the help of bamboo. The Sub-Divisional Officer, P.W.D., who had been examined, had also stated that the wall had fallen as a result of structural defects and not by the use of force. Moreover, in the first information report it was mentioned that the witnesses had only heard the noise of the falling of the wall. It is not disputed that the wall had fallen in the middle of the night and normally there was no likelihood of any body having seen the wall falling. Keeping these circumstances in view the learned enquiring Magistrate was right in coming to the conclusion that there was no reasonable possibility of the evidence being accepted even though at the enquiry two daughters of Ganesh Dass had appeared to state that one of them had peeped through the *jharna* and had seen the accused pushing the wall with bamboos and had told about it to the other sister. The learned Magistrate had himself visited the spot and had seen that it was as not possible to see the wall from the *jharna* from where one of the daughters of Ganesh Dass was alleged to have seen the accused with bamboo in his hand. It was, therefore, open to the Magistrate to find that no *prima facie* case for committing the accused for trial had ben made out. Taking this view, I find no merit in this revision petition and dismiss the same.

N. K. S.

LETTERS PATENT APPEAL

Before Mehar Singh, C.J., and R. S. Narula, J.

ADDITIONAL DIRECTOR (I) CONSOLIDATION OF HOLDINGS, PUNJAB, AND ANOTHER,—*Appellants.*

versus

RAGHWANT SINGH AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 370 of 1964.

January 7, 1970.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948))—Section 42—East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949—Rule 18—Constitution of India (1950)—Articles 226/227—Petition for revision under section 42 entertained by the Director beyond the period of limitation prescribed under rule 18—Objection as to limitation not raised before the Director—Such objection—Whether can be raised for the first time in writ petition under Articles 226 and 227.

Held, that though a decision on a questionn of limitation relates to the question of jurisdiction of the Court deciding the question, but an order

based on an erroneous decision of such a question or an order passed without *suo motu* noticing such a bar and deciding it, is not an order without jurisdiction and cannot, therefore, be classed as a nullity so as to be liable to be quashed in *certiorari* proceedings. An order of a tribunal on a question of limitation as indeed on any other legal question, would no doubt be liable to be set aside if it is either based on extraneous considerations or based on no evidence whatever, or contains an error of law apparent on its face. But in that case it would not be liable to be set aside because it is without jurisdiction but because it suffers from an error of law apparent on its face. An order of the Director of Consolidation of Holdings under section 42 of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, is not liable to be set aside by High Court in exercise of its jurisdiction under Articles 226 and 227 of the Constitution merely because in the opinion of the High Court the application on which the order had been passed was presented to the State Government long after the expiry of the period of limitation prescribed under Rule 18 of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949. If the objection had been raised before the Director, the applicant under section 42 of the Act might have applied for condonation of delay, and if the applicant was able to show sufficient cause for not filing the application within time, the delay might have been condoned. In the alternative, the applicant might even have convinced the Director that the applicant had been filed within time. Thus the question of limitation not having been raised before the Director, it is not open to the party to raise the same for the first time in the writ petition. (Para 3)

LETTERS PATENT APPEAL Under Clause X of the Letters Patent from the order dated 7th August, 1964, passed by the Hon'ble Mr. Justice A. N. Grover, in Civil Writ No. 728 of 1962.

B. S. DHILLON, ADVOCATE-GENERAL, PUNJAB, WITH SUKHDEV KHANNA, ADVOCATE, for the appellants.

H. L. SARIN, SENIOR ADVOCATE (SHRI R. C. NAGPAL, ADVOCATE, WITH HIM), for Respondents Nos. 1 and 2 only.

JUDGMENT

NARULA, J.—The only ground on which the learned Single Judge, against whose judgment this appeal has been preferred, allowed the writ petition of Raghwant Singh and Gurdev Singh, respondents and quashed the order of the Additional Director, Consolidation of Holdings, Punjab, was that the petition under section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948) (hereinafter called the Act) which was entertained and allowed by the Additional Director had been filed beyond the period of limitation prescribed by rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949.

