conclusion drawn from its appraisal cannot be re-opened. No error of fact will be corrected by this Court, when exercising its supervisory jurisdiction. It is not permissible to advance the argument, that the evidence adduced before the tribunal was insufficient or inadequate to sustain the impugned finding. This view is amply supported by a long series of decisions and reference may be made to *T. Prem Sagar* v. *M/s. Standard Vacum Oil Company* (3) and *Syed Yakoob* v. *K. S. Radha-Krishnan and others* (4).

Having carefully gone through the impugned orders, I cannot find any error or lacuna which may be deemed to be apparent on the face of the record. After giving due weight to the issues raised, I find the petition devoid of merit and it is, therefore, dismissed. The petitioner has been dismissed from service and I will not burden him with costs.

R.N.M.

LETTERS PATENT APPEAL

Before Shamsher Bahadur and Prem Chand Pandit, JJ.

SADHA SINGH LAMBARDAR AND OTHERS,—*Petitioners.*

versus

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

Letters Patent Appeal No. 166 of 1967

August 16, 1967.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (*L of* 1948)—*S.* 42—*Additional Director—Whether can review his previous order—Re-partition scheme confirmed after appeals and revisions under Ss.* 21 *and* 42 *were decided—Some right-holders complaining to Minister-in-charge against the consolidation proceedings and defects found with regard to valuation—Additional Director then revoking consolidation scheme from the valuation stage—Order of revocation—Whether valid—Constitution of India* (1950)—*Art.* 226—*Jurisdiction of the High Court to interfere with the impugned order—When to be exercised.*

(3) A.I.R. 1965 S.C. 111.
(4) A.I.R. 1964 S.C. 477.

Held, that an Additional Director, acting under section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, has no power of review except on some specified grounds, for example, correction of clerical or arithmetical errors or mistakes arising from accidental slip or omission, etc. If the subsequent order of the Additional Director in any way affects or modifies his previous order under section 42 of the Act confirming the repartition scheme, his subsequent order will be void and without jurisdiction to that extent and will be set aside in a writ petition. It is of no consequence that the subsequent order was passed on another ground which had not been urged before him earlier or at the instance of persons who were not parties to the previous order. If the Additional Director confirms a particular re-partition between two individuals on a certain ground, he cannot subsequently review that order and recall the same, because it was wrong on another ground or mistake pointed out to him in the subsequent petition. It will amount to 'review' all the same in spite of the fact that the latter decision was given on a ground different from the one mentioned in the earlier order. It cannot be that the Additional Director can review his previous order on grounds other than those which were urged before him when he was disposing of the earlier petition under section 42 of the Act. Again the question at whose initiative the order of review was passed is an irrelevant consideration in determining the validity of the order of review. What is to be seen is the result of his subsequent order, i.e., whether by passing the same, he has ***actually reviewed*** his earlier order or not. If he has, his subsequent order is without jurisdiction.

Held, that in a writ petition under Article 226 of the Constitution to set aside an order it is necessary for the petitioner to establish two things—(a) that there was an error of law apparent on the record and (b) that the same had resulted in manifest injustice to him. The proof of only one of these two will not afford a ground to quash the order. If the Additional Director had no jurisdiction to pass the impugned order, it would be treated as a nullity and no effect could be given to it. If, on the other hand, it was a perfectly legal order but certain consequences resulted from its implementation which are serious inequities, that would not afford a ground for quashing it under Article 226 of the Constitution.

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice R. S. Narula, passed in Civil Writ No. 52 *of* 1966, *dated* 11*th April,* 1967.

B. S. DHILLON AND B. S. SHANT, ADVOCATES, for the Petitioners.

MISS SUDARSHAN KAUR, ADVOCATE FOR ADVOCATE-GENERAL, B. S. JAWANDA AND TIRATH SINGH, ADVOCATES, for other Respondents.

