the general law of the landlord and tenant. Whenever the power of exemption under section 3 is exercised, the building or class of buildings exempted ceased to be governed by the Act and would be governed by the general law. Thus the power of exemption conferred by section 3 is merely to restore the applicability of the General law by taking away the exemption to it created by the special provision. In this view of the matter it can hardly be said that section 3 confers any legislative power".

Then the Bench goes to support this view by decided cases which it is not necessary to reproduce. I am, therefore, as at present advised, inclined to take the view that there are not only criteria available in the preamble and operative provisions of the Act as well as in the Constitution on which power vested in the State Government is to be exercised, but also that such exercise of power does not amount to legislation. In view of this it is not correct to say that the section is *ultra vires* the Constitution.

The learned Counsel for the appellants next urged that the exemption should have been in favour of Mahtams as a whole wherever they lived and that this exemption relating to Mahtams residing in a particular area is bad. There is obviously no force in this contention because according to the State Government it may be that Mahtams living in a particular area are backward and require such protection.

For the reasons given above, I find that there is no force in the appeal which is dismissed but with no order as to costs.

K.S.K.

FULL BENCH.

Before D. Falshaw, C.J., Inder Dev Dua and Daya Krishan Mahajan, JJ.

NAR SINGH,—AND OTHERS,—*Petitioners*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Civil Writ No. 2200 of 1963.

1966.

March 17th

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—S. 42—"At any time"—Power of the State

Government—Whether exercisable without any limitation in point of time—State Government—Whether can interfere with an order after confirmation of the scheme so as to arrest its enforcement.

Held, (by Full Bench)—that under section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, the State Government is empowered to interfere with an order even after the confirmation of the scheme so as to arrest its enforcement.

Held, by Majority (Falshaw, C.J. and D. K. Mahajan, J.—I. D. Dua, J. *contra*)—that the words "at any time" used in section 42 of the said Act render the power conferred on the State Government everlasting, interminable or indefinite in duration exercisable without any limitation in point of time.

Held (per Dua. J.)—that the words "at any time" in section 42 of the Act do not confer on the State Government everlasting, interminable or indefinite power in point of time and that the outside limit is the completion of the consolidation proceedings which would depend on the facts and circumstances of each case.

Case referred by the Hon'ble Mr. Justice Shamsher Bahadur on 30th October, 1964 *for decision owing to the importance of the question of law involved in the case. The Division Bench consisting of the Hon'ble Mr. Justice S. B. Capoor and the Hon'ble Mr. Justice Inder Dev Dua, further referred the following questions of law to the larger Bench for decision on 2nd November,* 1965.

"1. *Whether the words "at any time" used in section* 42, *Consolidation Act render the power conferred on the State Government everlasting, interminable or indefinite in duration exercisable without any limitation in point of time? If not, then what is the outside limit in this respect for its exercise? and*

2. *Is the State Government empowered under section* 42 *to interfere with an order after the confirmation of the scheme so as to arrest its enforcement?"*

The Full Bench consisting of the Hon'ble, Chief Justice, Mr. D. Falshaw, the Hon'ble Mr. Justice Inder Dev Dua and the Hon'ble Mr. Justice D. K. Mahajan after considering the above questions of law referred to them returned the case to the Division Bench on 17th March, 1966, *for its disposal. The case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice Inder Dev Dua and the Hon'ble Mr. Justice P. C. Pandit on 25th July,* 1966.

Petition under Articles 226 *and* 227 *of the Constitution of India praying that a writ of* certiorari, mandamus *or any other appropriate*

writ, order or direction be issued quashing the impugned order, dated 2nd November, 1963, passed by respondent No. 2.

P. S. MANN, GURDARSHAN SINGH, AND D. S. TEWATIA, ADVOCATES. for the Petitioners.

J. N. KAUSHAL, ADVOCATE-GENERAL WITH M. R. AGNIHOTRI, ADVOCATE, for the Respondents.

ORDER

MAHAJAN, J.—The following two questions have been referred to a Full Bench by S. B. Capoor and Inder Dev Dua, JJ:— Mahajan, J.

"1. Whether the words 'at any time' used in section 42, Consolidation Act, render the power conferred on the State Government everlasting, interminable or indefinite in duration exercisable without any limitation in point of time ? If not, then what is the outside limit in this respect for its exercise? and

2. Is the State Government empowered under section 42 to interfere with an order after the confirmation of the scheme so as to arrest its enforcement ?"

These questions being pure questions of law, it is not necessary to set out the facts of the case giving rise to them. Both these questions pertain to section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), hereinafter to be referred to as the Act. Section 42 is in these terms—

"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

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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."

There is no limitation prescribed for an application by a right-holder under section 42. The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, framed by the State Government under section 46 of the Act, however, make a provision in this behalf. The relevant rule is 18 and it provides six months' period for an application under section 42 from the date of the Order against which it is filed. The proviso to this rule permits the State Government to entertain an application even after the period of six months if the applicant had sufficient cause for not making the application within such period. However, there is no period of limitation prescribed so far as the State Government is concerned. The State Government can pass an order at any time. It is not disputed that section 42 of the Act invests the State Government with the revisional powers. In the rules a provision has been made regarding the form of the application and the documents which have to be filed with it (*vide* rule 17). The rules also provide that the application has to be stamped with a court-fee stamp as provided in rule 19. It is also not disputed and is common ground that the State Government when exercising the powers conferred upon it under section 42 of the Act is performing quasi-judicial functions.

At this stage it will be proper to examine the respective contentions of the parties. The petitioners, who are right-holders, contend that once a scheme of consolidation is prepared and confirmed, its enforcement cannot be arrested by an order passed by the State Government under section 42 of the Act. It is also maintained that the expression 'at any time' occurring in section 42 must also have some limitation in point of duration of time within which the State can lawfully exercise the power conferred. The words 'at any time' could not have been intended to leave the scheme and the repartition open to variation for an indefinite period inasmuch as it would have the effect of rendering title of the holders of their new holdings permanently precarious and in a state of perpetual uncertainty. As the power conferred by section 42 of the Act affects valuable rights to

property, the legislative intent would not be to vest power of such a wide magnitude in the executive officers. On the other hand, if a reference is made to the legislative scheme, the purpose and the object of the Act, it appears that some reasonable limitation has to be put on the unlimited power conferred by the section.

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So far as the State is concerned the stand taken on its behalf by the learned Advocate-General is that the enforcement of a scheme is covered by the expression 'an order or repartition made'. It is also maintained that the words 'at any time' in section 42 of the Act are clear, express and unambiguous and the power being vested in the State, an arbitrary or irresponsible exercise of this power should not be too readily assumed. Morever, the mere possibility of a power being abused or misused is not a cogent ground for cutting it down when the language of the provision is unambiguous.

