finding that the right to redeem accrued after the period of 9 years was approved by the Privy Council. The facts of the present case are on a better footing because here the mortgagor had to incur an additional burden of Rs. 90 if he wanted to exercise his option of redemption within 10 years and in case he did not exercise that option, he was not entitled to redeem the property before the expiry of ten years. The limitation in the present case, therefore, commenced only after the expiry of the period of 10 years fixed in the agreement and as such the suit filed in the year 1970 was well within time.

(3) For the reasons recorded above, this appeal is allowed, the impugned judgment and decree set aside and a preliminary decree for redemption passed in favour of the appellant to the effect that if he pays in the court the amount of Rs. 900 on or before December 31, 1983, the respondent shall deliver to the plaintiff or to such person as the plaintiff appoints all documents in possession or power relating to the mortgage property and shall if so require retransfer the property to the plaintiff at his cost free from mortgage and all encumberances created by the respondent or any person claiming under him and shall also put the plaintiff in possession of the suit property. It is further ordered that in case the appellant fails to make payment within the period fixed, this appeal shall stand dismissed. In view of the complicated question involved in the appeal, the parties are left to bear their own costs.

N. K. S.

FULL BENCH

Before P. C. Jain, A.C.J., D. S. Tewatia and I. S. Tiwana, JJ.

JAGTAR SINGH,—*Petitioner.*

versus

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

Civil Writ Petition No. 2343 of 1981.

February 21, 1984.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—Section 42—East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949—Rule

18—*Scheme prepared or confirmed or repartition made by an officer under the Act—Petition under section 42 impugning such scheme, confirmation or repartition—Bar of limitation contained in Rule* 18—*Whether applies to such a petition.*

Held, that the preparation or confirmation of a scheme, making of repartition in accordance with the scheme and passing of orders are three distinct connotations and concepts envisaged under section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 and this is evident from the amendment carried out in section 42 by Punjab Act 27 of 1960. It is a settled rule of construction that the words appearing in a statute should be given their ordinary meaning unless either the context of the provision or the legislative intent gives indication to the contrary. A bare perusal of Rule 18 of the Rules would show that it provides limitation only for petitions filed against orders passed. There is no reference in the Rule to a scheme prepared or confirmed or repartition made. The fact that in section 42 of the Act words 'scheme prepared or confirmed or repartition made' have been added as a result of amendment, cannot justify the conclusion that in rule 18 of the Rules these words have also to be read. If the State Government had intended to provide a limitation even with regard to the petitions filed against a scheme prepared or confirmed or repartition made, then after the amendment in section 42 of the Act, corresponding amendment in rule 18 of the Rules would have also been made. But no such amendment was made. The rule has to be interpretted as it exists. The words of Rule 18 are precise and unambiguous and no more is necessary than to expound these words in their natural and ordinary sense. The Courts are not to read into the context the words which are not found there. The Courts cannot provide a period of limitation for the orders not covered by the Rules by imagining that the Rule making authority must have intended to also provide a period of limitation for such orders. It is, therefore, held that Rule 18 of the Rules does not apply to those petitions in which the legality or validity of a scheme prepared or confirmed or repartition made is challenged.

(Paras 8, 9 nd 10).

Chhaju Ram *vs.* State of Haryana and others, 1981, P.L.J. 408.

OVERRULED.

Case referred by a Division Bench consisting of Hon'ble Mr. Justice S. P. Goyal and Hon'ble Mr. Justice Prem Chand Jain on 5th March, 1982 to a Larger Bench for decision of the important question of law involved in the case. The Larger Bench consisting of The Hon'ble The Acting Chief Justice Mr. Prem Chand Jain and The Hon'ble Mr. Justice D. S. Tewatia and The Hon'ble Mr. Justice I. S. Tiwana finally decided the case on 21st February, 1984.

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

(i) *Writ of Certiorari or any other Writ, Order or Direction may be issued quashing the order contained in Annexure P-16.*

(ii) *Requirement of service of notice on the respondents may be dispensed with due to paucity of time.*

Respondent No. 2 is threatening to dispossess the petitioner from the land by the help of consolidation authorities in implementation of the impugned order.

I. K. Mehta, Advocate with K. K. Mehta, Advocate and Miss Lalit Joshi, Advocate, *for the Petitioner.*

A. S. Cheema, Advocate with G. S. Dhillon, Advocate and Baljinder Singh, Advocate, *for the Respondent.*

JUDGMENT

Prem Chand Jain, A.C.J.

