Civil Writ Petition No. 3384 *of* 1979.

March 16, 1981.

East Punjab Holdings (Consolidation and Fragmentation) Act (50 *of* 1948)—*Section* 42—*East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules* 1949—*Rule* 18—*Petition under section* 42—*No specific order of any authority challenged—Challenge directed only against the preparation, confirmation or repartition under the scheme—Bar of Limitation created by rule* 18—*Whether applicable to such a petition.*

Held, that from an analysis of the various provisions of East Punjab Holdings (Consolidation and Fragmentation) Act, 1948 it is apparent that preparation and confirmation of the scheme, repartition of holdings in accordance with the scheme or in other words implementation of the scheme and the passing of the orders on hearing objections and then appeals against those orders are three different connotations and concepts envisaged by the Act. By no stretch

of imagination can it be said that the preparation or confirmation of the scheme, the implementation thereof or the repartition made and the order passed for deciding the objections and disposing of the appeals would mean one and the same thing. The provisions of section 42 of the Act and Rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules 1949 indicate and maintain this distinction. On the date when Rule 18 was introduced, a petition under section 42 could only be made to the State Government or its delegatee against an order passed by an officer under the Act. Section 42 was amended by Punjab Act No. 27 of 1960 with retrospective effect. After amendment it empowered the authorities taking action under the said section to revise or rescind the scheme prepared or confirmed or repartition made by any officer under the Act. Had the use of the word 'order' in rule 18 included within its ambit the scheme prepared or confirmed or repartition made, then there was no necessity to amend at all section 42 of the Act. Conversely, as the preparation or confirmation of a scheme and repartition carried out in accordance therewith does not amount to an order passed by an officer under the Act, the State Government did not intend to create the bar of limitation where the challenge under section 42 was not to an 'order' passed by any authority under the Act. There can only be two possibilities. The State Government either did not deliberately create the bar of limitation so far as it related to the impugning of preparation or confirmation of a scheme or repartition effected in pursuance thereof under section 42 of the Act or it omitted to do so. Whatever may be the reason, the rule as it stands does not come into play when a petitioner challenges either the scheme of consolidation including its preparation or confirmation or repartition made in pursuance thereof. Thus, preparation or confirmation of a scheme and the repartition carried out cannot fall within the scope of 'order' as used in rule 18 of the Rules and the bar of limitation created by the said rule will not apply when such preparation or confirmation of a scheme or the repartition carried out thereunder is challenged in a petition under section 42 of the Act. (Paras 8 and 11)

1. *Maghar Singh* vs. *State of Punjab and others*, 1967 Cur. L. J. 861,

2. *Sher Singh* vs. *State of Punjab and others*, 1966, Cur. L. J. 362,

3. *Chhutmal and others* vs. *The Additional Director and another* 1966 Cur. L. J. 762,

4. *Sarwan Singh* vs. *The Additional Director & another*, 1976 P.L.J. 317. OVERRULED.

Civil Writ Petition under Article 226/227 of the Constitution of India praying that :—

(i) *that a Writ in the nature of certiorari, quashing Annexure P-1, may kindly be issued.*

(ii) *any other Writ, Order or Direction which this Hon'ble Court may deem fit, in the circumstances of the case may also be issued.*

(iii) *as the Respondents are bent upon to execute the impunged order ,serving of advance notices on respondents may kindly be dispensed with.*

(iv) *filing of certified copies of the Annexures be exempted.*

(v) *costs of the Writ petition may kindly be awarded to the petitioner.*

Further prayed that during the pendency of the Writ Petition implementation of the impugned order Annexure P-1, may kindly be stayed.

I. K. Sharma, Advocate with V. L. Vashishta, Advocate, *for the Petitioner.*

G. S. Grewal, Advocate with R. L. Luthra, Advocate, *for the Respondents.*

JUDGMENT

I. S. Tiwana, J.

(1) The following question of law raised in this petition under Article 226 of the Constitution of India has assumed considerable importance as our answer to the same is not in consonance with the conclusions of a number of Single Bench judgments of this Court :—

Whether the bar of limitation created by Rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, would also operate when a petition under section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation Act, 1948, is filed impugning only the scheme prepared or confirmed or repartition made by any officer under the Act ? In other words, whether Rule 18 would apply to the facts of a case whether

no specific order of any of the authorities passed under the Act is the subject matter of challenge in a petition under section 42 of the Act ?

