

(1966) 09 P&H CK 0006

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 305 of 1964

Chanan Dass

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-09-1966

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 107 , 115
Constitution of India, 1950 — Article 226 , 227
Delhi and Ajmer Rent Control Act, 1952 — Section 35 , 35(1)
Delhi Rent Control Act, 1958 — Section 54, 57, 57(2)
Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 11(1), 11(3), 12, 22, 22(1)
Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 103, 105, 107, 122, 23
Government of India Act, 1935 — Section 205, 209(1), 7
Limitation Act, 1908 — Article 133 , 182
Provincial Small Cause Courts Act, 1887 — Section 25

Citation : (1967) 1 ILR (P&H) 41

Hon'ble Judges : Mehar Singh, C.J.; Inder Dev Dua, J; D.K. Mahajan, J

Bench : Full Bench

Advocate : Ram Rang and J.S. Chawla, for the Appellant; V.P. Kakria, for the Respondent

Final Decision : Allowed

Judgement

Mehar Singh, C.J.—The question for consideration before this Bench is--

Whether Rule 30, as amended on March 24, 1961 (Published in the Gazette of India, Part II, on April 1, 1961), applies to revisions pending on that date or filed thereafter under Sections 24 and 33 of the Displaced Persons (Compensation and Rehabilitation) Act?

This question arises in two appeals under Clause 10 of the Letters Patent. The first such appeal is Chanan Das v. Union of India L.P.A. No. 305 of 1964 and the second is Jiwan Das v. Union of India L.P.A. No. 1 of 1966. The facts of these cases may first be stated.

2. Appellant Chanan Das is a displaced person and the gross compensation admissible to him under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (Act 44 of 1954), hereinafter to be referred as "the Act", is Rs. 4,279. There is evacuee property No. R. 765 to 769 in Ward No. 7 at Panipat. A part of this property has been in the occupation of this Appellant as an allottee and a part has been similarly in the occupation of Godha Ram Respondent 3, who is also a displaced person with a compensation amount of Rs. 5,749 admissible to him under the provisions of the Act. The assessed value of the whole property is Rs. 4.733. After the compensation claims of this Appellant and Respondent 3 had been determined u/s 7 of the Act, the question arose of the payment of compensation to them, in the wake of which, either laid a claim to the property under Rule 30 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, which rule at the time Was in this form--

30. Payment of compensation where an acquired evacuee property, which is an allottable property, is in occupation of more than one person. If more persons than one holding verified claims are in occupation of any acquired evacuee property which is an allottable-property, the property shall be offered to the person whose gross compensation is nearest to the value of the property and other persons may be allotted such other acquired evacuee property which is allottable as may be available:

Provided that in calculating the gross compensation, the compensation due for agricultural lands, shall not be taken into consideration.

Explanation.--The provisions of the rule shall also apply where some of the persons in occupation of any acquired evacuee property which is an allottable property hold verified claims and some do not hold such claims.

This rule suffered an amendment on April 1, 1961, whereby for the words "nearest to the value of the property" were substituted the words "the highest". The Regional Settlement Commissioner by two separate orders, one of February 26 in favour of Respondent 3 and another of May 28, 1959, in favour of this Appellant, transferred parts of the property to each. Chanan Das Appellant preferred an appeal against the order allotting a part of the property to Respondent 3, which appeal was disposed of by the Assistant Settlement Commissioner by his order of January 12, 1961 and this officer first came to the conclusion that the property was indivisible and then that the compensation admissible to this Appellant was nearer to the value of the property as compared to that of Respondent 3. He, therefore, ordered transfer of the whole of the property to this Appellant. Respondent 3 went in revision u/s 24 of the Act, which was disposed of by the Chief Settlement Commissioner on June 1, 1961. This was obviously after the amendment of Rule 30 on April 1, 1961, which amendment had been made after the Appellate order of the Assistant Settlement Commissioner on January 12, 1961. The Chief Settlement Commissioner interfered in revision saying that during the pendency of appeals or revisions the rights of, the claimants remain inchoate and incomplete till final decision of the

highest authority and are not vested rights and that as there is no saving clause in the amendment which excludes its operation to pending proceedings, therefore, the amendment will apply to pending proceedings. Obviously the Chief Settlement Commissioner treated the revision application of Respondent 3 u/s 24 of the Act as proceedings pending before him. An application by Chanan Das Appellant u/s 33 of the Act was dismissed by the Central Government by its letter of September 27, 1961. Thereupon Chanan Das Appellant filed a petition under Articles 226 and 227 of the Constitution challenging the legal validity of the orders of the Chief Settlement Commissioner and the Central Government respectively under Sections 24 and 33 of the Act. The main ground of challenge in the petition was that the amendment in Rule 30 is not applicable to the proceedings in revision under Sections 24 and 33 of the Act. The learned Single Judge has by his order of March 24, 1964, dismissed the petition of this Appellant following a Division Bench decision on the question, *Mela Ram v. Government of India* Letters Patent Appeal No. 92 of 1963, decided on February 19, 1964. Letters Patent Appeal No. 305 of 1964 is by Chanan Das Appellant against that order of the learned Single Judge.

3. Appellant Jiwan Das is also a displaced person and so was Bhiwani Das, on whose death his compensation claim has passed on to his son, Ram Narain, Respondent 4 and his widow, Tiko Bai, Respondent 5. There is house No. 552-D in Hanuman Street at Karnal. Bhiwani Das was an allottee of a part of that house, the allottee of the other part being Jiwan Das Appellant. Bhiwani Das died on April 13, 1954. His assessed compensation was Rs. 7,748, which then came by inheritance to Respondents 4 and 5. The assessed compensation of Jiwan Das Appellant is Rs. 1,601. On September 24, 1958, the Settlement Officer ordered transfer of the whole of the house in favour of this Appellant on the ground that his compensation was nearer to the assessed value of the property which was Rs. 3,743. There was an appeal by Respondent 4 against that order, which was dismissed by the Settlement Commissioner on June 12, 1959, obviously on the same ground. Then both Respondents 4 and 5 made a revision application u/s 24 of the Act, which was disposed of by the Chief Settlement Commissioner on October 6, 1959. He was of the opinion that the gross compensation of Jiwan Das Appellant came to Rs. 2,544. After the death of Bhiwani Das, half share of the gross compensation of Respondent 4 came to Rs. 3,874. He left out the other half share of Respondent 5. On this reckoning he came to the conclusion that the half share of the gross compensation of Respondent 4 was nearer to the assessed value of the property at Rs. 3,743 as against the gross compensation of this Appellant at Rs. 2,544. The revision of Respondent 4 was accepted and the house was transferred to him. Jiwan Das Appellant made an application u/s 33 of the Act to the Central Government which was disposed of on March 24, 1962, on the basis of the unamended Rule 30. But the Deputy Secretary to the Central Government while disposing of that application considered the compensation payable to Jiwan Das Appellant as Rs. 1,601 and to Bhiwani Das, father of Respondent 4 and husband of Respondent 5, as Rs. 7,748 and then came to the

conclusion that the compensation payable to Jiwan Das Appellant was nearer to the assessed value of the property at Rs. 3,743. So the applications of Jiwan Das Appellant was accepted and the house was transferred to him. Against the order, dated March 24, 1962, of the Central Government, both Respondents 4 and 5 made a petition under Article 226 of the Constitution, which has been accepted by the learned Single Judge by his order of November 5, 1965, following the decision of the Division Bench in Mela Ram's case. The result has been that the order of the Central Government has been set aside, leaving the order, in revision, of the Chief Settlement Commissioner in favour of Respondent 4 whereby the house was transferred to this Respondent without deciding the question of the claim in this respect of his mother Respondent 5. Against the order of the learned Single Judge there is Letters Patent Appeal No. 1 of 1966 by Jiwan Das Appellant.

4. When these two appeals came for hearing before a Division Bench, consisting of my learned brother Mahajan, J. and myself, an earlier decision of a Division Bench, consisting of the former Chief Justice (Falslow, C.J.) and myself, in Harbans Lal v. Union of India, Civil Writ No. 513-D of 1959, decided on December 31, 1963, was cited for a view contrary to that as prevailed with the Division Bench in Mela Ram's case. It is the conflicting decisions in those two cases with regard to the application of Rule 30, as amended on April 1, 1961, that led us to refer the question as above to a larger Bench and this is how that question comes for consideration before this Bench.