(1) This petition has been filed under Article 226 of the Constitution of India for quashing the order of Additional Director, Consolidation of Holdings, Punjab, Jullundur, dated March 27, 1981. The consolidation proceedings in the village of the parties, Lakhan Kalan, tehsil and district Kapurthala, started in the year 1956. The petition under section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the 'Act') on which the impugned order was passed, was filed on September 21, 1976, along with an application for condonation of delay. The Additional Director, Consolidation of Holdings, though noticed that the petition was barred by time, yet without condoning the delay, proceeded to decide the same on merits. At the time of motion hearing, one of the points raised on behalf of the petitioner was that the order of the Additional Director, Consolidation of Holdings was illegal and void, inasmuch as without first condoning the delay, he decided the petition on merits. Finding force in the contention of the learned counsel, notice of motion was issued. In obedience to the notices issued, the respondents put in appearance and filed written statement. On the question of delay the plea put forth on behalf of respondent No. 2 is that the provisions of rule 18 of the East Punjab Holdings (Consolidation and Prevention of

Fragmentation) Rules, 1949 (hereinafter called the 'Rules') did not apply as the petition had been filed against the scheme and not against any order. In support of that plea, reliance was placed on a Division Bench judgment of this Court in *Haqiqât* v. *The Additional Director, Consolidation of Holdings, Punjab and others* (1). The Bench hearing the petition, on consideration of the entire matter, doubted the correctness of the view taken in *Haqiqat's case* (supra) and consequently directed that the petition be heard by a larger Bench. That is how we are seized of this matter.

(2) The short legal question that needs decision in the instant case may be formulated thus :—

"Whether the bar of limitation under rule 18 of the Rules would also apply to a petition filed under section 42 of the Act impugning the scheme prepared or confirmed or repartition made by an officer under the Act.?"

(3) Before dealing with the question, which is purely a question of law, on merits, it would be appropriate to notice the provisions of Section 42 of the Act and Rule 18 of the Rules which read as under :—

"42. Power of State Government to call for proceedings :

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."

xxx xxx xxx

(1) 1981 P.L.J. 239.

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

Section 42 of the Act which has been reproduced above was brought on the statute book after amendment on the 23rd July, 1960, by Punjab Act No. 27 of 1960. Prior to its amendment the said section read as follows :—

> 42. The State Government may at any time, for purpose of satisfying itself as to the legality or propriety of any order passed 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 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 considerations."

(4) An analysis of the two sections shows that in the old section word 'order' alone has been used, while in the amended section besides word 'order' words 'the scheme prepared or confirmed or repartition made' have also been introduced. As to what necessitated the amendment of the section, reference deserves to be made to on unreported judgment in *Charan Singh etc.* v. *Arbail Singh etc.* (2),

(2) LPA 163/57 decided on 22nd July, 1959.

wherein a question arose as to what meaning should be given to the word 'order' occurring in the old section. In other words, the question that required decision was whether a scheme prepared or confirmed or repartition made could be revised under section 42 of the Act or not. The Bench answered the question in negative and observed thus :—

> "Mr. Chawla who appears for the respondents contends that the 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 can be entertained. I regret I am unable to concur in this contention. 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 Legisature 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."

A similar question arose in another unreported case, in Shri *Makhan Lal and another* v. *The Punjab State through Collector, Gurgaon as Settlement Officer and others* (3), wherein relying on *Charan Singh's case* (supra), it was observed as follows :—

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

(3) CW 33 of 1959 decided on 8th September, 1959.

the repartition. Repartition itself has not been described as an order in the Act and it cannot be considered an order for the purpose 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 ....".

As the view taken by this Court was that scheme prepared or repartition carried out did not fall within the ambit of provision of section 42 of the Act, the State Government decided to make necessary amendment in section 42 of the Act so as to include within its ambit a scheme prepared or confirmed or repartition made. It was as a result of this amendment that even against a scheme prepared or confirmed or repartition made a revision lay under section 42 of the Act.

(5) Now coming to rule 18 I find that the same was introduced in the rules by virtue of Punjab Government Notification No. 1426D(II)-60/1527, dated 18th March, 1960, which for the first time, prescribed limitation for filing a petition under section 42 of the Act. Rather the fact is that through this notification rules 17, 18 & 19 were introduced which for the first time prescribed a detailed procedure for filing a petition under Section 42 of the Act. Rule 18 with which we are concerned has been reproduced in the earlier part of the judgment. It prescribes that an application under section 42 of the Act shall be filed within six months of the date of the order against which it is filed. It is also provided that period 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 of the Act which are required to accompany the application filed under section 42 of the Act, shall be excluded for computing the period of limitation. It is also provided that the

appropriate authority may entertain an application even beyond the period of limitation if it is satisfied that the applicant had sufficient cause for not making the application within the prescribed period.

(6) The contention that was advanced by the learned counsel for the petitioner was that as the Legislature had made an amendment in section 42 of the Act by empowering the State Government to examine the legality and propriety of a scheme prepared or confirmed or repartition made and as rule 18 of the Rules provides the period of limitation for filing such an application, than a *fortiorari* it should be assumed that the bar of limitation provided in rule 18 of the Rules would also apply to a petition filed under section 42 of the Act which challenges a scheme prepared or confirmed or repartition made. In other words, the learned counsel for the petitioner wants us to read in rule 18 of the Rules the words "scheme prepared or confirmed or repartition made" besides the word 'order'.