The learned counsel for the petitioners principally relies on the decisions of this Court in *Bhikan and others* v. *The Punjab State and others* (1) *and Chahat Khan and others* v. *The State of Punjab and others* (2), (Civil Writ No. 579 of 1962, decided on the 15th of October, 1965 by a Full Bench of five Judges, which confirmed the interpretation placed on the same expression 'at any time' as used in section 36 of the Act in *Bhikan's case*). It will be proper, therefore, to set out the provisions of section 36 of the Act. These provisions are in the following terms:—

> "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.

Bhikan's case and *Chahat Khan's case* dealt with section 36 of the Act and were principally concerned with the expression 'at any time'. It was held in *Bhikan's case* by two

(1) I.L.R. (1963) 1 Punj. 660 (F.B.)=1963 P.L.R. 368.
(2) I.L.R. (1966) 1 Punj. 514 (F.B.)=1966 P.L.R. 239.

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to one 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". Khanna J., who disagreed with the majority view of Tek Chand and Dua JJ., held that "there was nothing in the section or the Act to warrant to 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 proceedings before re-partition and not subsequently."

In *Chahat Khan's case* a reference on the same question as settled by *Bhikan's case* was necessitated by reason of the decision of the Supreme Court in *Laxman Purshottam Pimputkar* v. *The State of Bombay* (3) wherein it was held that where no period of limitation is specified in a legislative enactment, the petition for revision can be entertained at any time at the discretion of the revising authority. In this case, the impugned order was set aside after a lapse of many years, and it was held by the Supreme Court that though, of course, normally Government would not like to interfere unless moved within a reasonable time, the question as to what is reasonable time in a particular case is a matter for the Government to consider. It was in this situation that *Chahat Khan's case* was placed before a Full Bench of five Judges because it had to consider the decision in *Bhikan's case* which was by a Full Bench of three Judges. The principal judgment in *Chahat Khan's case* was delivered by Mehar Singh, J. and the learned Judge approved the majority interpretation placed on the expression 'at any time' in section 36 of the Act. I may also mention that Tek Chand, J., in his decision in *Bhikan's case* clearly said in so many words that he was considering section 36 only and not section 42 of the Act. Similarly, Mehar Singh, J. observed in *Chahat Khan's case* that—

> "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

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

to part of the consolidation of holdings, are considerations 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."

At another place in his judgment Mehar Singh, J. observed—

"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)".

In the ultimate analysis the learned Judge held that the majority decision in *Bhikan's case* is correct. R. P. Khosla, J., Dua, J. and Pandit, J. agreed with Mehar Singh, J., though Dua, J. and Pandit, J., gave their additional reasons in support of the construction placed upon section 36 by Mehar Singh, J. Pandit, J. observed in unmistakable terms that—

"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".

Khanna, J., who dissented again adhered to his view as expressed in *Bhikan's case*. Thus, it is clear that the learned Judges in *Chahat Khan's case* were clearly of the view that the interpretation placed by them on the expression 'at any time' in section 36 had no bearing on the same expression in section 42. It was also observed that section 42 was of a wider amplitude than section 36. It is also significant that the Supreme Court decision in *Laxman Purshottam Pimputkar's case*, on the basis of which *Chahat Khan's case* was referred by a Division Bench to a Full Bench of five Judges for the purpose of reconsidering the decision in *Bhikan's case*, was not pressed into service at the time when the case was argued before the Full Bench of five Judges. In this connection reference may be made to the observations of Mehar Singh, J., which are as follows:—

"The learned Deputy Advocate-General has not, however, before this Bench seriously relied upon the

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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*."

I have dealt, at some length, with two Full Bench decisions which consider the provisions of section 36 and have come to the conclusion that the words 'at any time' therein have a limited meaning. This conclusion was arrived at in view of the context of the section itself and the scheme of Chapter III of the Act. While dealing with section 36 in both the Full Bench decisions, it was made clear that the interpretation that was being placed on the phrase 'at any time' had nothing to do with the same phrase in section 42. As a matter of fact, it was recognized that the language of section 42 was much broader than that of section 36. The learned counsel for the petitioners has again referred to the scheme of the Act for his contention that the phrase 'at any time' in section 42 should be given a limited meaning. I am, however, unable to agree with this contention. The scheme of the Act furnishes no indication whatever which

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

would justify putting a limitation on this unambiguous expression. This phrase occurs in a revisional provision and, in my opinion, two decisions of the Supreme Court place the matter beyond any doubt so far as section 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 section 42 is concerned. In *Laxman Purshottam Pimputkar's case* (3), their Lordships were dealing with section 79 of the Bombay Hereditary Offices Act (III of 1874). Section 79 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 inquiry'. It will be apparent from this provision that no time limit is fixed and it will also be apparent that the phrase 'at any time' is missing and in spite of this, interference in an order passed 20 years ago was upheld. While dealing with section 79 in connection with an argument that the Government while acting under it was not acting in a *quasi judicial* capacity, but in an administrative capacity, it was observed by their Lordships as follows:—

> "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."

All the considerations which have been placed before us and have already been adverted to for putting a limitation on the power of revision conferred by section 42 were equally germane in *Laxman Purshottam Pimputkar's case*. The matter does not rest here. While dealing with a similar provision in a temporary Act (Administration of

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Evacuee Property Act, 1950), section 27 of which reads thus—

> "The Custodian-General may, at any time, either on his own motion or on application made to him in this behalf, call for the record of any proceedings in which any Custodian has passed an order for the purpose of satisfying himself as to the legality or propriety of any such order and may pass such order in relation thereto as he thinks fit."

It was held by their Lordships of the Supreme Court in *Purshotam Lal Dhawan* v. *Diwan Chaman Lal and another* (5), as follows:—

> "Section 27 of the Act confers a plenary power of revision on the Custodian-General and it empowers him to exercise his revisional powers either *suo motu* or on application made in that behalf at any time. The phrase 'at any time' indicates that the power of the Custodian-General is uncontrolled by any time factor, but only by the scope of the Act within which he functions."