5. An application for compensation is made under Rule 4 of the 1955 Rules to a Settlement Officer, whose order on it, such as under Rule 30, is appealable under Sub-section (1) of Section 22 of the Act. Section 23 of the Act also deals with the matter of right of appeal and Sub-section (1) provides, subject to the provisions of Sub-section (2), for an appeal to the Chief Settlement Commissioner from an order of the Settlement Commissioner or the Additional Settlement Commissioner or an Assistant Settlement Commissioner or a managing corporation and Sub-section (2) of this section says that "No appeal shall lie from any order passed in appeal u/s 22". One right of appeal against the order of the Settlement Officer to the Settlement Commissioner is provided in Section 22 and a further or second appeal in the same matter from the order of the Settlement Commissioner is expressly barred by Sub-section (2) of Section 23. An appeal is provided in Section 23 from an order of the Settlement Commissioner and other officers mentioned in the section with similar designation, to the Chief Settlement Commissioner and there is no further provision for a second appeal thereafter. The express statement in these two sections is that there is only one right of appeal provided and a second appeal is designedly and expressly, excluded by the legislature. Instead a power of revision is given to the Chief Settlement Commissioner under Sub-section (1) of Section 24 of the Act to call for the record of any proceeding under the Act in which a Settlement Officer, an Assistant Settlement Officer, an Assistant Settlement Commissioner, an Additional Settlement Commissioner, a Managing Officer, or a managing

corporation has passed an order for the purpose of satisfying himself as to the legality or propriety of any such order and power has been given to him then that he may pass such order in relation thereto as he thinks fit. Only one right of appeal is provided by the statute, excluding designedly and expressly the right of second appeal, but giving a power of revision to the Chief Settlement Commissioner in the terms as stated. According to Sub-section (2) of Section 24 of the Act, the Chief Settlement Commissioner has original power of cancellation of lease or allotment on the specific grounds stated in the sub-section and against such original order of the Chief Settlement Commissioner there is no right of appeal, but a revision is provided to the Central Government in Sub-section (4) of this very section, which says that "Any person aggrieved by any order made under Sub-section (2), may, within thirty days" of the date of the order, make an application for the revision of the order in such form and manner as may be prescribed, to the Central Government and the Central Government may pass such order thereon as it thinks fit." The difference in the phraseology of the power of revision to the Chief Settlement Commissioner under Sub-section (1) and to the Central Government under Sub-section (4) of Section 24 is just this that in the latter case the words "the legality or propriety of any such order" are not to be found, but, while those words are omitted, it is inconceivable that the Central Government can pass a whimsical and arbitrary order in exercise of the power of revision under Sub-section (4) of Section 24 when considering the original order of the Chief Settlement Commissioner made under Sub-section (2) of that section. It is obvious that the Central Government can only consider the correctness or otherwise of that order in the wake of the provisions of law, that is to say in the wake of the relevant provisions of the Act and the rules thereunder. So although it appears that the power of revision of the Central Government under Sub-section (4) is slightly differently worded and may seem to be much wider than the power of revision given to the Chief Settlement Commissioner under Sub-section (1), but in substance there is not and cannot be any radical difference in the nature of the power thus conferred on the Central Government. It is expressly stated both in Sub-section (1) and Sub-section (4) of Section 24 that the power given is power of revision. A power of revision obviously cannot be equated with the power to hear an appeal. If it was really and in substance a larger power with the Central Government under Sub-section (4) than that with the Chief Settlement Commissioner under Sub-section (1), the legislature would have proceeded to provide for a right of appeal from the original order of the Chief Settlement Commissioner under Sub-section (2), but this it has expressly and designedly refrained to do. In reality, therefore, there is not material and substantial difference between the two powers of revision. Then comes the overall power given to the Central Government u/s 33 of the Act which reads--

33. Certain residuary powers of Central Government.--The Central Government may at any time call for the record of any proceeding under this Act and may pass such order in relation thereto as in its opinion the circumstances of the case require and as is not inconsistent with any of the provisions contained in this Act

or the rules made thereunder.

The nature and content of this power given to the Central Government is, to my mind, not in actual substance fundamentally different from the nature and content of the power of revision given to the Chief Settlement Commissioner under Sub-section (1) or the Central Government under Sub-section (4) of Section 24, though, as has been said, the two powers are differently worded. In Sub-section (1) of Section 24 the power of revision of the Chief Settlement Commissioner extends to satisfying himself as to the legality or propriety of an order made by a subordinate authority named in the sub-section with a power to pass such order in relation thereto as he x thinks fit. In Section 33 the power given to the Central Government is to pass an order in relation to proceedings of which record is called by it as in its opinion the circumstances of the case require. This is just a different way of saying that it may pass an order as the propriety of the case requires. Then it is further stated in Section 33 that the Central Government while passing such an order is not to do so, so as it be inconsistent with any of the provisions contained in the Act or the rules thereunder and again this is as much to say as that it may consider or satisfy itself as to the legality of the order on proceedings called by it. If I am right in this approach, the nature and content of the power of revision in Sub-section (1) of Section 24 and the power of the Central Government in Section 33 in substantial substance is akin and if this approach is correct, as I think it is, then the power of revision to the Central Government in Sub-section (4) of Section 24 cannot possibly be read to have larger and greater content than the power u/s 33.

6. The Delhi and Ajmer Rent Control Act, 1952 (Act 38 of 1952), deals with the revisional power of the High Court in Sub-section (1) of Section 35 and that sub-section is--"The High Court may, at any time, call for the record of any case under this Act for the purpose of satisfying itself that a decision made therein is according to law and may pass such order in relation thereto as it thinks fit". While considering the nature and content of this power, Falshaw, J. (as he then was) in *Bimal Parshad Jain v. Shri Niadarmal* ILR (1960) 2 P&H 438; 1960 P.L.R. 664, observed thus--"I am also of the opinion that the ordinary principal that an appeal or a revision like that provided by Section 35 of the Act of 1952, which is something distinct from a revision u/s 115, Code of Civil Procedure, is merely a continuation of the original suit and that the ordinary principal that retrospective changes of law will apply to such appeals and revisions remains applicable". This case came for consideration of a Division Bench, consisting of Dulat and Gosain, JJ., in *Man Mohan Lal v. B.D. Gupta* ILR (1962) 1 P&H 558; 1962 P.L.R. 51 and the learned Judges observed:

The words "all suits and other proceedings" in Sub-section (2) of this section (Section 57 of Delhi Rent Control Act, 1958), are sought to be interpreted in two different ways by the learned Counsel for the parties. Mr. Hardyal Hardy, learned Counsel for the Petitioners, urges that these words also include appeals and

revisions, whereas Mr. R.S. Narula, learned Counsel for the Respondents, contends that they do not. These words have been interpreted by two learned Judges of this Court also in two different ways. In *Shri Krishana Aggarwal v. Satya Dev* 1959 P.L.R. 574, Bishan Narain, J., has held that these words refer only to the original proceedings in the trial Court and do not include appeals or revisions. In *Shri Bimal Parshad Jain v. Shri Niadarmal* ILR (1960) 2 P&H. 438 ; 1960 P.L.R. 664, Falshaw, J., has held that the word "suits" includes appeals and revisions because they are in the nature of rehearing of the suits. After giving our careful consideration to the matter we are definitely of the opinion that the words "suits and other proceedings" used in the operative part of Sub-section (2) of this section mean only the suits and other proceedings at the stage of their trial in the Court of the first instance.

So far as the petitions for revision are concerned, there can be no doubt that they are not included in the word "suits" because they cannot be said to be in the nature of rehearing of the same. It is a well-known proposition of law that no party has a right to insist that a particular order must be revised by the High Court under the powers of revision vested in the said Court and that it is the right of the High Court alone to interfere in revision as and when it thinks fit to do so and as and when the conditions precedent for its interference, as mentioned in the provision of law vesting the powers of revision in this Court, are satisfied,--vide in this connection, *Dinshaw Iron Works v. Maikhan Adamji and Co.* ILR 1943 Bom. 33, *Bishambar Nath v. Achal Singh* ILR 54 All. 891 and AIR 1931 17 (Nagpur) . Falshaw, J., in the case decided by him and referred to above has sought to draw a distinction between the powers of revision under the provisions of Section 115 of the CPC and those under the provisions of Section 35 of the Delhi and Ajmer Rent Control Act, 1952. He has taken the view that as the scope of revision under the Rent Act was much larger than the one under the Code of Civil Procedure, the revision under the Rent Act could be treated more or less on the same footing as a second appeal. With great respect we cannot endorse this view. It may be that the scope of interference by this Court in one case is less and in the other more but the fact remains that none of the two is a right of any of the parties. The provisions under both the enactments give only a power to the High Court to call for the records and to pass such orders as it may deem fit. Unlike second appeal, where this Court is bound to interfere when there is error of law in the judgment of the lower appellate Court, this Court may well refuse to interfere in revision if it feels that substantial justice has been done between the parties. No revision, whether it is under the CPC or any other law, can, in these circumstances be treated as a rehearing of the suit inasmuch as the party itself has no right to have such a rehearing.

The case of *Harbans Lal v. Union of India*, Civil Writ No. 513-D of 1959, decided on December 31, 1963, was also one under Rule 30. Harbans Lal Petitioner had been unsuccessful up to the stage of revision before the Chief Settlement Commissioner u/s 24 of the Act in obtaining the property because his claim was inferior to that of his opponent under Rule 30. After that stage there was an

amendment of Rule 98-A whereunder verified rehabilitation grant came to stand on the same footing as a verified claim for the purposes of Rule 30. If then the verified rehabilitation grant of Harbans Lal Petitioner was taken along with his verified claim, his claim to the property under Rule 30 became superior to that of his opponent. This new amended rule he sought to be applied to the case in an application u/s 33 of the Act and the Central Government declined to do that. It was on that that Harbans Lal filed a writ petition in this Court questioning the legality of the order of the Central Government. His petition having been referred to a larger Bench, it was heard by a Bench consisting of the former Chief Justice (Falshaw, CJ) and myself. This was on December 31, 1963. The learned Chief Justice, with whom I agreed, after reproducing Section 33 of the Act proceeded to observe--

There is, however, no doubt that the powers exercised under this section are of the stature of revisional powers and are intended to be used in much the same way as are the revisional powers conferred on the Chief Settlement Commissioner by Section 24, which enables that officer to call for the record of any proceedings under the Act for the purpose of satisfying himself as to the legality or propriety of any order. In my opinion the answer to the question whether a change in the law or rules is to be given effect to at this stage would apply whether the case is one u/s 24 or u/s 33.