This question being purely a question of law, it is but appropriate to reproduce the above-noted provisions of law at this very stage :—

"(Section) 42. 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 :

Provided that 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."

"(Rule) 18. Limitation for application under section 42.—An application under section 42 shall be made within six months of the date of the order against which it is filed :

Provided that in computing the period of limitation, the time spent in obtaining certified copies of the orders and the grounds of appeal, if any, filed under sub-section (3) or sub-section (4) of section 21, required to accompany the application shall be excluded :

Provided further that an application may be admitted after the period of limitation prescribed therefor if the applicant satisfied the authority competent to take action under section 42 that he had sufficient cause for not making the application within such period."

This Rule 18 was undisputably added to the Rules,—*vide* Punjab Government Notification No. 1426-D(II) 60/1527, dated March 18, 1960. The facts giving rise to this question are as follows :—

(2) Respondent No. 2, Waqf Board, owns killa Nos. 12//6/2, 7/2 and 13//9/1 and 10/2 in village Singh, District Rupar. On August 31, 1977,

this respondent filed an application under section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short, the Act) for the provision of a link passage to the said Kurrah or block of land. The Additional Director, Consolidation of Holdings, Punjab after giving due notice and hearing to the petitioner, provided the requisite passage to the land of the Waqf Board,—*vide* his order, dated August 2, 1979 (Annexure P. 1). It is mentioned in paragraph 4 of this order that though the petition under section 42 of the Act was barred by time and no objection in that regard had been taken by the respondent (now the petitioner), yet the Additional Director felt that as the omission in not providing a passage to the Kurrah of respondent No. 2 was on the part of the consolidation authorities, it was appropriate for him to condone the delay in the filing of the said application for the rectification of that omission. It is this order of the Additional Director which is impugned primarily on the ground that neither the petitioner before the Additional Director had made out a case for the condonation of the delay nor was the said officer justified in condoning the same in the light of the provisions of Rule 18 referred to above. It is further maintained that since the question of limitation relates to the very jurisdiction of the Officer passing the impugned order, it can be raised in these proceedings even though it had not been so raised before the Additional Director. In support of this stand of his, the learned counsel for the petitioner, while arguing the case before me in Single Bench, relied upon a Single Bench judgment of this Court in *Maghar Singh* v. *The State of Punjab and other*, (1), wherein facts similar to the present case were involved. As after hearing the learned counsel for the petitioner I was of the view that Rule 18 could not at all be attracted to the facts of this case as no specific order of any authority passed under the Act was under challenge before the Additional Director and the Rule did not apply where only the preparation and confirmation of of a scheme or repartition made under the Act is under challenge and that view of mine being not in consonance with the decision in *Maghar Singh's* case (supra), I made a reference to my Lord, the Chief Justice to constitute a a larger Bench to consider the correctness of that decision and this is how the matter has come up before us now.

(3) During the course of arguments today, the learned counsel for the petitioner has brought to our notice, besides the above-

(1) 1967 Cur. L. J. 861.

noted *Maghar Singh's* case, some other Single Bench judgments of this Court, reported as :—

1. *Sher Singh* v. *The State of Punjab and others* (2).

2. *Chhutmal and others* v. *The Additional Director, Consolidation of Holdings and another* (3).

3. *Sarwan Singh* v. *Additional Director, Consolidation of Holdings, Punjab, Jullundur and others* (4).

Wherein a view similar to the one in *Maghar Singh's case* on facts almost similar to the case in hand had been taken. In all these cases which related to the grant of a path to a petitioner in proceedings under section 42 of the Act and where no specific order of any authority passed under the Act was under challenge before the Director, the bar of limitation provided for under Rule 18 was held to be applicable. After going through all these judgments we find that in none of these cases the pointed attention of the learned Judges to the question now being considered, was drawn by the counsel for the parties. In these cases it has either been assumed or conceded that Rule 18 applied to the facts of those cases. The learned counsel for the petitioner, however, seeks to support the view expressed in these judgments on two grounds :—