At another place, their Lordships observed:—

> "The argument that the principle underlying section 5 of the Limitation Act applies to a petition for revision under section 27 of the Act has no force. Section 5 of the Limitation Act applies to an appeal for which a period of limitation is prescribed and it empowers the Court to admit the appeal after the period of limitation, if the applicant satisfied it that he has sufficient reason for not preferring the appeal within the prescribed time. The principle thereunder cannot be made applicable to a revision petition under section 27 of the Act in respect of which no period of limitation is prescribed. At the same time we must make it clear that the powers of the Custodian-General under section 27 read with rule 31(5), are not intended to be exercised arbitrarily. Being a judicial power, he shall exercise his discretion reasonably and it is for him

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

to consider whether in a particular case, he should entertain a revision beyond the period of sixty days stated in rule 31(5). * * *".

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 a 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 section 42 of the Act.

So far as this Court is concerned, the scope of the revisional power under section 42 of the Act fell for consideration in *The State of Punjab* v. *Shri Makhan Lal* (4). My Lord, the Chief Justice, who spoke for the Division Bench, observed that the words 'at any time' in section 42 were much broad based than the words in section 36. As a matter of fact, my Lord the Chief Justice was inclined to take the same view even with regard to section 36, as was taken by Khanna J., who was a party to both the Full Bench decisions which dealt with section 36. Thus, so far as this Court is concerned, the Division Bench decision in *Makhan Lal's case* goes directly against the contention of the learned counsel for the petitioners, and, I am in respectful agreement with the same to this extent that the State Government can vary a scheme of consolidation which has been given effect to by repartition at any time.

Before parting with this judgment, I might as well refer to the decision of Pandit J., in *Hans Raj* v. *Jaspal Singh and others* (6), wherein the following observations occur:—

"* * It is again a doubtful point whether the Additional Director could change the scheme

(6) 1966 P.L.R. 124.

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under section 42 of the Act after the repartition order had become final under section 21. * * * * * *".

In the first instance, the learned Judge was not considering the vexed question as to the interpretation of section 42 and made the above observations merely in passing and, in the second place, the attention of the learned Judge was not drawn to the decisions of the Supreme Court on which I have based my decision. It is a settled rule of construction that the words of a Statute should be given their ordinary meaning unless either the context of the provision or the legislative intent gives indication to the contrary. The legislative intent has to be gathered from the purpose of the enactment and the scheme of the Act. After giving due consideration to all these matters, I am of the view that there is no limitation placed on the revisional power of the State Government under section 42 of the Act.

For the reasons recorded above, I answer both the questions referred to us in the affirmative.

FALSHAW, C.J.—I have had the advantage of reading the judgment of my learned brother Mahajan J., and I agree that both the questions referred to us are to be answered in the affirmative. I cannot usefully add anything to the reasons he has given, but I feel that I should state that even regarding the words 'at any time' in section 36 of the Act I still agree with the views expressed by Khanna J., in his dissenting judgments in *Bhikan's* and *Chahat Khan's cases*.

17th March, 1966.

Dua, J.

DUA, J.—This writ petition was originally heard by Shamsher Bahadur, J., who, considering the question of the scope and effect of section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (hereinafter called the Act) to be of sufficient importance, referred the case for decision by a larger Bench. This order was made on 30th October, 1964. The Division Bench consisting of S. B. Capoor, J., and myself in view of the importance of the matter, framed the following two questions for decision by a Full Bench:—

"1. Whether the words "at any time" used in section 42, Consolidation Act, render the power conferred

on the State Government ever-lasting, interminable or indefinite in duration, exercisable without any limitation in point of time. If not, then what is the outside limit in this respect for its exercise? and

2. Is the State Government empowered under section 42 to interfere with an order after the confirmation of the scheme so as to arrest its enforcement?"

This is, how the matter has been placed before us.

I have had the privilege of reading the judgment prepared by my learned brother D. K. Mahajan, J., and the short note of concurrence by my Lord the Chief Justice in which he has approved the dissenting view of Khanna, J., in preference to the majority opinions both in *Bhikan* v. *Punjab State* (1) and *Chahat Khan* v. *The State of Punjab* (2). In both these Full Bench decisions, the scope and effect of section 36 of the Act was considered. Before us, however, it is not the scope and effect of section 36, but that of section 42, which directly arises for consideration. The Act, it may be pointed out, was enacted in order 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. I need not at this stage minutely go into the details of the statutory scheme. Suffice it to say that section 36 is the last section in Chapter III of the Act headed "Consolidation of Holdings" which begins with section 14. Chapter IV providing for "Other Powers of Consolidation Officer", contains sections 37 to 40. Chapter V, the last Chapter, headed "General", begins with section 41 and ends with section 47. Section 42 occurs in this Chapter. I may here reproduce both sections 36 and 42:—

"36. *Power to vary or revoke scheme.*—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.

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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 records 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 initiated by unlawful consideration."

I may also appropriately advert to sections 41, 43 and 43-A of the Act, because they seem to me to throw some helpful light on the context and setting of section 42 as also on the general colour and content of the legislative scheme. Section 41 of the Act, which deals with "appointment of officers and staff and delegation of powers", lays down that the "State Government may for the administration of this Act appoint such persons as it thinks fit and may by notification delegate any of its powers or functions under this Act to any of its officers, either by name or designation". Consolidation Officers and Settlement Officers (Consolidation) are also empowered by this section, with the sanction of the State Government, to delegate any of their powers or functions under this Act to any person in the service of the State Government. Section 43 lays down that except as provided in this Act, no appeal or revision shall lie from any order passed under this Act and section 43-A makes a provision for correction of clerical errors or arithmetical mistakes arising from accidental slips or omissions in a scheme made or an order passed by an officer; this power can be exercised at any time by the authority concerned either of its own motion or on the application of any of the parties. Reference at the bar has been made to the two Full Bench decisions dealing with section 36 because the expression "at any time" occurs in sections 36 and 42 and one of the points sought to be made at the bar is that this expression in both these sections should be presumed to have been intended to possess the same scope and effect. It

may be recalled that in *Chahat Khan's case* also, the learned Deputy Advocate-General had on the basis of a similar argument attempted to persuade the Full Bench to his point of view in regard to section 36 by relying on the decision in *Makhan Lal's case* with additional emphasis on the observation casting doubt on the majority view in *Bhikan's case*. As regards the scope and effect of section 36, it was first considered by a Full Bench of this Court in *Bhikan's case*. After adverting to the various aspects and shades of meanings of the expression "at any time", Tek Chand, J., who prepared the main judgment, expressing the majority view concluded in these words:—

> "Thus it will be seen that after the appellate powers are exercised by the Settlement Officer from the order of the Consolidation Officer in matters of repartition, there is no further duty which the Settlement Officer may now perform. He thus becomes *functus officio*. The phrase 'at any time' in section 36, therefore, cannot be extended to a period after the Settlement Officer has ceased to function."