The argument, that a change in the law should be applied at this stage is, based mainly on the decision of the Federal Court in AIR 1941 5 (Federal Court), the principle of which has been reaffirmed by the Supreme Court. This decision is to the effect that the hearing of an appeal under the procedural law of India is in the nature of rehearing and therefore, in moulding the relief to be granted in a case on appeal, the appellate Court is entitled to take into account even facts and events which have come into existence after the decree appealed against and consequently the Appellate Court is competent to take into account legislative changes since the decision, in appeals was given and its powers are not confined only to see whether the lower Court's decision was correct according to the law as it stood at the time when its decision was given.

It seems, however, to be very doubtful whether this principle can be extended to proceedings in revision or cognate proceedings. The view of this Court appears to be that the principle is not to be extended beyond appeals.

A point of this kind arose for consideration in *Man Mohan Lal v. B.D. Gupta*. ILR (1962) 1 P&H 558 ; 1962 P.L.R. 51. The Delhi and Ajmer Rent Control Act of 1952 was repealed and superseded by the Delhi Rent Control Act of 1958, Section 57(2) of which reads--"Notwithstanding such appeal, all suits and other proceedings under the said Act pending at the commencement of this Act, before any court or other authority shall be continued and disposed of in accordance with the provisions of the said Act, as if the said Act had continued; in force and this, Act had not been passed:

Provided that in any such suit or proceeding for the fixation of standard rent or for the eviction of a tenant from any premises to which Section 54 does not apply, the Court or other authority shall have regard to the provisions of this Act.

In *Shri Bimal Parshad Jain v. Shri Niadarmal* ILR (1960) 2 P&H. 438 ; 1960 P.L.R. 664, I had held that the words suits and other proceedings included appeals and revisions which were in the nature of rehearing of the suits. This view was overruled by *Dulat and Gosain, JJ.*, who held that the words "suits and other proceedings" used in the operative part of Sub-section (2) of Section 57 of the Act of 1958 mean only the suits and other proceedings at the stage of their trial in the Court of the first instance and not at the appellate and revisional stage and that the legislature never intended that for the purposes of applying the first proviso to Sub-section (2) of Section 57 of the Act the case should at the appellate stage or even at revisional stage be reopened and remanded for fresh trial with a view to enable the parties to lead evidence on the new points introduced by the Act.

In the case decided by me I had drawn some distinction between the revisional powers of the High Court u/s 115, CPC and the differently worded powers of revision conferred by Section 35 of the Delhi Act of 1952, which allowed the Court to call for the record in order to satisfy itself of the legality or propriety of the order, but the learned Judges held that no revision, whether it is under the CPC or any other law, can be treated as a rehearing of the suit inasmuch as the party in itself has no right to such a rehearing. While with respect, I am not altogether convinced that an appeal under the provisions of the Rent Act would not amount to a rehearing so as to invoke the provisions of the first proviso in Section 57(2) of the Act of 1958, I would not now dissent from the view that this would not apply to a revision and I am, therefore, of the opinion in the present case that the Deputy Secretary exercising the powers of the (Central) Government u/s 33 of the Act rightly declined to give effect to the provisions of the new Rule 98-A which had been introduced after the decision of the Deputy Chief Settlement Commissioner.

Some months after the decision in *Harbans Lal's* case, a Bench consisting of my learned brother Dua, J. and Khanna, J., decided *Mela Ram's* case. In that appeal also the question of the application of the amended Rule 30 came for consideration at the stage of revision u/s 24 of the Act. The case came before the Division Bench on account of conflicting decisions given by the learned Single Judges, in various cases concerning the applicability of the amended Rule 30. Reference to such conflicting decisions is made by my learned brother Dua, J., in the very beginning of his judgment. The learned Judges of the Division Bench held that the amended Rule 30 is retrospective in operation and my learned brother Dua, J., has, as far as I have been able to grasp the matter given broadly two reasons in support of that. Those reasons are (a)--"It is in this connection noteworthy that the general pattern of the scheme of compensation appears to be that compensation to the displaced claimants is to be paid out of the

compensation pool. I am inclined also to recognise the need for certain retrospective laws even though they may tend to impair certain vested or substantive interests, if promotion of cause of justice and of general good demands it, for, the general rule of implication against retrospective operation of statutes impairing vested rights is founded only on grounds of justice and not on any statutory madate of imperative character * * * * * If for carrying out the general pattern of the scheme of payment of compensation by transfer of acquired property from the compensation pool the rules governing the manner, terms and conditions of such transfer are changed as a result of administrative experience on the whole, a retrospective operation of these rules controlling all uncompleted transfers would seem to yield more just and equitable results than mere prospective operation:" and (b)--"The learned Counsel canvassing for the retrospective operation have also contended that the department having adopted the retrospective construction of Rule 30 and having administered the Act on that basis, this Court should not disturb that view because certainty in administering the Compensation Act would promote the cause of justice better it is further contended that this Court has also taken the same view in a large number of cases and to take a different view now would unsettle many settled titles. The argument seems to be based on the doctrine of stare decisis. * * * * *

In the case in hand, the department has for some time concededly been administering Rule 30 treating it to be retrospective in its operation so as to be applicable to all cases awaiting final determination on appeal and revision. Disturbing the view taken by the department at this stage must tend to reopen a large number of transactions which, in my opinion, can scarcely be held to be conducive to the cause of justice. On this ground also the amended rule deserves to be held to be retrospective in its operation". To put it briefly, the three reasons given are: (i) that the amendment is the result of administrative experience which is indicative of its retrospective character, (ii) that the department has administered amended, Rule 30 over some period treating it as retrospective and (iii) that this Court has also taken the same view in, a number of cases. The referring order in the present appeal says that "So far as the applicability of Rule 30, as amended, to pending appeals is concerned, the rule is firmly settled that they will be governed by the rule, as amended" and it is in the wake of this observations in the order of reference that the question for consideration of: this; Bench has been, framed. This matter, therefore, is not before this Bench, in other words this Bench, proceeds, on the basis that Rule 30 is rectrospective and has been applicable to pending appeals on the date it came into force. The question is whether its retrospective operation extends to a revision application u/s 24 and an application u/s 33 of the Act? My learned, brother Dua J., then deals with this aspect of the matter in this manner--"This takes, me to the question as to the extent or degree of the retrospective operation of the amended rule. The point raised has been argued, from four aspects. First: whether the appeal under the Act is a rehearing making it obligatory for the appellate authority to apply the amended, rule enforced during the pendency of the appeal; seconds whether the Chief Settlement Commissioner on revision must apply the amended rule

enforced during the pendency of the revision; third whether a petition to the Central Government u/s 33 is a rehearing attracting applicability of the amended rule enforced during the pendency of that petition and fourth: must this Court on, writ side quash the impugned order by reference to the amended rule enforced during the pendency of the writ petition. Having held that the amended rule is retrospective in its operation by necessary intendment, the question of its applicability to pending appeals presents no difficulty and the appellate authority must, in my opinion, apply the amended rule. The question of revision before the Chief Settlement Commissioner u/s 24 of the Act would have created some difficulty and that of petition u/s 33 would have perhaps caused a still greater obstacle in the way of retrospective operation of the amended rule, but in view of the holding that on the statutory scheme the legislative intention points to the retrospective character of the amended rule so as to control all cases not completely finalised by the department, I am inclined to conclude that the amended rule is attracted up to the stage even of petitions u/s 33. This view is also supported by the several decisions of this Court and by the construction adopted by the department itself. Writ proceedings being clearly outside the sphere of departmental activities would obviously not attract the amended rule." When the learned Judges decided this Mela Ram's case, obviously the two earlier decisions in Man Mohan Lal's and Harbans Lal's cases, both Division Bench decisions, were not placed before them. It is the conflict arising between the decision in those two earlier case on the one hand and the decision in Mela Ram's case on the other, that as led to the reference of the question, already given, to this Bench.

7. In Garikapatti Veeraya Vs. N. Subbiah Choudhury, , their Lord-ships considered the nature and scope of the right of appeal and have formulated, at page 1553, five principles, of which principles (i) and (iv) are material for the present purpose and the same are--(i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but Steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding:" and "(iv) The right of appeal is a vested right and such a right to enter the superior Court accrues to the litigant and exists as on and from the date the list commences and although it may be actually exercised when the adverse judgment is pronounced, such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal." In so far as the first of these two principles is concerned, the intrinsic unity which leads to the conclusion that a legal proceeding is one beginning from the suit up to the second appeal, is confined only to the stage of the appeal and is not carried to the stage of revision and the second makes it clear that those two principles are not confined only to a remedy by way of a suit followed by an appeal and possibly a second appeal, but also apply to any other proceedings initiated by way of an application followed by an appeal and possibly a second appeal. Mela Ram's case (Civil Writ No. 307 of 1962) was first decided by Shamsheer Bahadur,

J., on February 19, 1968 and my learned brother Dua J., in his judgment refers to this observation of Shamsheer Bahadur, J.--"It is well-known that the authorities and Courts exercising appellate and revisional jurisdiction can take account of the change in law and as was held in *Gummalapura Taggina Matada Kotturuswami Vs. Setra Veeravva and Others*, , that an amendment in the statutory rule would apply to a matter which has not been finally settled and is awaiting a decision either before an appellate or a revisional authority"; unless there is some mistake in the citation the report of this case merely shows that their Lordships held that "It is well-settled that an appellate Court is entitled to take into consideration any change in law" and this is based on *Lachmeshwar Prasad Shukul*'s case. There is not one single word about the applicability of this rule to a revisional Court or to a revision application. The only other case referred to by my learned brother Dua, J., in his judgment in *Mela Ram*'s case in this respect is *Asa Nand v. The Central Government* 1963 P.L.R. 214, in which P.C. Pandit, J., while applying Rule 30 to the stage of revision u/s 24 of the Act, observes--"Moreover by this amendment, the pending proceedings have not been excluded from its operation". But this depends upon whether a revision application is a part of one legal proceeding from the beginning up to its stage just as admittedly an appeal is, or, where there is a second appeal, it is so.