ORDER

PANDIT J.—This is an appeal under clause 10 of the Letters Patent, against the decision of a learned Single Judge of this Court, dismissing the writ petition filed by the appellants.

The facts are not in dispute. Consolidation proceedings started in the village of the parties in July, 1957 when notification under section 14(1) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter called the Act), was issued. The scheme was published in November, 1959 and after disposing of a number of objections, it was confirmed on 27th of January, 1960. Thereafter the re-partition was published under section 21(1) of the Act on 4th April, 1960. Some of the right-holders filed objections and later on appeals and revision petitions under section 21(2), (3) and (4) and section 42 of the Act. In the meantime it is said that certain other right-holders made a petition to the Minister-in-charge of the Consolidation Department against the consolidation operations in this village which was consequently visited by the Consolidation Officer, Flying Squad, on 24th May, 1960, under the orders of the Minister-in-charge passed on the said petition. The Consolidation Officer, Flying Squad, pointed out certain defects, chiefly with regard to valuation, in the consolidation proceedings. It was also pointed out that the revision of valuation was essential, as several defects in the valuation had been detected. The Settlement Officer, Consolidation of Holdings, also endorsed the view taken by the Consolidation Officer, Flying Squad and recommended revocation of the scheme from the valuation stage. The case was then taken up by the Additional Director on 2nd of June, 1965 in a general gathering held in the village itself and was remanded by him to the Settlement Officer, Sangrur, with the direction that Shri Mohinder Singh Brar, Consolidation Officer, Malerkotla, be deputed to inspect certain khasra numbers and make a report within 20 days. The case was again taken up by the Additional Director on 10th of November, 1965 in the village where 103 right-holders were present, when the impugned order was passed. The Additional Director was of the view that the valuation in the village was most defective, majority of the right-holders had been clamouring against valuation since the assessment was made and many of them were completely dissatisfied with the consolidation scheme in the village. He, consequently, revoked the consolidation scheme of the village from the valuation stage. Against this order, the appellants filed a writ petition in this Court. The same came up for hearing before Narula, J. Two points were argued by the counsel for the appellants before the learned Judge. The first was that the Additional Director by passing the impugned order, had indirectly

reviewed his previous order passed on the petitions filed earlier by some other right-holders of the village under section 42 of the Act, wherein he had refused to interfere with the re-partition proceedings. If the impugned order was allowed to stand, the result would be that the entire scheme of consolidation would be revoked from the valuation stage, the consolidation proceedings would start *de novo* and the re-partition orders passed in the case of the other right-holders of the village by his subordinate officers and confirmed by him previously, would automatically be set aside. In this manner, he would be reviewing his previous orders which he had no jurisdiction to do under the law. Reliance in this connection was placed on the Supreme Court ruling in *Roop Chand* v. *State of Punjab* (1). The second was that the impugned order had been passed by the Additional Director in violation of the mandatory requirements of the proviso to section 42 of the Act, inasmuch as the contents of the various reports which were the basis of the impugned order, were not shown to the appellants and they were not afforded any opportunity, of meeting the allegations made therein or of refuting the findings contained in those reports. It was also pointed out before the learned Single Judge that the impugned order had resulted in grave injustice. After consolidation in the village, several persons had purchased land, many had constructed their houses on the plots allotted to them in the re-partition, some had built their houses in their fields and were residing in them, a good few had mortgaged their land after re-partition was finally confirmed and a number of them had effected improvements in their lands by installing pumping sets in their respective holdings. If the consolidation operations are started afresh, it was apprehended that all these things would be upset.

With regard to the first point, the learned Single Judge was of the view that none of the previous petitions under section 42 which were decided by the Additional Director, related to any objections against the consolidation scheme. They were against the orders in re-partition pertaining to particular allotments in individual cases. In none of those cases, the matter of valuation was involved, with the result that those petitions were not *in respect of the same matter* about which grievance was made in the present

(1) A.I.R. 1963 S.C. 1503.

petition under section 42 of the Act. That being so, the question of reviewing the previous orders made by the Additional Director did not arise.