The matter was again raised in the case of *Chahat Khan* which was also referred to a Full Bench by Shamsher Bahadur, J., because the learned counsel for the State had questioned the correctness of the decision in *Bhikan's case* on the basis of the ratio of the Supreme Court decision in *Laxman Purshottam* v. *State of Bombay* (3). As the decision of a Bench of three Judges was sought to be re-examined, naturally, a Bench of five Judges was constituted. Mehar Singh, J., who wrote the main judgment, expressing the majority view, took great pains to examine the scheme of the Act at considerable length because, according to him, it provides an aid to the understanding, interpretation and appreciation of the meaning and scope of section 36. "The expression 'at any time' in its literal and natural meaning", so observed the learned Judge, "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,

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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 provison 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." The learned Judge then proceeded to consider some decided cases in which the expression "at any time" was construed and spoke thus:—

> "These illustrations have been given just to support what appears to be quite plain that the expression 'at any time' in a provison 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."

After making these preliminary remarks, the learned Judge considered the context of section 36 and the scheme of Chapter III of the Act, which import limitation on the words "at any time". The context of the section provided the learned Judge with "material from which", to quote him, "the conclusion can only be that these words have limitation". A little lower down, after considering, *inter alia*, the limitation on the jurisdiction of the Settlement Officer in regard to the territory for which he is empowered to sanction a scheme, it is stated:—

> "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 his 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 learned Judge then "agreed with every single observation of Tek Chand, J., in *Bhikan's case*, giving in detail the detrimental consequences of an approach with an indefinite continuation of a process of consolidation of holdings with a cloud on the title of the landowners spreading endlessly". However, in spite of this agreement, the learned Judge made it clear that he was not basing his conclusion on being influenced by such consequences and he independently arrived at the identical conclusion on "the very context and scope of section 36." While dealing with such scope, he pointed out that with the closing of the consolidation of holdings, there would be lifted any restriction or embargo on the rights of the landowners and they would 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. This is followed by these observations:—

"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,

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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 exhausts itself and the jurisdiction of the Consolidation Officer and the Settlement Officer (Consolidation) goes with that."

It is true that the precise point requiring consideration was the power of Settlement Officer, but the limitation envisaged in the Preamble would appropriately operate on the entire field of aim, object and purpose of the Act as a whole. Dealing with the Bench decision in the case of *State of Punjab* v. *Makhan Lal* (4), the learned Judge rightly observed that that case was concerned with section 42 and not with section 36, though he did not seem to agree with the observations in *Makhan Lal's case* by which a doubt was cast on the majority view of the Full Bench decision in *Bhikan's case*. In this connection, it is only fair to point out that comments in the judgment of Mehar Singh, J., on the observation of dissent in *Makhan Lal's case* were apparently inspired by the fact that the learned Deputy Advocate-General had urged that when an expression is used more than once in the same statute, ordinarily, it is to have the same meaning and had thus pressed into service the decision in *Makhan Lal's case*. R. P. Khosla, J., entirely agreed with the opinion, reasoning and conclusion of Mehar Singh, J., P. C. Pandit, J., also arrived at the same conclusion; but he mainly dwelt on the argument that section 36 would be inoperative after the scheme is sanctioned and after the commencement of the repartition proceedings. He, however, expressly adopted the reasoning of Tek Chand, J., in *Bhikan's case* by approvingly reproducing the following passage:—

> "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 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."

P. C. Pandit, J., of course, made it clear that nothing said by him should be construed automatically to apply to section 42. I agreed with Mehar Singh, J., but I was also influenced by the consideration which weighed with Pandit, J., and in addition I felt that the Legislature could not be presumed to have intended the far-reaching and drastic consequences, which would flow from the wide and literal import of the expression "at any time" as used in section 36. I considered it more reasonably in the context and in the background of the legislative aim, object and purpose not to extend the operation of this expression beyond the confirmation of the scheme. I re-affirmed my view expressed in *Bhikan's case.*

I may point out that the correctness of the majority view of the Full Bench decision of five Judges in *Chahat Khan's case* has not been questioned before us at the bar, and indeed, even if it had been questioned, we ourselves could not legitimately record any dissent from it on the merits, for, the only course open to us, in that event, would have been to have the matter re-examined by a still larger Bench. The ratio of the decision in *Chahat Khan's case,* therefore, must be held binding on us. To hold otherwise would inevitably tend to introduce a disconcerting element of uncertainty, confusion and unpredictability in the state of law which would defeat rather than promote the cause of justice.

According to the ratio of the decisions in *Chahat Khan's case* and *Bhikan's case,* the expression "at any time" does not always necessarily connote at any time literally without

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any limitation whatsoever. What we are now called upon to do is to consider the question whether the use of the expression "at any time" in section 42, unlike its use in section 36, has an unlimited content, scope and effect in point of duration of time. To argue that this expression just means at any time as understood literally and plainly is, to my mind, to over-simplify its statutory meaning, ignoring its context, if not also to beg the question. It is unnecessary to refer to the various decisions of the Supreme Court and of the other Courts commanding respect. Suffice it to say that having regard to the variety of its meaning, the sense in which the expression "at any time" is used in different sections and even in different clauses must necessarily be ascertained from the context of the scheme of the Act, the language of the provision and the object intended to be served thereby. Broadly speaking, of course, the words used in a statute have *prima facie* to be construed in their ordinary meaning, but even where the words and expressions have ordinary meaning, there may be cases where judicial approach finds that the simple device of adopting the ordinary meaning of words does not meet the ends of a fair and reasonable construction. Exclusive reliance on the bare dictionary meaning of the words may not necessarily assist a proper construction of the statutory provision in which those words occur. Quite often, in interpreting a statutory provision, it becomes essential to have regard to the subject matter of the statute and the object which it is intended to achieve. It is precisely for this reason that in determining the true scope and effect of relevant words and expressions, the context in which they occur, the object of the statute in which the provision is included and the policy underlying the statute become relevant and material: see in this connection *Anand Nivas Private Ltd.*, v. *Anandji etc.* (7), and *Sheikh Gulfan* v. *Sanat Kumar Ganguli* (8). Again, where in construing general words the meaning of which is not entirely plain, there are adequate reasons, for doubting whether the Legislature could have been intending so wide an interpretation as would disregard fundamental principles, then the Courts are justified in adopting a narrower construction. As stated in Maxwell on Interpretation of Statutes (11th Edition) at p. 51 "the words of a

(7) A.I.R. 1965 S.C. 414.
(8) A.I.R. 1965 S.C. 1839.