8. In earlier part of this judgment has been reproduced Section 35 of the Delhi and Ajmer Rent (Control) Act, 1952 (Act 38 of 1952) and reference to some of the cases of this Court dealing with the power of revision under that section has also been made. However, this section has come for consideration of their Lordships of the Supreme Court in *Hari Shankar v. Rao Girdhari Lal Chowdhury* AIR 1963 and I cannot do better than reproduce these observations of their Lordships which are pertinent to the question under consideration--

The distinction between an appeal and a revision is a real one. A right of appeal carries with it a right of rehearing on law as well as fact, unless the statute conferring the right of appeal limits the rehearing in some way as, we find, has been done in second appeals arising under the Code of Civil Procedure. The power to hear a revision is generally given to a superior Court so that it may, satisfy itself that a particular case has been decided according to law. u/s 115 of the Code of Civil Procedure, the High Court's powers are limited to see whether in a case decided, there has been an assumption of jurisdiction where none existed, or a refusal of jurisdiction where it did, or there has been material irregularity or illegality in the exercise of that jurisdiction. The right there is confined to jurisdiction and jurisdiction alone. In other Acts, the power is not so limited and the High Court is enabled to call for the record of a case to satisfy itself that the decision therein is according to law and to pass such orders in relation to the case, as it thinks fit.

The phrase "according to law" refers to the decision as a whole and is not to be equated to error of law or of fact simpliciter. It refers to the overall decision, which must be according to law which it would not be, if there is a miscarriage of

justice due to a mistake of law. The section is thus framed to confer larger powers than the power to correct error of jurisdiction to which Section 115 is limited. But it must not be overlooked that the section--in spite of its apparent width of language where it confers a power on the High Court to pass such order as the High Court might think fit,--is controlled by the opening words, where it says that the High Court may send for the record of the case to satisfy itself that the decision is "according to law". It stands to reason that if it was considered necessary that there should be a rehearing, a right of appeal would be a more appropriate remedy, but the Act says that there is to be no further appeal.

The section we are dealing with, is almost the same as Section 25 of the Provincial Small Cause Courts Act. That section has been considered by the High Courts in numerous cases and diverse interpretations have been given. The powers that it is said to confer would make a broad spectrum commencing, at one end, with the view that only substantial errors of law can be corrected under it and ending, at the other, with a power of interference a little better than what an appeal gives. It is useless to discuss those cases in some of which the observations were probably made under compulsion of certain unusual facts. It is sufficient to say that we consider that the most accurate exposition of the meaning of such sections is that of Beaumont, C.J., (as he then was) in *Bell and Co. Ltd. Vs. Waman Hemraj*, where the learned Chief Justice, dealing with Section 25 of the Provincial Small Cause Courts Act, observed:

The object of Section 25 is to enable the High Court to see that there has been no miscarriage of justice, that the decision was given according to law. The section does not enumerate the cases in which the Court may interfere in revision, as does Section 115 of the CPC and I certainly do not propose to attempt an exhaustive definition of the circumstances which may justify such interference; but instances which readily occur to the mind are cases in which the Court which made the order had no jurisdiction, or in which the Court has based its decision on evidence which should not have been admitted, or cases where the unsuccessful party has not been given a proper opportunity of being heard, or the burden of proof has been placed on the wrong shoulders. Wherever the Court comes to the conclusion that the unsuccessful party has not had a proper trial according to law, then the Court can interfere. But, in my opinion, the Court ought not to interfere merely because it thinks that possibly the Judge who heard the case may have arrived at a conclusion which the High Court would not have arrived at.

This observation has our full concurrence.

So the view taken by the learned Judges in *Man Mohan Lal's* case finds affirmance by their Lordships in the above case. In spite of the larger amplitude of the power in Section 35 of the Delhi and Ajmer Rent (Control) Act, 1952, as compared to the revisional power of the High Court u/s 115 of the Code of Civil Procedure, their Lordships have now affirmed (a) that the power of revision is not the same as an appeal and (b) that a revision is not a rehearing of the

original proceedings. There is thus not intrinsic unity of proceedings to the stage of revision with the suit or original proceedings as to the stage of appeal as has been observed in Garikapati Veeraya's case. It has already been shown that the opinion of Shamsheer Bahadur, J., that the position in revision is the same as in the case of a pending appeal with regard to the continuation of the original proceedings, is not supported by Gummalapura Taggina Matada Kotturuswami's case and it now becomes clear that opinion of P.C. Pandit, J., in Asa Nand's case, that revision is a pending proceeding, meaning a continuation of the original proceedings, cannot be supported either, for it has been settled by their Lordships that a revision, unlike an appeal, is not a rehearing of the original suit or proceedings. The power of revision with the Chief Settlement Commissioner under Sub-section (1) and the Central Government under Sub-section (4) of Section 24 of the Act and the power with the Central Government u/s 33 of the same is akin to the power of revision u/s 35 of the Delhi and Ajmer Rent (Control) Act, 1952, in its amplitude. So what has been observed by their Lordships in Hari Sharikar's case is equally applicable to the powers of revision under Sub-sections (1) and (4) of Section 24 and the power with the Central Government u/s 33 of the Act.

9. It has already been pointed out that Rule 30 has been held to have retrospective effect and that that question is not before this Bench, for the question under consideration deals only with the stage of revision and the applicability of the amended rule at that stage. The amended Rule 30 being thus retrospective, of course, operates to affect pending proceedings to the stage of appeal. The legislature has taken care to expressly bar a second appeal under the Act, thus treating the powers of revision under Sub-sections (1) and (4) of Section 24 and the powers u/s 33 of the Act as distinct from those in an appeal. If those powers, or any of those powers, were intended to be as wide as powers in an appeal, the legislature would have provided for a second or a further appeal under the Act. It is evident that the powers of revision in Sub-sections (1) and (4) of Section 24 and the powers u/s 33 cannot, therefore, possibly be of the same amplitude as an appeal. So that the retrospective operation of amended Rule 30 is limited up to the stage of appeal, applying to pending proceedings, which covers the stage up to appeal. Of course, in a case which the amended Rule 30 applies to any stage up to the appeal if in such a case there is further remedy sought u/s 24 or Section 33 of the Act, the same amended rule will apply. That, however, is not what the question under consideration deals with. It deals with cases in which appeals were disposed of sometime before the coming into force of the amended Rule 30 and its application is sought at the stage of revision u/s 24 or at the stage of proceedings u/s 33 of the Act.

10. It has been observed by their Lordships in Hari Sharikar's case that while the right of appeal carries with it the right of rehearing, but the power of hearing in revision is generally given to a superior Court so that it may satisfy itself that a particular case has been decided according to law. It obviously means that retrospective legislation which would be operative to the stage of appeal will not

be operative at the stage of revision unless expressly so provided or intention to that effect can be gathered by necessary implication. In *Shah Kantilal Manilal v. Kothari Gopaldas Bapabhai* AIR 1936 Guj. 143, V.B. Raju, J., while dealing with the powers of revision u/s 115 of the Code of Civil Procedure, has held that if after the subordinate Court has passed its order, a law is passed, which affects the right of the parties without having any effect on the powers of the High Court in general, then such a law should not be considered by the High Court in revision. I respectfully agree with the learned Judge and to my mind, the position is exactly the same even in the case of a revision u/s 24 and in the case of an application u/s 33 of the Act. No doubt a law operating retrospectively may be made so as to affect proceedings in revision by express enactment, which is not the case here and further no doubt that same effect may arise by the retrospective operation of a law because of necessary intendment or implication, but for that strong factors must exist so that the Court may be compelled to reach the conclusion in the wake of such factors that the legislature by necessary intendment or implication made the law to have retrospective effect so as to affect proceedings in revision. The question then is are there any such factors in these cases which may lead to such a conclusion unequivocally? The learned Counsel for the Respondents have referred first to Rule 104 of the 1955 Rules, which deals with procedure for revision and it provides that a petition for revision under the Act shall be drawn up and presented in the same manner and within the same period as a memorandum of appeal and shall be accompanied by a copy of the order sought to be revised. Then they refer to Rule 105, which applies the provisions of Order 41 of the CPC to appeals and revisions under the Act. The last reference in this connection is to Rule 122 prescribing fees payable in respect of appeals and applications under the Act, but this rule is not helpful, for one fee is provided for appeals and another and different amount of fee is provided for a revision application u/s 24 of the Act. The contention of the learned Counsel with regard to Rules 104 and 105 is that for all practical purposes an application for revision is treated as a memorandum of appeal, for both are to be drawn up and presented in the same manner and within the same period of limitation. Further, to both Order 41 of the CPC has been applied. Even when these rules are taken together, a revision application u/s 24 of the Act or for that matter an application u/s 33 of the Act, is still not converted into an appeal. Detailed reference has been made to the provisions of the Act showing that the legislature has taken care to exclude second or further appeal and no manner of reading of the rules can go against such express intention. So that these rules even when considered together do not lead to the conclusion that a revision u/s 24 or an application u/s 33 of the Act can be equated with an appeal under the Act. The learned Counsel have then referred to Central Government Notification No. GSR-1566 of December 26, 1960, made u/s 40 of the Act, amending Rule 30 by omitting the proviso to it and it is said that that amendment shall not affect any proceedings for partition of property pending on December 31, 1960. The learned Counsel urge that since there is no negative provision with the amended Rule 30 as on April 1, 1961, so it should be implied