As regards the second point, the learned Judge has mentioned in his judgment that the State counsel referred to the original records which showed that substantial objections to certain parts of the reports were taken up in the general gathering of the village, which indicated that the right-holders were aware of the contents of those reports. There was nothing to show that the appellants or any one of them asked for any opportunity to examine or inspect the reports and that any such opportunity was denied to them or that they asked for any opportunity to lead any evidence to rebut the allegations made in the reports and the same had not been allowed. That being so, according to the learned Judge, the principles of natural justice or requirements of the proviso to section 42 of the Act had not been violated.

With regard to the impugned order resulting in serious inequities, the observations of the learned Judge were that although there did appear to be some force in this argument, but it did not follow that the impugned order was liable to be set aside merely on the ground of inconvenience, as there was no legal bar to such consequences flowing from a valid order under section 42 of the Act. Besides, according to the learned Judge, provision had been made in the impugned order for holding enquiries regarding the alleged improvements and a direction had been given that in case of an improvement beyond the ordinary course of cultivation, the particular area, in which the improvement had been made, be given to the persons who had made such improvements and that no benefit of the increased valuation should be given to the original right-holders.

On these findings, the learned Single Judge dismissed the writ petition with the following observations:—

"I have, however, no doubt that in the fresh proceedings from the valuation stage, every possible effort would be made to safeguard the interests of the right-holders, who have made improvements on their respective holdings or constructed on them, and also to recognise the transactions

of mortgage and sale, etc., which would have been perfectly valid, legal and good under section 25 of the Act, if the impugned order had not been passed."

Against this decision, the present appeal has been filed.

Counsel for the appellants has raised the same points which were agitated by him before the learned Single Judge. It is undisputed that if the Additional Director had no jurisdiction to pass the impugned order, then it would be treated as a nullity and no effect could be given to it. If, on the other hand, it was a perfectly legal order, then if certain consequences result from its implementation, which according to the appellants, are 'serious inequities', that would not afford a ground for quashing the same under Article 226 of the Constitution, because it is plain that before setting aside an order, it is necessary that the appellants should establish two things—(a) that there was an error of law apparent on the record, and (b) that the same had resulted in manifest injustice to them. Even if one of these two is not proved, that would not afford a ground to quash the order under Article 226 of the Constitution. It is, therefore, necessary to see whether the impugned order was without jurisdiction or it was a legal one. The question of the impugned order resulting in injustice to the appellants will only arise, if we come to the conclusion that there was an error of law in the said order.

So far as the argument, that the provisions of the proviso to section 42 had not been complied, is concerned, the Additional Director, in his affidavit in reply to the writ petition, had mentioned that the village was visited by two Consolidation Officers (Flying Squad), the Settlement Officer and the Additional Director himself, besides a number of subordinate officers and the matter was thoroughly considered by them in a general gathering held in the village itself *every time*. The learned Single Judge also had come to the conclusion, after being referred to the original records of the case, that the appellants were fully aware of the contents of the various reports on which the impugned order was passed. There is, therefore, no substance in this submission made by the learned counsel for the appellants that his clients, though present in the gatherings, had no knowledge of the contents of the various reports. It was further held by the learned Judge that there was nothing on the record to show that the appellants had asked for any

opportunity to examine or inspect the said reports and that such opportunity was denied to them. It was also not established that the appellants wanted to lead evidence to rebut the allegations made in any of those reports and they had not been allowed to do so. Under these circumstances, it cannot be held that there was any non-compliance of the provisions made in the proviso to section 42 of the Act.

We are then left only with one contention, namely, whether the Additional Director had jurisdiction to pass the impugned order. This would depend on whether it could be said that in making this order, it was in some way reviewing any of his previous orders under section 42 of the Act or not. It is undisputed that an Additional Director has no power of review except on some specified grounds, for example, correction of clerical or arithmetical errors or mistakes arising from accidental slip or omission, etc., which admittedly do not arise in this case. So, the only point to be determined is whether the impugned order amounts to a review of the previous orders passed by the Additional Director under section 42 of the Act, wherein he had either interfered or refused to interfere with the re-partition proceedings.