statute when there is doubt about their meaning, are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the Legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained." Before adopting any proposed construction of an expression susceptible of more than one meaning, it is important to consider the effect or consequences resulting from it because they often point to the real meaning of the words. There are certain objects which the Legislature is presumed not to intend, and a construction leading to any of them is to be avoided. It is not infrequently necessary, therefore, to limit the effect of the general words contained in an enactment and sometimes to depart from their primary and literal meaning, when it seems highly improbable that words in their wide meaning actually express the real intention of the Legislature. One of these presumptions is that the Legislature does not intend to make any substantial alteration in the law beyond the immediate scope and object of the statute. In all general matters outside those limits, the law remains undisturbed for it is in the last degree improbable that the Legislature would overthrow fundamental principles, infringe rights or depart from the general system of law without expressing its intention with irresistible clearness, and to give any such effect to general words, simply because they have a meaning that would lead thereto when used in either their widest, their usual or their natural sense, would be to give them a meaning other than that which was actually intended. General words and phrases, therefore, however, wide and comprehensive they may be in their literal sense, must, usually, be construed as being limited to the actual objects of the Act. In construing the words of an Act of Parliament, the Court would be justified in assuming that the Legislature did not intend to go against the ordinary rules of law, unless the language they have used obliges the Court to come to the conclusion that they did so intend: see Maxwell on Interpretation of Statutes pp. 78 and 79 (11th Edition).

The main contention pressed before us on behalf of the learned Advocate-General, and it is this which has prevailed with my learned brother D. K. Mahajan, J., is that section

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42 of the Act, confers a judicial power of revision and, therefore, the expression "at any time" must be given its full scope and effect without imposing any limitation in point of time. The decision of the Supreme Court in the case of *Laxman Purshottam Pimputkar* and the earlier decision of that Court in the case of *Purshotam Lal Dhawan* v. *Diwan Chaman Lal* (5), have been considered to be conclusive on the point. It is necessary to see, how far those decisions conclude the interpretation of the expression "at any time" in section 42 of the Act. The relevant facts out of which the appeal to the Supreme Court in *Laxman Purshottam Pimputkar's case* arose may be seen. The plaintiff's family in that case were grantees of the Patilki Watan of some villages in the Thana District of Maharshtra. Defendants 2 to 4 also belonged to the plaintiff's family, the plaintiff representing the senior most branch of the family while defendants 2 to 4 the other branches. Under the Bombay Hereditary Offices Act (III of 1874) (called the Watan Act), the person, who actually performs the duty of a hereditary office for the time being is called an Officiator. Such Officiator had been selected from the plaintiff's branch from the year 1870. Purshottam was Officiator till the year 1921, when because of a disqualification incurred by him, a deputy was appointed in his place. On Purshottam's death in 1940, Laxman plaintiff-appellant became the Officiator. In 1914, there had been a partition of the family property consisting of Inam and Watan lands. Under this partition, lands, which had so far been assigned for remuneration of the Patilki of Solsumbha, which was the subject-matter of controversy on appeal, were allotted to the branch of the defendants, while some other lands were given to the plaintiff's branch. Purshottam had not subscribed to the partition-deed in the beginning, but later acquiesced in it. In 1944, the plaintiff moved the Government for the exemption of the Watan lands in the possession of defendants 2 to 4 and for making them over to him. The Government after some enquiry, resumed those lands in 1946 and directed their restoration to the plaintiff. The defendants thereafter moved the Government for reconsideration of that order. The Government eventually modified its previous order by directing that defendants 2 to 4, who were in possession of the lands, should continue to retain it, but they should pay such amount of rent as may be fixed by the Government from time to time. This order was made in 1947, and by virtue

of that order, the rent payable by defendants 2 to 4 was raised from Rs. 240 to Rs. 1,000. The plaintiff thereupon instituted a suit, giving rise to the appeal before the Supreme Court, seeking a declaration that the order of the Government of 1947 and the ancillary order of March, 1949, were null and void and inoperative and that the defendants should remove "all obstructions and hindrances caused to the property acquired by the plaintiff as Watan grant . . . . and that they should give the same into the plaintiff's possession, that the defendants should render to the plaintiff the account of the income from his property and pay him the costs of the suit." It was in this context that the observations of the Supreme Court have to be read. The Supreme Court went into the scheme of the Watan Act and observed that the enquiry held by the Collector under sections 11 and 12 of that Act was not administrative in character, and indeed its foundation was a *lis* between two parties: a Watandar out of possession and an alienee in possession of Watan property. When the final order is made by the Collector under section 12, this *lis* comes to an end and, therefore, there is no scope for the contention that any part of the proceeding is administrative in character. In this connection, the Court observed as follows:—

> "But merely because discretion is conferred on it in dealing with a particular matter, it cannot be contended that while exercising that discretion the Court acts otherwise than in the exercise of its judicial function. The proceedings before the Collector are of course not judicial, but they are certainly *quasi-judicial* and where the Collector has to exercise a discretion for giving effect to his decision that a certain alienation is null and void, it would not be permissible to say that all of a sudden his act ceases to be *quasi-judicial* act and becomes an administrative one."

The order of the Collector under section 12 was in that case appealable and it was this order which was held by the Supreme Court to have been revised by the Government under section 79. While commenting on this section, the Supreme Court observed:—

> "When an authority exercises its revisional powers it necessarily acts in a judicial or quasi-judicial

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capacity. Therefore, the Government's order of October, 1946, must be deemed to be a judicial or a quasi-judicial order. Such an order cannot be set aside or revised or modified just as an administrative order can under section 74. Finality attaches to be Government's order under section 79 and in the absence of any express provision empowering it to review the order we are clear that the subsequent order made by the Government on May 2, 1947, is *ultra vires* and beyond its jurisdiction."

Are the schemes of the two Acts (the Bombay Act III of 1874, on which the Supreme Court pronounced its opinion and the one which concerns us) sufficiently identical or similar so as to attract the ratio of the decision in the case of *Laxman Purshottam Pimputkar* to the case before us ? With all respect, I entertain extreme doubts if they are. It is unnecessary to examine exhaustively the schemes of these enactments, because on behalf of the respondents, no attempt has at all been made to show their similarity. The Bombay Act, broadly stated, dealt with the law relating to hereditary offices held hereditarily for the performance of duties connected with the administration or collection of public revenue, etc. "Watan property", as defined in that Act, means movable and immovable property held, acquired or assigned for providing remuneration for the performance of the duty appertaining to an hereditary office. Watan property and hereditary office together with the right and privileges attaching thereto constitute Watan; "Watandar" means a person having a hereditary interest in a Watan; and "family" includes each branch of the family descended from an original watandar. Section 11 of the Watan Act empowers the Collector to declare certain alienations of Watan property void and under section 12, he can carry out, *inter alia,* the provisions of section 11 Part XIII of the Watan Act dealing with "Procedure and Appeals" contains sections 72 to 85. It is provided by section 74 that the proceedings of the Collector shall be under the general control of the Commissioner and of the Government. Sections 76 and 77 provide for appeals from decisions, Then comes section 79, which may be reproduced in extenso:—

"79. The Provincial 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 shall seem fit, or, if it seems necessary, may order a new inquiry.