that the rule-making authority intended that the amendment should operate retrospectively. In the first place, this does not necessary follow, for nothing stopped the rule-making authority from saying so expressly in the positive form as it did so in the negative form in the earlier amendment referred to above and secondly, even if this argument is accepted, the retrospective effect of the amended Rule 30 will only be operative to the stage of appeal and it will not justify its extension to a revision u/s 24 or to an application u/s 33 of the Act. It is then contended by the learned Counsel that the purpose and the scheme of the Act and the rules made thereunder indicate that the amended Rule 30 is to apply retrospectively to pending revision applications u/s 24 or applications u/s 33 of the Act, but the scheme and the purpose of the statute and the rules is no more than to provide compensation so as to rehabilitate displaced persons. Whether in payment of compensation, as between two contenders, a property is given to him whose claim is the highest or to him whose claim is nearest to the assessed value of the property, is a matter within that scheme and purpose and the choice of one or the other such manner of payment of compensation is not a circumstance which indicates in the least whether the amended Rule 30 is by necessary intendment or implication to be held to be operative so retrospectively as to affect an application for revision u/s 24 or one u/s 33 of the Act made after the coming into force of the amendment. A fourth factor urged by the learned Counsel in this respect is that there are decisions of this Court taking the view that the amended Rule 30 is applicable to a revision application u/s 24 and an application u/s 33 of the Act, but, as pointed out, in the judgment in Mela Ram's case the decisions are by no means consistent. In fact the decisions are inconsistent and contradictory and that is what led to the reference of Mela Ram's case to a larger Bench and this is how the question now comes before this Bench. Fifthly, it has been said that the decisions of the department also point to the same way, but such decisions, after the amendment, if I understand this matter right, are not helpful because the retrospective operation of a statutory provision or a rule is to be seen on the date on which the same is made and not by anything done subsequently with regard to its reading or interpretation by the department operating or applying such law. If this approach were correct, it would mean that what was not in fact retrospective law, will have to be read to be retrospective because those whose duty it is to apply that law have applied it retrospectively. I do not consider that this is the correct approach to the question. Apart from this, the decisions of the department are by no means one way and consistent. An example of this is available in the appeal of Chanan Das (L.P.A. No. 305 of 1964). In that case the Chief Settlement Commissioner exercising his powers of revision u/s 24 held that the amended rule is not retrospective as applying to the stage of proceedings before him and he proceeded to that view following an earlier decision of the department in a case Bhagwan Das v. Regional Settlement Commissioner Jullundur, decided on April 22 and 24, 1961, from which citation is made in his order of June 1, 1961. So that even earlier to the case of Chanan Dass Appellant, the department was taking the view that the amended rule does not operative retrospectively so as to

affect proceedings at the stage of revision u/s 24 of the Act. Thus neither has there been a consistent opinion in this Court nor in the department that the amended Rule 30 is operative retrospectively so as to affect revisions u/s 24 and applications u/s 33 of the Act. This obviously cannot be a factor which shows the way with regard to the intention of the rule-making authority to make amended Rule 30 so retrospective as to apply to the stage of a revision u/s 24 or an application u/s 33 of the Act. A sixth consideration has been urged by the learned Counsel for the Respondents that administrative experience of the department has led to the amendment and for that reason it should be held to operate retrospectively even to the stage of a revision u/s 24 and an application u/s 33 of the Act. If this consideration is of some assistance in this respect, it was the reason for the amendment. And it is settled that objects and reasons for change in law are not an aid to interpretation though the same may be looked at for the matter of understanding and appreciating the circumstances which brought about the change. However, there is no material in these cases what was the departmental experience and whether any and what departmental experience led to this amendment of Rule 30. So that this factor also does not point to the retrospective operation of the amended Rule 30 either at the stage of revision u/s 24 or at the stage of proceedings in an application u/s 33 of the Act. My learned brother Dua, J., in *Mela Ram's* case appreciated the difficulty of thus extending the retrospective operation of this amended rule, but was inclined to do so in view of some of the factors to which reference has already been made. I find that none of those factors is a pointer to that end, whether those factors are taken collectively or separately. Apart from those factors, nothing else has been urged at the hearing for a conclusion that the amended Rule 30 operates retrospectively to affect a revision application u/s 24 or an application u/s 33 of the Act by necessary intendment or implication. As I see the matter, there are no factors or indications from which any such inference, much less an unequivocal inference, is available that the rule-making authority by necessary intendment or implication wanted the amended rule to be so operative as to affect those proceedings. It is in this approach that, in my opinion, the answer to the question before the Bench should be in the negative. I would, therefore, answer that question in the negative that the amended Rule 30 does not apply to revisions pending on the date of its coming into operation or filed thereafter u/s 24, or to applications u/s 33 of the Act.

Dua, J.

11. I have read the elaborate judgment prepared by my Lord the Chief Justice, but I regret my inability to agree.

12. The circumstances in which the present reference appears to have been made have been broadly stated in that judgment. I would, therefore, straightaway proceed with my opinion on the question referred. The question formulated apparently assumes that Rule 30 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 (hereinafter called the Rules) as

amended in March, 1961, would govern the proceedings pending on appeal u/s 22 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter called the Act). This would seem to me to suggest that the rule in question has at least partial retrospective effect and is not completely prospective. I have said so because at one stage during the course of arguments, a suggestion was seriously thrown that the rules under a statute being the product of delegated legislation can never be made with retrospective effect, unless the authorisation expressly or by necessary intendment so provides, but this suggestion was not persisted in and in my opinion, rightly. Problem of delegation of legislative powers involves constitutional law rather than statutory construction because it appears to me to be only a refinement of the broader doctrine of the separation of powers. In view of the necessities of governmental practice and the constant increase of social and economic regulations in a modern welfare State, it is only delegation of legislative function without the retention of legislative control, in other words, abdication of legislative function, which may be difficult to support constitutionally. It seems to be by now settled on high authority that delegated legislation is a constituent element of legislative power as a whole its purpose being to meet the challenge of the complex socio-economic problems. Where proper guidance is given and effective control retained with the legislative wing, there appears to me to be no constitutional objection to a rule being retrospective in its operation of course, retrospectivity may not legitimately travel backwards beyond the date of the delegation or perhaps the date of the birth of the parent enactment, a point on which it is unnecessary to say anything on the present occasion. Indeed the constitutional validity of the rules made by the delegate was upheld by the Supreme Court as far back as the decision in *T.L. Tandon v. The State of Punjab*, Civil Appeals Nos. 102 and 103 of 1960, decided by a Bench of five Judges on 11th August, 1960. Thus said the Court on that occasion:

Now in the present case the rules had been made with retrospective effect. That does not, in our view, make the rules liable to objection. If the President had the power to make the rules of business, as we have held he had under the Proclamation, it cannot be said that he did not have the power to make the rules operate retrospectively. The power to make the rules must be read beneficially.

The control in the present case has been retained by the Parliament very effectively as would be clear from Sub-section (3) of Section 40 of the Act. I consider it unnecessary to dilate on this point any further.

13. Another argument also sought to be pressed on behalf of the Appellant at one stage during the course of the arguments against the retrospective operation of the amended rule was based on the submission that every claim-holder under the Act in occupation of an acquired evacuee property which is allottable, would be entitled to have such property offered to him in accordance with the rules existing at the time when he applied to be paid his compensation by transfer of that property. This argument was also not allowed to be developed in view of the

form of the question referred.

14. On 24th March, 1961, the pre-existing Rule 30 was amended by means of the following notification:

G.S.R. 460/R. Amdt. LV.--In exercise of the powers conferred by Section 40 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), the Central Government hereby makes the following rules further to amend the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, namely:

(1) These rules may be called the Displaced Persons (Compensation and Rehabilitation) Fourth Amendment Rules, 1961.

(2) In Rule 30 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955--

(i) for the words "nearest to the value of the property", the words "the highest" shall be substituted;

(Amendment No. IV, dated 24th March, 1961)

(ii) the following proviso shall be inserted, namely--

"provided that, in calculating the gross compensation, the compensation due for agricultural lands shall not be taken into consideration."

(Amendment No. LV, dated 24th March, 1961).

(iii) in Explanation 1, the figure "I" and Explanation II, shall be omitted.

(Amendment No. LV, dated 24th March, 1961).

It is unnecessary for me to reproduce Rule 30 because it has already been reproduced in the judgment prepared by my Lord the Chief Justice. Suffice it to point out that the heading of this rule indicates that it deals with the "payment of compensation when an acquired evacuee property, which is allotable, is in occupation of more than one person" and the rule occurs in Chapter V which deals with "Payment of compensation by transfer of acquired evacuee properties". This seems to me apparently to clothe this rule as a whole with the character of a procedural provision touching the manner of calculating gross compensation and of paying compensation by offering to the claim-holder property in his occupation. In view of the fact that the question referred to the Full Bench assumes that the rule is retrospective upto the stage of appeal, the point as to at what stage the claim-holder acquires--if at all--a vested right to insist on getting payment by transfer of acquired evacuee property in his occupation has not been fully developed at the bar--a point on which there does seem to me to exist a certain degree of conflict in decided cases.

15. I now come to the precise problem facing the Court. The principal and perhaps the only ground, on which the unreported decision of the Division Bench in Harbans Lal v. Union of India, C.W. No. 513-D of 1959, decided on 31st

December, 1963, substantially proceeds--if I understand it rightly--is that an appeal u/s 22 of the Act must be treated as a re-hearing so as to make it obligatory on the Appellate Tribunal to enforce Rule 30 as it exists on the date of the decision of the appeal, whereas a revision u/s 24 of the Act cannot in law be treated as such a re-hearing and therefore, the Tribunal disposing of the revision under this section must confine itself to the rule as it existed when the matter was disposed of by the Appellate Authority.