(7) On the other hand, it was contended by the learned counsel for the contesting respondents that the State Government, after the amendment of section 42 of the Act, did not make corresponding amendment in rule 18, that as rule 18 of the Rules stands now, the period of limitation would be applicable only to applications filed against the orders; that in the context of the language used in section 42, the orders passed under the Act are different from the scheme prepared or confirmed or repartition made and that by not making amendment correspondingly in rule 18 of the Rules, the intention of the framers of the rule is quite evident that the bar of limitation was not intended to be made applicable to applications filed against a scheme prepared or confirmed or repartition made.

(8) After giving my thoughtful consideration to the entire matter, I find myself unable to agree with the contention of the learned counsel for the petitioner. As is evident from his arguments, there is no dispute that the preparation or confirmation of scheme, making of repartition in accordance with the scheme and passing of orders are three distinct connotations and concepts envisaged under section 42 of the Act. Even this is evident from the amendment carried out in section 42 of the Act. That being so, if still it has to be held that an order would include preparation or confirmation of scheme or making of repartition in accordance with the scheme, then the amendment would becoms meaningless,

It is in this context that the learned counsel for the petitioner had based his whole case by contending that rule 18 of the Rules also should be deemed to have been correspondingly amended.

(9) The question that now needs decision is whether after the amendment of section 42 of the Act in 1960, should rule 18 of the Rules be also taken to have been amended so as to include within its scope an application filed against a scheme prepared or confirmed or repartition made. In my view, the answer to the said question has to be against the petitioner. It is a settled rule of construction that the words appearing in a statute should be given their ordinary meaning unless either the context of the provision or the legislative intent gives indication to the contrary. A bare perusal of rule 18 of the Rules would show that it provides limitation only for petitions filed against orders passed. There is no reference in the Rules to a scheme prepared or confirmed or repartition made. The fact that in section 42 of the Act the words 'scheme prepared or confirmed or repartition made' have been added as a result of amendment, cannot justify the conclusion that in rule 18 of the Rules these words have also to be read. If the State Government had intended to provide a limitation even with regard to the petitions filed against a scheme prepared or confirmed or repartition made, then after the amendment in section 42 of the Act, corresponding amendment in rule 18 of the Rules would have also been made. But no such amendment was made. As to why no amendment was made in the rules, the Courts are not concerned. The rule has to be interpreted as it exists. The words of Rule 18 are precise and unambiguous and no more is necessary than to expound these words in their natural and ordinary sense. The Courts are not to read into the context the words which are not to be found there nor is any duty cast upon the Court to apply itself to the extremely difficult task of finding out the mind of the framers of the rule that it had also intended to bring within the purview of rule 18 of the Rules a scheme prepared or confirmed or repartition made after the amendment in section 42 of the Act.

(10) Mr. Mehta, learned counsel for the petitioner, sought to project that in case rule 18 is not deemed to have been correspondingly amended, an anamolous situation is likely to arise inasmuch as a person who files objections under section 21(2) of the Act has to seek remedy within six months of the passing of the order while a person who has not filed any such objections would have an unlimited period to seek remedy under section 42 of the Act.

May be that such a situation is conceivable, but that does not mean that in the rule of limitation the Courts can incorporate those orders also for which the Rules making authority did not intend to provide a period of limitation. In my view, the Courts cannot provide a period of limitation for the orders not covered by the Rules by imagining that the Rule making authority must have intended to also provide a period of limitation for such orders. The whole argument of the learned counsel is based on a supposition which has neither any basis nor any existence. If once it is accepted that word 'order' does not include scheme prepared or confirmed or repartition made and that these are three different connotations, then all arguments are devoid of merit because two different meanings cannot be given to word 'order' i.e., that in section 42 this word does not include scheme prepared or confirmed or repartition made; while in rule 18 this word would include within its perview scheme prepared or confirmed or repartition made. In this view of the matter, I hold that rule 18 of the Rules does not apply to those petitions in which the legality or validity of a scheme prepared or confirmed or repartition made is challenged.

(11) After having dealt with the aforesaid aspect, I do not propose to deal with the other arguments which were raised by Mr. Mehta as similar arguments had been raised before the Division Bench in *Haqiqat's case* (supra) and the same have been elaborately dealt with by my learned brother I. S. Tiwana, J. It would be unnecessarily burdening this judgment by dealing with those arguments and with respect I fully agree with the reasoning adopted in *Haqiqat's case* (supra). Mr. Mehta, learned counsel had relied on a Single Bench judgment of this Court in *Chhaju Ram* v. *State of Haryana and others,* (4) in support of his argument. A bare perusal of that judgment shows that it does help the learned counsel for the petitioner. But in the view I have taken and for the reason that the ratio of *Haqiqat's case* is being affirmed *Chhaju Ram's case* on which reliance is placed does not lay down correct law and is accordingly overruled.

(12) No other point either legal or on merits was raised before us.

(4) 1981 P.L.J.J. 408.

(13) For the reasons recorded above, the writ petition is dismissed but without any order as to costs.

D. S. Tewatia, J.—I agree.

I. S. Tiwana, J.—I also agree.

N. K. S.

H. C

13308 HC—Govt. Press, U. T., Chd.