The Provincial Government may delegate all or any of its powers under this section, except the power to revise an order made by a Collector under section 25, to any Commissioner, and such Commissioner may thereupon exercise such powers within the local limits of his jurisdiction, subject to the revisional powers of the provincial Government under this section, and to any restrictions that the provincial Government may deem fit to impose."

This power is quite clearly one of revision of the judicial or quasi-judicial orders and the Government's ultimate power of judicial revision cannot be and has not been delegated to anyone else. Nor does any question of permanent uncertainty of title, like the one we are confronted with, arises in the Watan Act because that Act does not deal with anything even remotely similar to the consolidation proceedings. The Supreme Court was in that case clearly not concerned with the construction of a provision by any means similar in its operation and effect to section 42 of the Act in its context. Shri Kaushal has, however, emphasised that the decision in *Purshotam Lal Dhawan's case* at least bears a closer analogy because in that case, the Supreme Court was concerned with a temporary enactment like the Administration of Evacuee Property Act (XXXI of 1950) and section 27 of that Act, which confers revisional power on the Central Government had been construed just as section 79 of the Watan Act was construed. Turning to the Evacuee Act, it may be remembered that it was enacted to provide for the administration of evacuee property and for certain matters connected therewith. It is true that this enactment was brought on the statute book to deal with the extraordinary situation created by the unfortunate partition of the country in 1947, but the object, purpose and statutory scheme of this Act, so far as I have been able to gather, is far from similar to that of the Act and its precise provisions which concern us in the case in hand. Chapter V of the Evacuee Act dealing with "Appeals, Review and Revisions"

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consists of sections 24 to 28. Appeals are provided in sections 24 and 25, whereas section 26 provides for revisions by Custodian, Deputy Custodian and Authorised Deputy Custodian and also for review by Custodian, Additional Custodian and Authorised Deputy Custodian. Section 27 confers on the Custodian-General power of revision. Section 28 clothes the orders of the various officers, including those of the Custodian-General, with finality. Section 27 reads as under:—

"27. Powers of revision of Custodian-General:—

The Custodian-General may at any time either on his own motion or on application made to him in this behalf call for the record of any proceedings in which any Custodian has passed an order for the purpose of satisfying himself as to the legality or propriety of any such order and may pass such order in relation thereto as he thinks fit:

Provided that the Custodian-General shall not pass an order under the sub-section prejudicial to any person without giving him a reasonable opportunity of being heard.

Explanation.—The power conferred on the Custodian-General under this section may be exercised by him in relation to any property, notwithstanding that such property has been acquired under section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954)".

In *Purshotam Lal Dhawan's case,* a revision was preferred to the Custodian-General on 30th October, 1952 by Dewan Chaman Lal against the order of the Additional Custodian, dated 25th August, 1952. This was presented within the prescribed time. In the revision, only the Custodian was made a party. Subsequently, Purshotam Lal Dhawan and some others were impleaded by an order of the Deputy Custodian-General, dated 25th August, 1953. By the final order on revision certain reliefs were granted to Dewan Chaman Lal. On special leave appeal from that order, it was, *inter alia,* argued that the revision

to the Deputy Custodian-General was barred by time so far as Purshotam Lal Dhawan and others were concerned. Rule 31 made by the Central Government under section 56 of the Evacuee Act provides that a petition for revision to the Custodian-General shall ordinarily be made within 60 days of the order sought to be revised. While dealing with section 27, Evacuee Act, the Supreme Court speaking through Suba Rao, J., observed:—

> "Section 27 of the Act confers a plenary power of revision on the Custodian-General and it empowers him to exercise his revisional powers either *suo-motu* or on application made in that behalf at any time. The phrase 'at any time' indicates that the power of the Custodian-General is uncontrolled by any time-factor, but only by the scope of the Act within which he functions."

Here again, the Supreme Court was not concerned with a problem which may be considered by any stretch to resemble the one which requires solution by this Court in the present case. The matter in controversy before the Supreme Court had arisen out of a *lis* between two parties which was of a judicial character requiring judicial approach on the part of the Additional Custodian as also of the Custodian-General. The relevant provisions of the Evacuee Act and the rules made thereunder leave no doubt on this point and it is unnecessary to deal with them at length. The statutory provision directly requiring examination as also the general object and purpose of the statutory scheme considered by the Supreme Court is, in my opinion, different in material respects from what concerns us. And then, the Supreme Court clearly indicated that the power of the Custodian-General under section 27 was controlled by the scope of the Evacuee Act within which he functions. This observation appears to me to be significant and should not be lost sight of.

I have great respect and esteem for the opinion of my learned brother D. K. Mahajan, J. and of my Lord the Chief Justice, and indeed it is for this reason that I have devoted my deep deliberation and anxious thought once again to the question posed in all earnestness to discover if there is any flaw in the reasoning and conclusion of the

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judgment of Tek Chand, J. in *Bhikan's case* and of Mehar Singh, J. and P. C. Pandit, J. in *Chahat Khan's case,* for the opinion of all of whom, I have equally great esteem and respect. I have done so with greater sense of anxiety because of the strong dissent of my Lord the Chief Justice from the majority view of the two Full Bench decisions mentioned above. I must, however, confess that I am unable to find any cogent and convincing ground for disagreeing with the reasoning and conclusion of Tek Chand, J., Mehar Singh, J. and P. C. Pandit, J., and I say so with the utmost respect for those of my learned brethren, who have taken the contrary view. The approach of the majority view in the Full Bench decisions to the aim, object and purpose of the Act appears to me to conform to the view that once the scheme is sanctioned and the repartition is completely finalised, the statutory object of enacting the Act should be considered to be accomplished and the scheme cannot thereafter remain indefinitely open to variation by action under section 42 of the Act. I dealt with this aspect in *Chahat Khan's case and* I also made a reference to this aspect in *Bhikan's case,* though only from the point of view of section 36. But this aspect cannot be considered to be wholly irrelevant even in construing section 42. I need not repeat what I said on those occasions. I have, however, once again devoted my earnest and anxious thought to this aspect in the light of the arguments addressed at the bar, in the light of the judgment of my learned brother D. K. Mahajan, J. and of the note of concurrence added by the learned Chief Justice. But with the utmost respect, I regret my inability to persuade myself to hold that section 42 on its language and more so on the statutory purpose, object and scheme, was intended by the Legislature to expose indefinitely for all times to come the title of the holders to the new holdings to perpetual or eternal uncertainty. The use of the expression "at any time" in section 42 on which alone this argument is founded, does not seem to me to constitute a sufficiently compelling reason to impute to the Legislature a desire to intend such drastic and far-reaching consequences.