16. Our attention has not been drawn by the learned Counsel at the bar to any definition of the word "appeal" or of the word "revision". I am not minimising the broad popular conception of these two words influenced by the distinction reflected in the Code of Civil Procedure, but when the rights of the parties are to be affected by their precise scope and meaning as given in a particular statute, then it is desirable to go a little deeper into the matter and not proceed on the mere broad and general conception inspired by the schemes of different statutes like the CPC with which the Courts may perhaps happen to deal more frequently. Our procedural law, as in vogue in our Courts, introduced as it was by the British, has, broadly speaking, its roots in the system of procedural law prevailing in England and with suitable modifications necessitated by considerations of local conditions, social and otherwise. In England, an appeal to the Court of Appeal is expressly described in the Rules of the Supreme Court to be by way of re-hearing. In our Code, though we do not use the expression "re-hearing" in the statute, the provisions taken as a whole have been construed to give to our appeals under the Code similar character of re-hearing. Now appeals and revisions are both creatures of statute and unless right of appeal and revision is given by statute, none exists. This position seems to me to be axiomatic and beyond dispute. It is, therefore, always necessary to look to the particular provision of law creating the right of appeal or revision for the purpose of determining the precise scope and effect of such right. This would necessarily call for interpretation of the statutory provision in order to get at the legislative intent. The mere use of the words "appeal" or "revision", without more, if I may say so with respect, would not conclude the matter and nothing said at the bar or in the binding precedents to which my attention has been drawn, seems to me to support, as a matter of law, such conclusive effect of the bare use of these words. In *Raja of Ramnad v. Kamid Rowther* ILR 49 Mad. 335 (P.C.), an appeal was taken to the Privy Council from a decision of the Madras High Court on revision in small cause suits. Lord Dunedin, speaking for the Board, said:

From this judgment an appeal in the form appropriate to such a case from the Munsif's Court, i.e., civil revision petition, was preferred to the High Court of Madras. * * * *.

In *Nagendranath De v. Sureshchandra De* ILR 60 Cal. 1 (P.C.). Sir Dinshah Mulla in his judgment prepared on behalf of the Board spoke thus:

There is no definition of appeal in the Code of Civil Procedure, but their Lordships have no doubt that any application by a party to an appellate Court, asking it to

set aside or revise a decision of a subordinate Court, is an appeal within the ordinary acceptation of the term and that it is no less an appeal because it is irregular or incompetent.

The words "or revised" have been underlined by me (italicised herein). It is noteworthy that the Privy Council in this case was commenting upon the word "appeal" occurring in Article 182, Clause (2), column 3, Indian Limitation Act, 1908. The CPC and the Indian Limitation Act, it may be remembered, are generally considered to be in *pari materia*. The aforesaid observations of the Privy Council were approved and adopted by a Bench of five Judges of the Supreme Court in *Raja Kulkarni v. The State of Bombay* AIR 1954 S.C. 73 and they were later fully quoted with approval by the Supreme Court in *Mela Ram and Sons Vs. The Commissioner of Income Tax Punjab*, . More recently in *Dayawati v. Inderjit* 1966 Current Law J, it was observed as follows by a Bench of three Judges of the Supreme Court:

An appeal has been said to be "the right of entering a superior Court and invoking its aid and interposition to redress the error of the Court below." per Lord Westbury in *Attorney General v. Sillem* 11E.R. 1200 1209. The only difference between a suit and an appeal is this that an appeal "only reviews and corrects the proceedings in a cause already constituted but does not create the cause". As it is intended to interfere in the cause by its means, it is a part of it and in connection with some matters and some statutes it is said that an appeal is a continuation of a suit.

The words "appeal" and "revision" by themselves would thus seem to me to form a somewhat slender basis for the distinction between the statutory rights described as "appeal" and "revision" conferred on a citizen to have an order of a Court or Tribunal set aside or modified by the higher Court or Tribunal: what one has to see and discern is the substance of the right actually created and conferred by looking at and intelligently scrutinising the relevant provisions of law as a whole. It is here that, in my view, the distinction between the chaff and the corn and between real substance and mere form or label assumes importance and deserves to be borne in mind.

17. I may now advert to the meaning, scope and effect of the expression that "an appeal is a re-hearing" and also see if this rule by itself implies or establishes the negative rule that any other remedy in a higher Tribunal for setting aside or modifying an order of an inferior Tribunal for instance on a remedy described as revision, can as a matter of law never amount to a re-hearing. Remembering that the right of appeal as also that of revision is always created by statute, its ambit, extent and character must always be determined by construing the relevant statutory provision. Its scope may be narrow or wide depending on the statute creating it. In AIR 1939 74 (Federal Court) , the Federal Court had occasion to consider the ambit and extent of its power when hearing an appeal from a decision of the Patna High Court. In that case, after the decision of the High Court, the Bihar Legislature had repealed certain provisions of the Bihar

Money Lenders Act, 1938 and had substantially re-enacted them in the Bihar Money Lenders (Regulation of Transaction) Act, 1939, which received the assent of His Excellency the Governor-General on 15th April, 1939 and came into force on 3rd May, 1939. The question arose as to how far the Federal Court was empowered to take the latest amendment into consideration. The relevant sections of the Act in question were held by clear implication to be retrospective in effect and no doubt was entertained that the relevant provisions were retrospective in the sense that they would apply to proceedings pending at the time when the Act came into force. The Federal Court considered the relevant Rules of the Supreme Court in regard to appeals to the Court of Appeal in England and some English decisions, as also a decision of the Privy Council. After noticing them, the Federal Court observed as follows:

The very general terms of sections 205 and 209(1), Constitution Act, justify us in holding that this Court has, in a case like the present, powers no less wide than those exercised in their own spheres by the Court of Appeal in England and by the Judicial Committee.

The Constitution Act referred to in the judgment is the Government of India Act, 1935. In AIR 1941 5 (Federal Court), the Federal Court had once again occasion to consider the question of the applicability of the Bihar Money Lenders Act No. 7 of 1939 in proceedings before it on appeal. Section 7 of the said Act, which was re-enacted after the decision of the High Court, was apparently recognised to be in terms applicable to appeals in suits brought before the commencement of the Act and it was obvious to the Federal Court that the decree in appeal in that controversy yet remained to be passed by it, namely, the Federal Court. The argument, however, urged was that the pendency of the appeal in the Federal Court was of no consequence and that the material date should be considered to be the date of the High Court's decree because the Act passed by the Bihar Legislature could not directly operate to take away the powers of the Federal Court. It was this argument which was mainly dealt with by the Federal Court and in the course of the judgment, reference was made to various decisions of the Indian and English Courts and to the relevant Rules of the Supreme Court relating to appeals to the Court of Appeals in England and also to some provisions of the Code of Civil Procedure. Varadachariar, J., then proceeded to observe as follows:

In view of these provisions, it seems to me to make no difference that it is not explicitly stated in the Indian statutes (as in O.58 Supreme Court Rules) that an appeal is by way of re-hearing. It is also on the theory of an appeal being in the nature of a re-hearing that the Courts in this country have in numerous cases recognised that in moulding the relief to be granted in a case on appeal, the Court of appeal is entitled to take into account even facts and events which have come into existence after the decree appealed against.

A little lower down, in that judgment, the learned Judge noticed want of uniformity in the practice of the Judicial Committee in this respect and after

referring to a decision of the Privy Council in *Ponnamma v. Arumogam* 1905 A.C. 383, proceeded to observe thus:

In the recent case of *Mukherjee v. Ram Rattan*, it would appear from the report of the arguments in *Mukherjee v. Ram Rattan Kuer and Ors.* 63 I.A. 47, that *Quitter v. Mapleson* (23) was referred to and it was observed by Lord Thankerton in the course of the argument that the duty of a Court is to administer the law of the land at the date when the Court is administering it. This adds significance to the fact that their Lordships in that case did not deal with the judgment of the Patna High Court on its merits, but dismissed the appeal on the strength of a provision contained in an enactment which was passed only during the pendency of the appeal before His Majesty in Council. In these circumstances I am of opinion that we should follow the law as laid down in the latter case.

It is obvious that according to this decision, the High Court, the Federal Court and the Privy Council, while considering an appeal from the Indian Courts were entitled to take notice of change in law made during the pendency of appeal if the law were otherwise retrospective enough to govern pending cases. This view does not rest on a proceeding being described as an "appeal" but on the nature of the powers conferred on the Court of Appeal by the relevant statute. And then does it necessarily follow from this view that proceedings by way of revision can never, as a matter of law, be held to be by way of re-hearing so as to enable the Court of revision to take notice of a change in law made retrospectively during the pendency of the revision? I must confess my inability, as at present advised, to persuade myself to uphold the deduction of such a negative rule from the above proposition; and I say so with all respect for the contrary view. Indeed, in a recent decision of the Supreme Court in *Ramesh v. Seth Gendalal Motilal Patni* 1966 CLJ 152, there occurs a passage of some significance in this connection in the judgment of Hidayatullah, J., who spoke on behalf of a Bench of five Judges. That passage is as under:

There is no doubt that the order must possess a finality for that is what the article itself says. It is also true that it has been held that an order is not a final order, unless it finally disposes of the rights of the parties and does not leave them to be determined in the ordinary way or as it is said that if the suit is still a live suit in which the rights of the parties have still to be determined, there is no finality and no appeal lies. Mr. Gupta has brought to our notice all the cases of the judicial committee and this Court in which this test has been applied.