So far as the supreme court case of *Roop Chand* v. *State of Punjab* (1), is concerned, it lays down—

> "Where the State Government has, under section 41(1) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, delegated its power given under section 21(4) to hear appeals to an officer, an order passed by such officer is an order passed by the State Government itself and not an 'order passed by an officer under this Act' within the meaning of section 42. The order contemplated by section 42 is an order passed by an officer in his own right and not as a delegate. The State Government, therefore, is not entitled under section 42 to call for and examine the record of the case disposed of by the officer acting as delegate. An order passed by the State Government under section 42 in such a case is a nullity and deserves to be set aside under Article 32 of the Constitution of India, a writ petition under which is filed by one whose right to property has

> been affected by an adverse order made by the State Government.".

It means that if the State Government or its delegate has exercised its powers by passing an order under section 21(4) of the Act, that order cannot be revised by the State Government under section 42 of the Act. The above, however, is not the position in the instant case. As a matter of fact, the language employed in section 21(4) of the Act has now been changed. Under this sub-clause, the State Government or its delegate does not figure now and instead the Assistant Director has been introduced.

There is an observation in this Supreme Court decision mentioned in paragraph 13 of the judgment to the effect 'that the power under section 42 (of the Act) cannot be exercised more than once in respect of the same matter'. I have purposely referred to this sentence in the judgment, because the learned Single Judge, while repelling the first contention of the appellants has solely relied on it. It has been observed by him that in none of the previous proceedings under section 42 of the Act, the matter of 'valuation' was involved and that being so, the jurisdiction of the State Government under that provision to consider the question of valuation (which had never been raised earlier) was not barred.

There is also a Full Bench decision of five Judges of this Court in *Deep Chand and another* v. *Additional Director, Consolidation of Holdings, Punjab, Jullundur, and another* (2), where it was held—

> "An Additional Director of Consolidation is not empowered to recall or review his earlier erroneous and unjust order whenever it is discovered that the error was due to his own mistaken view of the merits of the controversy."

Now we have to see whether the impugned order amounts to a review of the previous orders passed by the Additional Director under section 42 of the Act. If it does, then admittedly, he had no jurisdiction to pass the same.

It is common ground that petitions under section 42 of the Act had been previously filed by the right-holders of the village for

(2) I.L.R. (1964) 1 Punj. 665 (F.B.)=1964 P.L.R. 318 (F.B.).

removal of individual grievances relating to particular allotments in the re-partition made under the scheme of consolidation. Some of those petitions were accepted while others were rejected, with the result that the re-partitions made on the basis of the scheme became final between the parties to those petitions. It is also undisputed that if the impugned order stands, the entire scheme will have to be re-framed from the valuation stage, consolidation proceedings in the village would start *de novo* and all the re-partitions made uptil date, including those in respect of which petitions under section 42 had been disposed of by the Additional Director, would be set aside. In other words, the effect of the impugned order would be that the re-partitions already confirmed by the Additional Director would also be thrown over-board, The question, therefore, is whether this would amount to a review of the previous orders made by the Additional Director under section 42 of the Act. The contention of the learned counsel for the appellants was that it did amount to an indirect review.

'Review', according to the Oxford Dictionary, means 'view again; subject to esp. legal revision; the act of looking over something (again), with a view to correction or improvement; to inspect or examine a second time; to re-consider; to submit to examination or revision'. Has the Additional Director revised his previous decision or viewed it again? There is no doubt that in the impugned order, the Additional Director has not made any reference to his previous orders. The effect of this order, however, as already mentioned above, is that his previous orders will automatically be reversed. Thus, the previous orders have been indirectly revised and hence reviewed by him. Both, according to the decision of the Supreme Court in *Roop Chand's case* and of this Court in *Deep Chand's* case, the Additional Director had no jurisdiction to review his previous orders. What the Additional Director could not do directly, he cannot obviously do the same thing indirectly.