Consolidation of holdings means amalgamation and redistribution of land in an estate or sub-division of an

estate so as to reduce the number of plots in the holding. Notification for the purpose of consolidation under section 14 of the Act relates to an estate or group of estates and any part thereof, and a scheme is prepared under the Act on the basis of the notification. According to the two Full Bench decisions, which are binding on us, once the scheme is enforced and the jurisdiction of the Settlement Officer comes to an end, the scheme cannot be varied or revoked under section 36. The material difference between sections 36 and 42, broadly stated, is that section 42, also takes within its fold "repartition made" and the power is exercisable by the State Government. This power is, however, capable of delegation, and indeed it is the Director and the Additional Director of Holdings who exercise this power. I may incidentally point out that unguided, uncontrolled and arbitrary power of delegation of strictly judicial functions is ordinarily not favoured in a set-up like ours and the Legislature may well be assumed to be aware of this aspect. That section 42 is operative over a somewhat more extensive sphere than section 36 cannot be denied and to that extent, without doubt, the operational arena of this section is wider. But that would seem to be all. After the repartition is complete and consolidation of holdings is finalised in its essentials, the power to interfere with the scheme and the repartition under section 42 would be difficult to support. The point most vehemently pressed by the respondents, however, is that section 42 is essentially a judicial power of revision and, therefore, even in the absence of the expression "at any time" this power would be exercisable *suo motu* at any time at the discretion of the revising authority, there being no period of limitation fixed according to law. The insertion of the expression "at any time" merely makes plain what would otherwise be necessarily implied. This, according to Shri Kaushal, is the most important feature peculiar to section 42, distinguishing it from section 36.

Section 42 does not in terms confer revisional power, but that of course may not be conclusive. Our attention has been drawn to Rule 17, of the E. P. Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, which provides for the Form of application under section 42 and documents required to accompany it, to rule 18 which prescribes period of limitation for such applications,

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and to Rule 19 which prescribes the fee payable thereon in the form of court-fee stamps. These rules read in the background of section 46 which empowers the State to frame them also do not suggest that an application under section 42 is in terms an application for revision of any judicial or quasi-judicial order. The purpose of section 42, however, may appropriately be considered to be to confer on the State Government, a power of overall superintendence or supervision over the administration of the Act which calls for a quasi-judicial approach, if it affects the rights of the holders adversely. The word "revision" having not been defined, the power under section 42 may from one point of view be assumed or considered to be similar to the power of revision as popularly understood. But then, does it mean that this power is, for this reason alone, intended to be exercisable at any time: in other words, without any limitation or control in point of duration ? The *ratio decidendi* of neither of the two Supreme Court decisions seems to me to be wide and general enough to support this view. They dealt with statutes which are quite different in their object, purpose and scheme from the Act which concerns us. Though the language of section 42 of the Act is, broadly speaking, similar to the language of section 79 of the Watan Act, nevertheless, the object, purpose and statutory scheme of the two enactments are as materially different that I do not find it easy to equate section 42 of the Act with section 79 of the Watan Act from the point of view of the outside time limit within which their operation may be presumed to be restricted. It is noteworthy that whereas under section 79 of the Watan Act, the Government may only satisfy itself as to "the legality or propriety of any order passed and may reverse or modify the order", section 42 of the Act is far more comprehensive in its scope inasmuch as under it, the State Government may satisfy itself as to "the legality or propriety of any order passed, scheme prepared or confirmed or repartition made by any officer.....and examine the record of any case pending before or disposed of.....and may pass such order in reference thereto as it thinks fit." Section 42 of the Act is thus not confined only to the consideration of judicial or quasi-judicial order but it has within its fold even the preparation and confirmation of schemes and making of repartitions. In other words, its operational sphere extends even to some of the administrative functions of the subordinate officers under the Act.

The *ratio decidendi* of the Supreme Court decision in *Laxman Purshottam's case,* which was only concerned with the judicial power of revision from the Collector's quasi-judicial orders, may not safely be held to be fully applicable to the consideration of section 42. But, be that as it may, the power of the State Government under section 42 of the Act must, from its very nature and, from the statutory purpose of the Act, for accomplishing which alone this power is conferred, be controlled by the scope of the Act within which the State Government is to be necessarily deemed to be enjoined to function. This limitation seems to me to be inherent in the conferment of the power and is necessarily implied by the object, purpose and scheme of the Act. It may be recalled that consolidation of holdings, according to the statutory scheme, is effected by initiating it with a notification which is confined to an estate or to a group of estates. In pursuance of the notification, the scheme is prepared and later confirmed and published. Thereafter, repartition is carried out in accordance with the scheme. Repartition thus carried out is then given effect to by the preparation of a new record-of-rights in accordance with Chapter VI of the Punjab Land Revenue Act, 1887. When consolidation proceedings are completed and the right-holders are, in pursuance thereof, put in possession of their new holdings, the statute confers on the right-holders same rights in respect of the new holdings as they had in their original holdings; (S. 25 of the Act). This must mean that their title to the new holdings is in no wise inferior to or less perfect than their title in their original holdings. To construe section 42 of the Act as contended by the learned Advocate-General by acceding to this section eternal and perpetual vitality would seem to me, with all respect, to conflict with this provision because it would subject the land-holders' title to the new holdings to a permanent cloud in the form of possible *suo motu* action. It is noteworthy that the scheme is open to variation under section 42 even on ground of propriety which is itself a term of wide, vague and unprecise import: and then this power has been delegated to and is being exercised by the Director and Additional Director, Consolidation of Holdings. Incidentally, I may at this stage point out that the State has in some cases claimed that the scheme can even be held impliedly modified by means of an order under section 42 and for such a submission, support is often sought from the *ratio*

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decidendi of a Full Bench decision of this Court in *Director, Consolidation* v. *Johri Mall,* (9). One such case in which it was so argued is *Hari Singh* v. *State,* C.W. No. 564 of 1965, decided on 11th February, 1966. Now, suppose all the fragmented estates in the State are consolidated under the Act. In that event, to accede to the interpretation of section 42, pressed by the learned Advocate-General would mean that all the schemes confirmed and all the repartitions effected in the State would be open to interference and variation under section 42 for all times to come and this vulnerability would eternally attach to all the new holdings. Such an intention is not easy for me to impute to the Legislature. But then the learned Advocate-General argues that if such is the policy of the law unequivocally expressed in clear language, this Court has no option except to give effect to it. The learned counsel emphatically adds that the alternative interpretation suggested on behalf of the petitioner would render the Government helpless in the case of obvious mistakes committed during consolidation proceedings. He has also contended that in case of exercise of excessive jurisdiction by the State Government, this Court can always interfere on writ side.