It is the common case of both sides that no objection as to, limitation was raised by the writ petitioners or any one else on any of the dates of hearing of the application under section 42 of the Act. While allowing the writ petition, the learned Single Judge had followed the judgment of Mahajan, J., in *Deendar* v. *The State of Punjab* (1). In that case, the question of limitation had been raised before the Additional Director and he had merely waived the time limit in order to redress the grievance of the petitioner. Mr. B. S. Dhillon, who appears for the appellants, submits that he has no quarrel with the proposition of law laid down in *Deendar's case* (1), as subsequently confirmed in various subsequent decisions of this Court, but his only argument in support of the appeal is that it was not open to the writ petitioners to raise the question of limitation for the first time in their petition under Articles 226 and 227 of the Constitution. Mr. Dhillon is no doubt supported in this submission by at least three Division Bench judgments of this Court. *In Bhagat Singh* v. *Additional Director, Consolidation of Holdings, Punjab, Jullundur, and others* (2), it was held by my lord the Chief Justice and Pandit, J. that where the question of the revision under the Act being barred by time is not raised before the Director of Consolidation, the same cannot be raised before the High Court for the first time in proceedings under Article 226 of the Constitution. A similar question was again referred to a Division Bench consisting of Shamsher Bahadur, J., and myself in *Sewa Singh* v. *State of Punjab and others* (3). Shamsher Bahadur, J., who spoke for the Division Bench, held that failure to raise an objection of limitation by a party which could have done so would be a bar to the *certiorari* petition made to quash such an order. The Bench held that except for a patent or inherent defect of jurisdiction, an objection which would oust the jurisdiction of a quasi-judicial tribunal ought to be raised in the first instance before the tribunal itself. The third case in which this point came up for consideration was decided by S. B. Capoor, J., and myself in *Thambu and others* v. *Additional Director, Consolidation of Holdings and others* (4). It was held that where an objection as to an application under section 42 of the Act being barred by time was not raised before the Additional Director, he was not bound to take notice of it *suo motu* and the proceedings held before him were not a nullity. In

(1) C.W. 1458 of 1962 decided on 8th April, 1963.
(2) 1966 P.L.R. 496.
(3) I.L.R. (1967) 2 Pb. & Hr. 89.
(4) 1968 P.L.R. 301.

the course of the judgment of the Division Bench prepared by me, it was observed that a petitioner who does not raise a legal defence to an action before the tribunal where the action is brought should not ordinarily be permitted to raise the said defence for the first time in a writ petition.

(2) Mr. Harbans Lal Sarin, who appears to support the judgment of the learned Single Judge, submits that the decisions of the previous three Division Benches on the point in issue need reconsideration on the ground that on the principles of section 3 of the Limitation Act, it is the duty of the Additional Director to take notice of the question of limitation *suo motu* and that if the Additional Director fails in so doing, his decision lacks inherent jurisdiction and should be quashed *ex debito justitiae* by a writ in the nature of *certiorari*. He has referred to the judgment of their Lordships of the Judicial Committee in *Joy Chand Lal Babu* v. *Kamalaksha Chaudhury and others* (5), wherein it was held that where a subordinate Court by its own erroneous decision on a point of limitation or on a point of *res judicata* invested itself with a jurisdiction which in law it did not possess the High Court had the power to interfere in revision under section 115 of the Code of Civil Procedure. The observations of their Lordships of the Supreme Court in *Pandurang Dhondi Chougule and others* v. *Maruti Hari Jadhav and others*, (6), were then referred to. P. B. Gajendragadkar, C. J., as he then was, speaking for the Court observed in that case as follows:—

> "It is conceivable that points of law may arise in proceedings instituted before subordinate Courts which are related to questions of jurisdiction. It is well-settled that a plea of limitation or a plea of *res judicata* is a plea of law which concerns the jurisdiction of the Court which tries the proceedings. A finding on these pleas in favour of the party raising them would oust the jurisdiction of the Court, and so, an erroneous decision on these pleas can be said to be concerned with questions of jurisdiction which fall within the purview of section 115 of the Code. But an erroneous decision on a question of law reached by the subordinate Court which has no relation to questions of jurisdiction of that Court, cannot be corrected by the High Court under section 115."