It was observed by the learned Single Judge that in the previous proceedings under section 42, the matter of valuation was not involved. I take it that what the learned Judge had in mind was that the Additional Director had in the earlier proceedings never given his decision with regard to the valuation and not held that the same was correct. That being so, if in the present proceedings, he decided that the valuation was incorrect, he had not

in any way reviewed any of his earlier decisions relating to valuation. It is true that in the earlier orders passed by the Additional Director, he had not confirmed or changed the re-partition on the ground that the valuation was correct, but, if I may say so with respect, the bar, in my opinion, is to his reviewing his previous orders and we have not to see as to the grounds on which he was doing so. It cannot be urged that if the Additional Director confirms a particular re-partition between two individuals on a certain ground, he can subsequently review that order and recall the same, because it was wrong on another ground or mistake pointed out to him in the subsequent petition. It will amount to 'review' all the same in spite of the fact that the latter decision was given on a ground different from the one mentioned in the earlier order. It cannot be that the Additional Director can review his previous order on grounds other than those which were urged before him when he was disposing of the earlier petition under section 42 of the Act.

During the course of the arguments, another point was raised by the learned counsel for the respondents in respect of the submission that the impugned order did not amount to review of the earlier orders. He pointed out that the applicants in the present petition under section 42 were different from those in the earlier ones. That may or may not be so. But the question is not at whose instance the Additional Director was reviewing his previous orders. What is to be seen is the result of his subsequent order, i.e., whether by passing the same, he has *actually reviewed* his earlier order or not. If we come to the conclusion that he has, then obviously he had no jurisdiction to do so. The question at whose initiative the order of review was passed is, therefore, in my opinion, an irrelevant consideration in determining this matter. It may also be mentioned that this point was not agitated before the learned Single Judge. It is being taken for the first time in Letters Patent Appeal.

In this view of the matter, I am of the opinion that by passing the impugned order, the Additional Director was reviewing his previous orders made under section 42 of the Act, which he had no jurisdiction to do. This contention of the learned counsel for the appellants, therefore, prevails. The result is that I would accept this appeal, reverse the decision of the learned Single Judge and set aside the impugned order only insofar as it would, in any

way, affect the previous orders passed by the Additional Director under section 42 of the Act, which had become final between the parties to those petitions. In the circumstances of this case, however, I leave the parties to bear their own costs.

SHAMSHER BAHADUR, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

MAGHAR SINGH,—*Petitioner.*

versus

THE PUNJAB STATE AND OTHERS,—*Respondents.*

Civil Writ No. 2349 of 1963

August 25, 1967.

Pepsu Tenancy and Agricultural Lands Act (*XIII of* 1955)—*S.* 32 *NN—Pepsu Tenancy and Agricultural Lands Rules* (1958)—*Rule* 5 *Explanation—Valuation of land—At what date to be calculated—Explanation to Rule* 5—*Whether inconsistent with S.* 32 *NN.*

Held, that according to section 32 NN of the Pepsu Tenancy and Agricultural Lands Act, 1955 the land owned by a person *immediately before* the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956, has to be seen for evaluating it for converting into standard acres. The date of the commencement of the above-mentioned Second Amendment Act, 1956, was 30th of October, 1956 which is, therefore, the relevant date.

Held that according to the Explanation at the end of Rule 5 of the Pepsu Tenancy and Agricultural Lands Rules, 1958, the entries in the latest jamabandi on the relevant date are to be conclusive for the purpose of determining the class of any land. It, therefore, does not seem to be in consonance with the provisions of section 32 NN of the Act which undoubtedly have to take precedence over the rules. Assumed that in a particular case; the latest Jamabandi is of the year 1950-51 and due to one reason or the other, no Jamabandi for the subsequent years was