(i) The meaning and scope of the word 'order' as used in Rule 18 would include the preparation or confirmation of a scheme and the implementation thereof in the form of repartition, etc., and

(ii) By the use of the words' at any time' in section 42, the Legislature did not possibly intend to mean that the Government could interfere in any proceedings under the Act with impunity at any time, may be after decades of the completion of the consolidation proceedings. Such an interpretation, according to the learned counsel, would introduce an element of indefiniteness and uncertainty so far

(2) 1966 Curr. Law Journal 362.
(3) 1966 Curr. Law Journal 762.
(4) 1976 P.L.J. 317.

as the rights of the persons whose lands had been subjected to consolidation proceedings are concerned.

(4) To examine the weight and validity of the first submission of the learned counsel, I find it necessary to analyse the various provisions of the statute to find out as to how far the preparation or confirmation of a scheme, implementation of the same in the form of repartition and the passing of an order by a competent authority on the objections raised or the appeals filed under the various provisions of the statute can be said to be one and the same thing.

(5) Under section 2(b) of the Act "Consolidation of Holdings' means 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. The advent of the consolidation proceedings in a village or a revenue estate starts with the publication of a notification under section 14 of the Act disclosing the intention of the Government to make a scheme for the consolidation of holdings in that estate, for the purposes of better cultivation of lands therein. Sub-section (2) of section 14 provided that the Consolidation Officer appointed by the Government shall obtain in the prescribed manner the advice of the landowners of the estate or estates concerned and prepare a scheme for the consolidation of holdings in such an estate or estates or a part thereof as the case may be. In terms of the next following sections 15, 16, 16-A, 17 and 18, such a scheme shall provide for compensation to be paid to the owners who are allotted a holding of less market value than that of their original holdings, for the distribution of land held under occupancy tenures between the tenants holding the right of occupancy and their landlords, for keeping certain lands as joint or for amalgamation of the public roads, streets, paths and channels etc. and the redistribution of the same and for reservation of land for common purposes of the village community etc. According to section 19, the draft of such a scheme is to be published by the Consolidation Officer in the prescribed manner. He is also required to hear and decide objections, if any, made by the landowners against the proposed scheme. It is only after that that he is to submit the scheme or the amended scheme as the case may be to the Settlement Officer appointed under section 20 of the Act. The Settlement Officer is then to confirm the scheme after

considering the written or oral objections, if any, filed by the land-owners or the persons whose lands are to be subjected to the process of consolidation. Sub-section (4) of section 20 makes it imperative to publish the confirmed scheme in the prescribed manner. Section 36 of the Act authorises the authority confirming the scheme subject to any order of the State Government made in that regard to vary or revoke the scheme at any time. It is further laid down by the said section that any subsequent scheme may be prepared, published and confirmed in accordance with the provisions of the Act.

(6) It is only after the preparation and confirmation of the scheme as pointed out above that the process of repartition starts. Section 21 of the Act lays down that the Consolidation Officer shall after obtaining the advice of the landowners of the estate carry out the repartition in accordance with the scheme of consolidation of holdings confirmed under section 20 and the boundaries of the holdings as demarcated shall be shown on the Shajra which shall be published in the manner prescribed in the estates concerned. Rule 7 of the Rules lays down as to what record and in what manner in relation to the repartition has to be prepared.

(7) It is again after the repartition proceedings carried out by the Consolidation Officer that a person aggrieved by the said repartition may under sub-section (2) of section 21 file written objections within fifteen days of the publication before the Consolidation Officer who shall after hearing the objector pass such order as he considers proper. The person aggrieved by the order under sub-section (2) of section 21 is entitled to file an appeal before the Settlement Officer and another appeal before the Assistant Director under the provisions of sub-sections (3) and (4) of the said section, within a specified period of time. These appellate authorities, however, have been given the power to entertain the appeal after the expiry of the period of limitation if they are satisfied that the appellant was prevented by any sufficient cause from filing the appeal in time.