(5) A.I.R. 1949 P.C. 239.
(6) A.I.R. 1966 S.C. 153.

(3) On the other hand Mr. Dhillon has placed reliance on the law laid down by the Supreme Court in *Ittyavira Mathai* v. *Varkey Varkey and another* (7). In the course of the judgment of the Supreme Court prepared by Mudholkar, J., it was held as below:—

> "All that the decision relied upon (*Maqbul Ahmed* v. *Onkar Pratap Narain Singh* (8), says is that section 3 of the Limitation Act is pre-emptory and that it is the duty of the Court to take notice of this provision and give effect to it even though the point of limitation is not referred to in the pleadings. The Privy Council has not said that where the Court fails to perform its duty, it acts without jurisdiction. If it fails to do its duty, it merely makes an error of law and an error of law can be corrected only in the manner laid down in the Civil Procedure Code. If the party aggrieved does not take appropriate steps to have that error corrected, the erroneous decree will hold good and will not be open to challenge on the basis of being a nullity."

The legal proposition which emerges from the study of the above-mentioned decisions of the Supreme Court is that though a decision on a question of limitation relates to the question of jurisdiction of the Court deciding the question, but an order based on an erroneous decision of such a question or an order passed without *suo motu* noticing such a bar and deciding it, is not an order without jurisdiction and cannot, therefore, be classed as a nullity so as to be liable to be quashed in *certiorari* proceedings. An order of a tribunal on a question of limitation, as indeed on any other legal question, would no doubt be liable to be set aside if it is either based on extraneous considerations or based on no evidence whatever, or contains an error of law apparent on its face. But in that case it would not be liable to be set aside because it is without jurisdiction, but because it suffers from an error of law apparent on its face. In this view of the matter, it appears to us that the order of Additional Director of Consolidation of Holdings was not liable to be set aside by this Court in exercise of its jurisdiction under Articles 226 and 227 of the Constitution merely because in the opinion of this Court the application on which the order had been passed was presented to the State Government long after the expiry of the period of limitation.

(7) A.I.R. 1964 S.C. 907.
(8) A.I.R. 1935 P.C. 85.

If the objection had been raised before the Additional Director, the applicant under section 42 of the Act might have applied for condonation of delay, and if the applicant was able to show sufficient cause for not filing the application within time, the delay might have been condoned. In the alternative, the applicant might even have convinced the Additional Director that the application had been filed within time. In any event, we are bound by the earlier three Division Bench judgments referred to above, and following the same we must hold that the question of limitation not having been raised before the Additional Director, it was not open to the writ petitioners to raise the same for the first time in the writ petition. The impugned order under section 42 of the Act was quashed by the learned Single Judge solely on the ground of limitation, and as we have held that it is not open to this Court to allow the question of limitation being raised for the first time in *certiorari* proceedings, we have to accept this appeal and to set aside the order of the learned Single Judge.

(4) We accordingly allow this appeal, set aside the order of the learned Single Judge, and dismiss the writ petition of respondents 1 and 2, but leave the parties to bear their own costs.

MEHAR SINGH, C.J.,...I agree.

N. K. S.

CIVIL MISCELLANEOUS

Before B. R. Tuli, J.

MAJOR JAGJIT SINGH DHILLON,—*Petitioner.*

versus

THE UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ No. 1339 of 1969

January 14, 1970.

Army Act (XLVI of 1950)—Sections 18 and 19—Constitution of India (1950)—Article 77—Powers of dismissal of Army Officers under sections 18 and 19—Whether distinct—Article 77—Whether applicable only to action under section 19—Power of the President under section 18—Whether can be delegated.

Held, that the powers of the President under section 18 of the Army Act, 1950, are quite distinct from the powers of the Central Government under section 19. The action under section 19 has to be taken by the Central Government though in the name of the President and it is to such cases that Article 77 of the Constitution applies. This article does not apply