It is true that this Court is unconcerned with legislative policy, its only function being to discover the legislative intention and to give effect to it. But in the process of discovering such intention, this Court has a duty to interpret the words used by the Legislature by giving due weight to the context and, the aim, object and purpose sought to be achieved by enacting the statute. In the present case, it has also to be borne in mind that the expression "at any time" has no fixed, rigid and inflexible meaning, and indeed in the two Full Bench decisions, this expression as used in section 36 of the Act has been given limitation. Some of the reasons for limiting the scope of this expression in section 36 apply with equal force in the case of section 42 and no sufficiently cogent and rational ground has been shown for displacing those reasons. It appears to me to be fully competent to this Court to consider the consequences which would flow from adopting the wider or the narrower interpretation of this expression

(9) 1961 P.L.R. 93.

as used in section 42 and then to judicially determine by reasoning and judgment which of the two possible interpretations rationally to adopt for giving effect to the real object and purpose of the Legislature. As discussed above, I am inclined to think that the Legislature did not use the expression "at any time" in section 42 with the object of keeping the land-holders' title to the new holdings in eternal suspense, instability and uncertainty and this expression must be intended to be controlled by some time-factor. I would hesitate to impute to the Legislature an intention to discard, violate or ignore the fundamental principle of not keeping the citizens' title to property in eternal and perpetual suspense, so far as it can be reasonably avoided. The argument that any abuse of exercise of power by the State Government can be set right by this Court is too tenuous to claim acceptance. The wide power providing for its exercise to examine even the propriety of orders, schemes and repartitions, leaves little scope for relief by this Court on writ side which has a very restricted scope. Indeed, in the ultimate analysis, the legal effect of the power of such wide magnitude is virtually to render the consolidation proceedings eternal and interminable, which position, with all respect, I find unacceptable. The expression "at any time", in my opinion, is intended to have some effective and practical limitation in point of duration. The real difficult question, however, is that of discovering the outside time limit. The operational sphere or arena of section 42 is apparently wider than that of section 36, for it includes within its fold repartition proceedings as well. On a consideration of the various aspects, it appears to me that the reasonable time limit for the exercise of power under section 42, according to the statutory scheme, purpose and object, would be up to the time when the consolidation is completed and when it becomes immune from challenge under the Act. This, from the very nature of things, would depend on the facts and circumstances of each case. In this connection, an application under section 42 by the aggrieved parties does not present any problem for that is governed by the period of limitation fixed by the rules. Broadly speaking, however, this aspect would also have to be considered in each case for determining whether or not the consolidation in a given locality has been completed and has passed the stage of challenge. Once that stage is reached, then in my opinion, the expression "at any time" in section 42 cannot be relied

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upon for the *suo motu* power of interference with the orders, schemes and repartitions. As soon as the consolidation is complete in every respect and title in the new holdings has vested in the right-holders and the limitation fixed for appeals and revisions against the various orders etc., has expired, without any appeal or revision having been preferred, or if preferred, they have been finally disposed of, the object and purpose of the Act in respect of the estate or estates concerned must be held to be fully accomplished. The notification with which the consolidation of such estate or estates started, must thereupon be held to have completely exhausted itself on serving out its purpose. Sections 24 and 25 of the Act seem to me to lend support to this view. It is true that section 24 does contemplate changes in the scheme etc., under section 21(2), (3) and (4) and under sections 36 and 42. But these subsections of section 21 are on their plain language controlled in their operation by time-factor and section 36 has been held by two Full Benches of this Court also to have limitation in point of time. As I construe section 42, it seems to me that the Legislature may reasonably be assumed to have intended this section also to have a limitation in its operation in point of time because to give it an eternal life by holding to the contrary would, for all practical purposes, render ineffective, if not reduce it to mere shadow, the security of land holders, title and right assured by the statutory scheme of the Act. The operation of section 42, as envisaged by section 24, may, therefore, reasonably and legitimately be held controlled by Rule 18 which prescribes a period of limitation within which an order under the Act can be impugned under this section. On this view, broadly speaking, section 42 may be invoked even for *suo motu* exercise of power only so long as its vitality is kept alive by virtue of Rule 18. No sooner is its vitality lost by expiry of limitation, than the consolidation is to be deemed to be final and irrevocably complete and thereafter it may not be open to the State or its delegate *suo motu* to interfere under section 42 so as to efface the enforcement of the scheme, to ignore the completion of repartition and consolidation and to revive the notification and reopen all the proceedings, merely because it holds a different view regarding the propriety or even the legality of some measure or order. Such a course would obviously have the extraordinary effect of automatically revitalising the consolidation proceedings by implying that they have

all along been pending right from the date of the original notification with all its attending consequences : an effect not readily supportable, without dismay, in a set-up founded on Rule of law. Speaking with respect, I, for my part, find it difficult to impute to the Legislature an intention to desire such startling consequences, merely on the basis of the use of expression "at any time" in section 42. So far as clerical mistakes are concerned, there is ample provision for their rectification under section 43-A. In regard to other mistakes on the merits, it is sufficient to point out that the officers concerned with the consolidation of holdings must take due and proper care to perform their duties with reasonable diligence and requisite thoroughness, and lapses on their part can provide little justification for exposing the land-holders' title to their new holdings to permanent cloud and uncertainty. Rule of law must not be so lightly sacrificed at the altar of administrative convenience. My answer to the questions referred, therefore, are:—

1. The words "at any time" in section 42 do not confer on the State Government ever-lasting, interminable or indefinite power in point of time and that the outside limit is the completion of the consolidation proceedings which would depend on the facts and circumstances of each case.

2. The State Government can interfere with an order even after the confirmation of the scheme and arrest its enforcement under the Act.

I have arrived at this conclusion after long, deep and patient deliberation because of the difference of opinion amongst my colleagues, for the opinion of all of whom I have great respect and esteem. There would be no order as to costs. The writ petition will now have to be disposed of by the Division Bench in accordance with the aforesaid answers.

B. R. T.