(8) From the above analysis of the various provisions of the Act it is thus apparent that preparation and confirmation of the scheme, repartition of holdings in accordance with the said scheme or in other words implementation of the scheme and the passing of

the orders on hearing objections and then appeals against those orders are three different connotations and concepts envisaged by the Act. By no stretch of imagination can it be said, as is being maintained by the learned counsel for the petitioner that the preparation or confirmation of the scheme, the implementation thereof or the repartition made and the order passed for deciding the objections and disposing of the appeals would mean one and the same thing. Otherwise also I feel that these very provisions of law, that is, section 42 of the Act and Rule 18 of the Rules indicate and maintain this distinction. As has been pointed out earlier, Rule 18 was introduced for the first time on March 18, 1960. On that date the words 'scheme prepared or confirmed or repartition made under this Act' did not occur in section 42 of the Act, At that time the section only talked of any order.' The words 'any order passed, scheme prepared or confirmed or repartition made by any officer under this Act' were substituted for the words 'any order passed by any officer under this Act'! by Punjab Act No. 27 of 1960 with retrospective effect and this Act received the assent of the President of India on July 9, 1960. The reason for passing Act No. 27 of 1960 is stated in the following words in the Statement of Objects and Reasons appended to the bill :—

> "Rule 16(ii) of the Rules framed under the Act provides for reservation of land for the benefit of the village community. This Bill intends to give legal cover to this rule *and also to empower the authorities taking action under section 42 to revise or rescind a scheme prepared or confirmed or repartition made by any officer under the Act.* It also intends to give powers to the recovery of cost of consolidation from the lessees of long term lease of land and from the tenants and surplus areas." (Published in Punjab Gazette (Extra.) dated February 16, 1960]. (Emphasis added).

Thus it is apparent that on the date, that is, March 18, 1960, Rule 18 was introduced, a petition under section 42 could only be made to the State Government or its delegates against an order passed by any officer under the Act. As is indicated by the above noted statement of Objects and Reasons which led to the amendment in section 42, it was to empower the authorities taking action under section 42 to revise or rescind the scheme prepared or confirmed

or repartition made by any officer under the Act. Had the use of the word 'order' in Rule 18 included within its ambit the scheme prepared or confirmed or repartition made, as is being maintained by the learned counsel for the petitioner, then there was no necessity to amend at all section 42 of the Act. Conversely as the preparation or confirmation of a scheme and repartition carried out in accordance therewith does not amount to an order passed by an officer under the Act—the view I am inclined to take—the State Government did not intend to create the bar of limitation where the challenge under section 42 was not to an 'order' passed by any authority under the Act. There can only be two possibilities. The State Government either did not deliberately create the bar of limitation so far as it related to the impugning of preparation or confirmation of a scheme or repartition effected in pursuance thereof under section 42 of the Act or it omitted to do so. Whatever may be the reason the rule as it stands at the moment does not come into play when a petitioner challenges either the scheme of consolidation including its preparation or confirmation or repartition made in pursuance thereof.

(9) Further, Rule 17 of the Rules which deals with the form of the application to be filed under section 42 of the Act makes it abundantly clear that the bar of limitation has been created only in the context where a party impugns a specific order passed by any of the authorities under section 21, sub-sections (3) and (4) of the Act. It is for this reason alone that in computing the period of six months, the time spent in obtaining the certified copies of the order passed under section 21 is to be excluded. This is what has been provided for by the proviso to Rule 18 itself.

(10) It is not for the first time that this distinction between a scheme, repartition and an order paseed under the Act is noticed. Earlier also in *Charan Singh* v. *Arbail Singh* (5), *and in Makhan Lal and another* v. *The Punjab State and others* (6) this aspect of the matter was noticed and pointed out. Those cases, of course, related to the interpretation of section 42 as it stood prior to its amendment through Punjab Act No. 27 of 1960. In the earlier case, when an argument was raised on behalf of the respondent to

(5) L.P.A. 163 of 1957 decided on 22nd July, 1959.