The submissions of Mr. Gupta would have had considerable force if we were considering, the exercise of appellate or revisional jurisdiction of the High Court and the whole of the controversy had not been decided by the High Court. An appeal and a revision is a continuation of the original suit or proceeding and the finality must, therefore, attach to the whole of the matter and the matter should not be a live one after the decision of the High Court if it is to be regarded as final for the purpose of appeal under Article 133.

I have underlined (italicised herein) the words which are worth noting. Does not this passage suggest that a revision according to our procedural law is, like an appeal, also a continuation of the suit or proceeding out of which it arises? In any event, it does seem to me considerably to detract from--if it does not quite cut at the root of--the submission that a revision as such, as a matter of law, cannot from its very nature be held to amount to a re-hearing. In my opinion, it is always a question of construing the given provision of law and determining the ambit, scope and effect of the remedy provided thereby and its mere description or label as "revision" cannot be held to be conclusive.

18. I may now turn to the decisions cited on behalf of the Appellant to see if their ratio decidendi run counter to this view. The decision of the Supreme Court in *Hari Sharikar v. Rao Girdhari Lai Chowdhury* (11), was directly concerned with the scope and effect of Section 35(1) of the Delhi and Ajmer Rent Control Act (38 of 1952) under which a revision was preferred in the High Court and a learned Single Judge of this Court reconsidered on merits the findings of fact arrived at by the Tribunal below. While commenting on the competency of this Court to do so u/s 35 of the Act of 1952, Hidayatullah, J. (speaking for himself, Sinha, C.J. and Shah, J.) observed as follows:

But the question that arises in this appeal is one deeper than a mere appraisal of the evidence. It is whether the High Court in the exercise of its revisional power is entitled to re-assess the value of the evidence and to substitute its own conclusions of fact in place of those reached by the Court below. This question requires an examination of the powers of revision conferred on the High Court by Section 35 of the Act. That section is one of common occurrence in Acts dealing with some special kinds of rights and remedies to enforce them. Section 35 is undoubtedly worded in general terms, but it does not create a right to have the case reheard, as was supposed by the learned Judge, Section 35 follows Section 34, where a right of appeal is conferred, but the second sub-section of that section says that no second appeal shall lie.

The distinction between an appeal and a revision is a real one. A right of appeal carries with it a right of rehearing on law as well as facts, unless the statute conferring the right of appeal limits the rehearing in some way as, we find, has been done in second appeals arising under the Code of Civil Procedure. The power to hear a revision is generally given to a superior Court so that it may satisfy itself that a particular case has been decided according to law. u/s 115 of the Code of Civil Procedure, the High Court's powers are limited to see whether in a case decided, there has been an assumption of jurisdiction where none existed, or a refusal of jurisdiction where it did, or there has been material irregularity or illegality in the exercise of that jurisdiction. The right there is confined to jurisdiction and jurisdiction alone. In other Acts, the power is not so limited and the High Court is enabled to call for the record of a case to satisfy itself that the decision therein is according to law and to pass such orders in relation to the case, as it thinks fit.

The learned Judge had also in an earlier part of his judgment reproduced Section 35(1) which may appropriately be read:

The High Court may, at any time, call for the record of any case under this Act for the purpose of satisfying itself that a decision made therein is according to law and may pass such order in relation thereto as it thinks fit.

This provision was considered by the learned Judge to be similar to Section 25 of the Provincial Small Cause Courts Act. J.L. Kapur, J., one of the four Judges constituting the Bench, though agreeing in the final conclusion allowing the appeal, prepared a separate note of concurrence adding that Section 35(1) of the Delhi Act of 1952 was not as narrow as Section 25 of the Provincial Small Cause Courts Act and that it was identical with the Proviso to Section 75(1) of the Provincial Insolvency Act. This Proviso reads as under:

Provided that the High Court, for the purpose of satisfying itself that an order made in any appeal decided by the District Court was according to law, may call for the case and pass such order with respect thereto as it thinks fit.

It is unnecessary to point out that, for one thing, these provisions do not in terms confer a right on the aggrieved party to approach the revisional authority, though legal infirmities are often brought to the notice of the Court of revision by the parties prejudicially affected and the High Court is always ready and willing to go into them. And then the provisions of Order XLI of the CPC were not made applicable to the revisions. I have read this judgment with great care but I am unable to construe the ratio decidendi of this decision as intending to lay down that merely because a remedy provided to an aggrieved party is described as a revision, it can never, as a matter of law, be held to amount to a rehearing or a pending proceeding in the sense of attracting the applicability of an admitted retrospective law. The decision in the State of Kerala Vs. K.M. Charia Abdullah and Co., , deals with a sales-tax matter from Madras. Reliance on behalf of the Appellant has been placed on some observations in the dissenting judgment of Subba Rao, J., (as he then was) and I consider it appropriate to reproduce the passage in extenso in order to show that read as a whole it does not support the Appellant's construction of the revisional power Which concerns us. Thus observed the learned Judge:

This leads us to the question whether the revisional jurisdiction conferred u/s 12 of the Act enables the authority concerned to make a fresh enquiry after issuing notice to the dealer concerned and determine the question of assessment on merits. The Act provides for appeals in some cases and revisions in other cases. u/s 11(1) of the Act any Assessee objecting to an assessment made on him may, within thirty days from the date on which he was served with the notice of assessment, appeal to such authority as may be prescribed; u/s 11(3), the appellate authority may, after giving the Appellant an opportunity of being heard, pass such orders on the appeal as such authority may think fit. u/s 12(2) of the Act, the revisional authority may suo motu "call for and examine the record of

any order passed or proceeding recorded under the provisions of the Act by an officer subordinate to him for the purpose of satisfying himself as to the legality or propriety of such order, or as to the regularity of such proceeding and may pass such order with respect thereto as he thinks fit". When the Legislature confers a right of appeal in one case and a discretionary remedy of revision in another, it must be deemed to have created two jurisdictions different in scope and content. When it introduced the familiar concepts of appeal and revision, it is also reasonable to assume that the well-known distinction between these two jurisdictions was also accepted by the Legislature. There is an essential distinction between an appeal and a revision. The distinction is based on differences implicit in the said two expressions. An appeal is a continuation of a proceeding; in effect the entire proceedings are before the appellate authority and it has power to review the evidence subject to the statutory limitations prescribed. But in the case of a revision, whatever powers the revisional authority may or may not have, it has not the power to review the evidence unless the statute expressly confers on it that power. That limitation is implicit in the concept of revision. Section 12(2) is no doubt wider in scope than Section 115 of the Code of Civil Procedure. Even so the revisional Authority's jurisdiction is confined to the question of legality or propriety of the order or the regularity of the proceedings. The further limitation on that jurisdiction is that it can only exercise the same on the examination of the record of any order passed or proceedings taken by any authority. The section, therefore, not only limits the scope of its jurisdiction but also defines the material on the basis of which the said jurisdiction is exercised. The general expression that the authority "may pass such order as he thinks fit" must necessarily be confined to the scope of the jurisdiction. The revisional authority, therefore, cannot travel beyond the order passed or proceedings recorded by the inferior authority and make fresh enquiry and pass orders on merits on the basis of the said enquiry. If it is not construed in this manner, the distinction between appeal and revision would be effected.

In this passage it is emphasised that a Court of revision does not ordinarily possess the power to review the evidence unless the statute expressly confers that power, nor does it travel beyond the order passed on the proceedings recorded by the inferior authority. Obviously, these observations too do not counter the view that a revisional authority under the given statute may possess the power of applying the law made during the pendency of the revision--if such retrospective application of the law is manifest. In *Garikapatti Veeraya Vs. N. Subbiah Choudhury*, , the Court was concerned with the effect of change brought about by the Constitution in the valuation of the right of appeal from the Orders and judgments of the High Courts to the Supreme Court and it was in this connection that Das, C.J., summed up five principles at page 553 of the report laying down, inter alia, that right of appeal is a substantive right which vests in the suitor at the time of the institution of the suit and that legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one

legal proceeding. The Supreme Court in that case was not concerned with the position of revisions and was not formulating an exhaustive rule as to what proceedings are connected by an intrinsic unity in order to be regarded as one legal proceeding can it be said that the Court by summarising those five principles was seeking to lay down a clear cut rigid rule of law that legal pursuit of the remedy described as revision can never amount to a rehearing so as to empower the Court of revision to take notice of and apply a law made during the pendency of the revision, even if the law so made is otherwise retrospective enough to apply to pending cases? Speaking with all respect, I must confess my inability to discern any such ratio from this decision. The Supreme Court on this occasion was concerned with an entirely different problem and the discussion does not seem to me to support the Appellant's contention or assist us in solving the problem with which we are faced in the instant case. There are two more decisions of the Supreme Court cited on behalf of the Appellants. They are *Brij Kishore v. Vishwa Mitter* AIR 1965 S.C. 1574 and *Bishan Paul Vs. Mothu Ram*, . The former case construes Section 57(2) of the Delhi Rent Control Act (59 of 1958). It is, however, not understood how the ratio of that decision shows that on revision the Court, as a matter of law, is incompetent to take notice of and apply a retrospective law made during the pendency of the revision. The latter case is concerned with the question as to when title to property in compensation pool under the Act sold by auction-sale passes. This decision is also of little assistance to the Appellant. In none of the foregoing decisions of the Supreme Court have I been able to find a clear-cut principle of law supporting the Appellant's submission that a Court of revision as such is incompetent to apply a law concededly retrospective in its operation made during the pendency of the revision: some of the decisions of the Supreme Court, however, do suggest that a revision is also a form of an appeal and that a revision like an appeal is also continuation of a suit.