(6) C.W. 33 of 1959 decided on 8th October, 1959.

the effect that repartition to which objections were invited by the Consolidation Officer under the provisions of section 21, be deemed to be an order from which a revision was competent under section 42 of the Act, the learned Judges of the Division Bench after analysing the latter section as it stood then, held :—

> "This section empowers the State Government to examine the legality or propriety a) of any order ; (b) passed by an officer under the Act and (c) in a case dealing before or disposed of by such officer ..... One of the orders which the Legislature appears to have contemplated is an order passed on an objection raised by a person aggrieved by the partition under the provisions of sub-section (2) of section 21. It is manifest that the order in respect of which the present order under section 42 was passed, was not an order passed under the provisions of sub-section (2) of section 21. Indeed, Mr. Chawla was unable to indicate to us that any case was pending before or disposed of by any Consolidation Officer against which the revision could lie. He contended vaguely that the entire consolidation proceedings was one case and that it is open to Government in exercise of the revisional powers conferred upon it to revise any portion of the whole scheme. The Legislature could never have contemplated that the scheme as a whole should be capable of being revised under the provisions of section 42. It contemplated merely that it should be open to Government to revise any individual order which may be passed by any officer under the provisions of this Act. As there was no order which could have been revised in the present case, it seems to me that the Director exceeded the powers which have been conferred upon him under section 42 of the statute."

In *Makhan Lal's* case (supra) where also a similar argument was raised in support of the impugned order of the Director of Consolidation, the matter was more elaborately examined and elucidated by Mehar Singh, J., (as his Lordship then was) in the following words :—

> "Now, after repartition the only order that is ever made and can ever be made is on an objection by some body to the

repartition. Repartition itself has not been described as an order in the Act and it cannot be considered an order for the purposes of section 42 of the Act. If it was itself an order under the Act, then there was no necessity for providing objections to that order and decision of those objections by the very Consolidation Officer who has carried out the repartition Objections are to the actual shape of repartition, which is not an order, and it is only when those objections are disposed of that the Consolidation Officer makes an order. As pointed out if repartition is itself to be considered an order, the provision with regard to objections against repartition is a provision for objections being filed before the same authority to an order that it has already made. This is apart from the consideration that sub-section (1) of section 21, which concerns repartition, does not say that repartition is an order. So that in the present case there was no order which respondent No. 2 could revise under section 42 of East Punjab Act No. 50 of 1948."

It is no doubt true that this Single Bench judgment was reversed by the L.P.A. Bench in *The State of Punjab and another* v. *Makhan Lal etc.*, (7), but that was, as has been pointed out in paragraph 4 of the judgment, on account of the coming into force of the Punjab Act No. 27 of 1960 with retrospective effect thereby conferring powers on the Government or its delegate to alter or vary a scheme or a repartition made under the Act. The distinction between a scheme prepared or confirmed, repartition effect or an order passed under the Act was not in any way disturbed.

(11) Thus a reading of section 42 reproduced above itself as well as the scheme of the Act as analysed above and the two judgments of this Court referred to above unmistakably point out that the statute makes a clear distinction between an order passed by an officer under the Act and the performance of duties by the authorities under the Act in the matter of preparation and confirmation of scheme of consolidation and the repartition made in pursuance thereof. So it cannot possibly be held, as is maintained by the learned counsel for the petitioner, that preparation or confirmation

(7) 1964 Curr. L. J. 447.

of a scheme and the repartition carried out would fall within the scope of 'order' as used in Rule 18 of the Rules. The rule as it stands at the moment does not come into play when a petitioner challenges either the scheme of consolidation including its preparation or confirmation or the repartition made in pursuance thereof. If that is so—as to my mind it is—then the view taken in *Maghar Singh's* case (supra) in applying rule 18 to facts almost similar to those of the case in hand does not reflect the correct position of law. For the observation that the Additional Director could extend the time under the proviso to Rule 18 only if he had come to the conclusion that during the period of default the petitioner was incapable of moving the authority or there were good reasons for his not doing so earlier, the learned Judge relied upon a Full Bench decision of this Court in *S. Gurdial Singh and others* v. *The State of Punjab and others,* (8). But that was a case in which the challenge was to a specific order passed by the authorities under the provisions of section 21 of the Act. In fact in that Full Bench case two contentions had been raised—(i) that there was in fact no fragmentation in existence in the estate concerned and consequently there was no need for any consolidation and thus the issuance of the notification under section 14 of the Act was unsustainable and (ii) that the petition under Section 42 of the Act having been filed after more than six months of the passing of the impugned order dated March 30, 1960, was barred by time. The first contention of the petitioners in the case was rejected by the Full Bench with the following observations :—

> "Coming, as they do to this Court nearly ten years after the notification, which they are trying to impugn, and where being no merit in the plea raised, for the first time, this Court would be justified in refusing them any relief under its writ jurisdiction under Article 226 on that ground alone."

So far as the other contention raised on the ground of limitation as prescribed by Rule 18 is concerned the Full Bench after noticing the facts of the case and the argument that even though the Director had not enough of justification to condone the delay in the petition made to him

(8) 1967 P.L.R. 689.

under section 42 of the Act, yet he was not bound by any period of limitation for interfering *suo motu*, declined to decide the question as according to the learned Judges the petition was to be allowed on another ground, that is, the impugned order of the Consolidation Officer being a consent order could not be challenged under section 42 before the Director. This aspect of the case is discussed in paragraphs 17 to 19 of the judgment. Thus it is apparent from this decision of the Full Bench that the challenge so far as it was levelled against the issuance of the notification under section 14 of the Act, the same was not declined on the ground of limitation and was rather turned down on the ground of laches alone. The contention with regard to the period of limitation as envisaged by Rule 18 of the Rules which was raised in the context of an order of the subordinate authority dated March 30, 1960, was left undecided. Thus this judgment of the Full Bench does not in any way lend support to the view taken by the learned Single Judge in *Maghar Singh's* case (supra). Similarly the other judgments mentioned at serial Nos. 1 to 3 above, taking a similar view on similar facts have also not enunciated the correct position of law so far as the applicability of Rule 18 is concerned. We are conscious of the fact that besides these pronouncements there may be a few other judgments reported or unreported wherein the distinction as pointed out above in an order passed,— scheme prepared or confirmed or repartition made in pursuance thereof, has not been noticed, but that fact alone does not alter the legal position in any manner.

(12) So far as the second contention of the learned counsel for the petitioner relating to the interpretation of the words 'at any time' as used in section 42 of the Act is concerned, we find that the matter has been conclusively settled against him by two decisions of this Court in *The State of Punjab and another* v. *Shri Makhan Lal etc.* (9) and *Nar Singh Mansoor Singh and others* v. *State and another* (10). This is what has been held by the Full Bench in this regard :—

> "The scheme of the Act furnishes no indication whatever which would justify putting a limitation on this unambiguous expression. This phrase occurs in a revisional

(9) 1964 Curr. L. J. 447.
(10) A.I.R. 1967 Pb. 111.

provision and in my opinion, two decisions of the Supreme Court place the matter beyond any doubt so far as S. 42 is concerned. Of course, both these decisions relate to different statutes. But the considerations, which prevailed with their Lordships of the Supreme Court with regard to the exercise of the revisional power without any limitation of time, apply with equal force so far as S. 42 is concerned .....

It will thus appear that no limitation has been placed on the exercise of the power of revision. Whether that power has been conferred by a statute which is not of a temporary duration, or by a statute which is of temporary duration, the power of revision can be exercised by the appropriate authority without limitation as to time. But it is axiomatic to say that the power cannot be exercised for an ulterior purpose or arbitrarily and if it is so exercised, the exercise of the same can be struck down by a Court in appropriate proceedings. I am, therefore, clearly of the view that neither the scheme of the Act nor the scheme of the revisional provision supports the contention of the learned counsel for the petitioners that some time limit should be placed on the exercise of the revisional power conferred on the State Government by S. 42 of the Act."

For reaching the above noted conclusion, the Full Bench relied on two Supreme Court judgments in *Laxman Purshottam Pimputkar* v. *The State of Bombay and others* (11) and *Purshotam Lal Dhawan* v. *Diwan Chaman Lal and another*, (12), wherein a similar phrase "at any time" in the context of the revisional jurisdiction of the authorities concerned came up for consideration. We respectfully follow this enunciation of law. At the same time we would like to mention that the power vested in the State Government or its delegatee to look into the legality or propriety of any scheme prepared or confirmed or repartition made under the Act, at any time, is not intended to be exercised arbitrarily. Though discretionary, yet being judicial power, it has to be exercised reasonably. Whether in a particular case the petition or the revision

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

(12) A.I.R. 1961 S.C. 1371.

should be entertained at a belated stage, would, however, depend on the facts and circumstances of each case.

(13) Having considered the legal aspect of the matter as discussed above now we proceed to examine the applicability of the same to the facts of the case in hand. Respondent No. 2 admittedly had not impugned any specific order before the Additional Director and had only made a grouse of the non-providing of a link passage to his Kurrah or block at the time of the repartition in pursuance of the scheme prepared for the consolidation of holdings in the village. The scheme undisputably envisages the providing of a passage to the Kurrah of every landowner. In other words, the respondent only pointed out to the Director the non-performance of duties by the consolidation staff in accordance with the provisions of the Act and the scheme prepared thereunder. Its case further as stated in the return filed to the present petition is that prior to the time of its making the application before the Additional Director on August 31, 1977, the petitioner had never objected to the use of the passage through his land to reach the Kurrah of the respondent. It was always believed that the said passage had been provided for by the consolidation authorities in their records. Only when it was revealed to the Board through its tenants that no such passage had been provided for to its Kurrah then it made an application under section 42 of the Act to the Director. It was in this context, as has been pointed out earlier, that the Director in his impugned order Annexure P. 1 observed that the omission on the part of the consolidation staff deserved to be rectified. Though he passed the impugned order after condoning the delay in the filing of the petition before him, yet as has been held above no such period of limitation was applicable to the petition before him. Anyhow, the fact remains that keeping in view the facts and circumstances of the case, the Director found enough of justification to interfere or pass the impugned order even at belated stage. This exercise of power on his part does not in any manner appear to be arbitrary or uncalled for.

(14) Towards the end, petitioner's learned counsel sought to argue that an alternative path could be provided to respondent No. 2, but we decline to go into the same as it is patent that in exercise of jurisdiction under Article 226 of the Constitution of India, this Court is not to sit as a Court of appeal. The order of the Director not being without jurisdiction or in violation of any provision of law, deserves to be sustained.

(15) In the light of the discussion above, we do not find any merit in this petition and dismiss the same but with no order as to costs.

S. S. Sandhawalia, C.J.—I agree.

N.K.S.

FULL BENCH

Before S. S. Sandhawalia C.J., S. P. Goyal and J. V. Gupta, JJ.

AMAR SINGH and another,—*Appellants*

versus

DALIP,—*Respondent.*

Regular Second Appeal No. 1821 *of* 1978.

March 12, 1981.

Punjab Tenancy Act (XVI *of* 1887)—*Section* 77—*Code of Civil Procedure* (V *of* 1908)—*Sections* 3 *and* 11—*Suit for the ejectment of a tenant instituted in a Revenue Court—Such Court—Whether competent to determine the jural relationship of landlord and tenant—Decision of the Revenue Court regarding such relationship—Whether operates as* res judicata *in a subsequent suit in a Civil Court—Explanation VIII to section* 11 *of the Code—Whether covers a court of limited jurisdiction other than a civil court.*

Held, (per majority S. P. Goyal and J. V. Gupta, JJ. S. S. Sandhawalia, C.J. contra) that a persual of section 77 of the Punjab Tenancy Act, 1887 would show that the Revenue Court has been invested with the jurisdiction to decide certain disputes between the landlord and tenant which necessarily means that the existence of relationship of landlord and tenant between the parties is a condition precedent before any matter specified therein can be taken cognizance of by a Revenue Court. There is no provision in whole of the section which authorises the Revenue Court to pass a decree regarding the relationship of the parties. It is, therefore, obvious that the Revenue Court is only entitled to pronounce on the relationship between the parties for the purposes of deciding disputes within its cognizance as enumerated in that section and the Legislature has not conferred any jurisdiction on the Revenue Court to pronounce finally on the jurisdictional facts, i.e., the existence of the relationship of landlord and tenant between the parties. The determination of the status of the parties or a question of title between them may involve very intricate questions of civil law and nobody can even suggest that the Revenue Court has jurisdiction to pronounce on such questions or that such a decision can be final and binding on the parties. If that is so, then it has to be ruled that the Revenue Court has no jurisdiction to pronounce finally on the question of status of the parties or any other question of title because no distinction can be made between a simple question of title and question of title which involve intricate and complicated questions of law so far as the extent of jurisdiction is concerned. It is, therefore, held that though the Revenue Courts