19. I may now turn to the decisions of this Court. In *Man Mohan Lal v. B.D. Gupta* I.L.R.(1962) 1 P&H 558 : 1962 P.L.R. 51, a Bench of this Court, while construing Section 57(2) of the Delhi Rent Control Act (59 of 1958), observed that the expression "suits and other proceedings" in that section meant suits and other proceedings only at the stage of their trial in the Court of first instance and not at the appellate or revisional stage. After so holding, the Bench also proceeded to observe as follows:

So far as the petitions for revision are concerned, there can be no doubt that they are not included in the word "suits" because they cannot be said to be in the nature of rehearing the same. It is a well-known proposition of law that no party has a right to insist that a particular order must be revised by the High Court under the powers of revision vested in the said Court and that it is the right of the High Court alone to interfere in revision as and when it thinks fit to do so and as and when the conditions precedent for its interference, as mentioned in the provision of law vesting the powers of revision in this Court, are satisfied,--vide, in this connection, *Dinshaw Iron Works v. Maikhan Adamji* and

Co. ILR 1943 Bom. 33, Bishambhar Nath v. Achal Singh ILR 54 All. 891 and AIR 1931 17 (Nagpur) .

Disagreeing with the view of Falshaw, J., (as he then was) in Shri Bimal Parshad Jain v. Shri Niadarmal ILR (1960) 2 P&H 438 : 1960 P.L.R. 664, the Bench proceeded to observe:

Unlike a second appeal, where this Court is bound to interfere when there is error of law in the judgment of the lower Appellate Court, this Court may well refuse to interfere in revision if it feels that substantial justice has been done between the parties. No revision, whether it is under the CPC or under any other law, can, in these circumstances be treated as a rehearing of the suit inasmuch as the party itself has no right to have such a rehearing.

The Division Bench in this case overruled the decision of the learned Single Judge in the case of Shri Bimal Parshad Jain. In that case, the learned Judge had held a revision u/s 35 of the Delhi and Ajmer Act to be a continuation of the original suit. The Bench in Man Mohan Lal's case was concerned with the scope and effect of the particular expression "suits and other proceedings" occurring in Section 57(2) of the Delhi Act of 1958. On this question, they gave their decision in the following words:

After giving our careful consideration to the matter we are definitely of the opinion that the words "suits and other proceedings" used in the operative part of Sub-section (2) of this section mean only the suits and other proceedings at the stage of their trial in the Court of first instance.

The observations in regard to revisions were made after the decision on the main question which was sufficient to dispose of both the cases before the Bench. It appears, however, that the Bench considered it desirable to decide both the points argued and it was for this reason that the second point was also dealt with. The observations regarding revisions were apparently influenced by the provisions like Section 115, CPC and Section 35 of the Delhi and Ajmer Rent Act. The Bench was conscious of the fact that the word "appeal" has not been defined in the Code or in the Rent Acts with which the Court was concerned in that controversy. The following observations of the Bench are instructive to discern the approach of the Court:

The word "appeal" in the proviso has been used in its generic sense and must be taken to include revisions also. This word has not been denned either in the CPC or in any of the two Rent Acts now in question. According to Webster's Dictionary, the first meaning, in law, of the noun "appeal" is "removal of a cause or a suit from an inferior to a superior Judge or Court for reexamination or review." The explanation of the term in Wharton's Law Lexicon, which is only different in words, is the removal of a cause from an inferior to a superior Court for the purpose of test in the soundness of the decision of the inferior Court.

No further comment is needed on this decision. I may now turn to the

unreported Bench decision in the case of Harbans Lal. In this case, the Division Bench was concerned with the question of the applicability of the new Rule 98-A of the Rules added on 15th July, 1959, during the pendency of the proceedings u/s 33 of the Act. This new rule, broadly speaking, placed the rehabilitation grants under Rules 95 and 96 on the same footing as verified claims of the same value. The residuary powers of the Government u/s 33 were considered to be of revisional nature--though the word "revision" was not employed in this connection--intended to be used in much the same way as the revisional powers conferred on the Chief Settlement Commissioner by Section 24 and the two sections were considered to be somewhat identical for this purpose. The decision in this case proceeded almost exclusively on the consideration that an appeal is a rehearing, but not so a revision. Reference was in this connection made to the decision of the Federal Court in the case of Lachmeshwar Prasad, the principles of which were held to have been reaffirmed by the Supreme Court. The Bench decision of this Court in the case of Man Mohan Lal, which had overruled the Single Bench decision in the case of Bimal Parshad Jain, was cited at the bar and Falshaw, C.J., who wrote the judgment on behalf of the Bench in Harbans Lal's case expressed himself thus:

I am not altogether convinced that an appeal under the provisions of the Rent Act would not amount to a rehearing so as to invoke the provisions of the first proviso in Section 57(2) of the Act of 1958. I would not now dissent from the view that this would not apply to a revision and I am, therefore, of the opinion in the present case that the Deputy Secretary exercising the powers of the Government u/s 33 of the Act, rightly declined to give effect to the provisions of the new Rule 98-A, which had been introduced after the decision of the Deputy Chief Settlement Commissioner.

The judgment in Harbans Lal's case shows that the Bench was under the impression that the view prevailing in this Court was against the applicability of the rule recognised by the Federal Court in the case of Lachmeshwar Prasad, to a stage beyond the stage of appeals. Apparently, the attention of the Bench was not drawn to the decisions of this Court holding that on revision under the Act, amendment in Rule 30 effected during the pendency of the revision could be taken notice of and applied, although one of those decisions had by then been actually reported in the Punjab Law Reporter. Indeed, the judgment of the Bench seems to proceed almost exclusively on the basis of one-sided argument that an appeal is and a revision is not a rehearing and the other aspect was apparently neither fully canvassed at the bar nor otherwise adverted to. As early as 3rd December, 1962, P.C. Pandit, J., had in *Asa Nand v. The Central Government of India* 1963 P.L.R. 214, held that the amended Rule 30 substituting the words "the highest" for the words "nearest to the value of the property" was applicable to cases pending disposal on the date of amendment on revision before the Chief Settlement Commissioner. Arguments both for and against the applicability of the amended rule during the pendency of the revision were considered and the learned Judge upheld its applicability. This judgment it may be pointed out, was

the subject matter of Letters Patent Appeal No. 384 of 1962 to which I will advert later. Shamsheer Bahadur, J., had also occasion to deal with this very point in *Mela Ram v. Government of India* C.W. No. 307 of 1962, decided by him on 19th February, 1963 and this judgment formed the subject matter of Letters Patent Appeal No. 92 of 1962, in which main judgment was written by a Division Bench while hearing more than 10 cases. The learned Judge distinguished his earlier decision in *Dr. Khushi Ram v. Union of India* 1962 P.L.R. 755 and followed his earlier decision, dated 28th October, 1960, in the case *Sajjan Singh v. Chief Settlement Commissioner*, C.W. No. 32 of 1960. Shamsheer Bahadur, J. affirmed the view that on revision u/s 24 of the Act the Chief Settlement Commissioner can rightfully take notice of change in the Rules made during the pendency of the revision. I am not at this stage commenting on the merits of this decision all that I propose to point out is that the attention of the Bench deciding *Harbans Lal's* case does not seem to have been drawn to these decisions and to the view adopted in them by the learned Judges of this Court. It is true that the Supreme Court decision in *Gummalapura Taggina Matada Kotturuswami Vs. Setra Veeravva and Others*, , merely said that amendment of statutory rules would apply to a matter which has not been finally settled and is awaiting decision before an Appellate Court and revisional authority was not expressly mentioned in the judgment. Apparently, the learned Counsel appearing in that case (C.W. No. 307 of 1962) as also in the case of *Sajjan Singh*, which had been disposed of by the learned Judge earlier, did not consider the distinction between an appeal and a revision to be very material from this point of view. In *Sajjan Singh's* case, it may be pointed out, the amendment of Rule 30 made on 20th February, 1958 by substituting the words "gross compensation" for the words "net compensation" fell for consideration and the Settlement Commissioner had acted on the new amended rule. Revision with the Chief Settlement Commissioner and further revision with the Government of India were both dismissed. The argument urged before Shamsheer Bahadur, J., was that the relevant date to consider was 30th April, 1957, when the order of the Settlement Officer was made. Repelling this contention, the learned Judge observed as follows:

Statutory rules are generally not given any retrospective operation, but the amendment would apply to a matter which has not been finally settled and is awaiting a decision either before an appellate or a revisional authority.

Reliance was placed on the Supreme Court decision in the case of *G.T.M. Kotturuswami* from which the following passage was quoted:

It is well-settled that an appellate Court is entitled to take into consideration any change in the law.

I may now turn to the Bench decision in L.P.A. 92 of 1963 from the judgment of Shamsheer Bahadur, J., in *Mela Ram's* case. It is noteworthy that about 11 cases (including two Letters Patent Appeals Nos. 92 of 1963 and 384 of 1962 as also C.W. 330 of 1962, which was later finally disposed of by a Division Bench, C.W. 1492 of 1961, referred by Khanna J., on 31st October, 1963 and C.W. 1194 of

1962 referred by Shamsher Bahadur J., on 7th October, 1963, out of which writ petition the present Letters Patent Appeals arise) were all heard together on the merits by the Bench on that occasion and the counsel in all the cases addressed elaborate arguments pressing their respective points of view on the question of applicability of the amended Rule 30 to revisions under Sections 24 and 33 of the Act and to writ petitions pending on the date of amendment. All the cases had been set down for final disposal before the Bench consisting of Khanna, J. and myself and in each and every case arguments were addressed by the counsel in support of their respective contentions including the counsel in C.W. 1492 of 1961 and C.W. 1194 of 1962. Main stress in the arguments by all the counsel in the cases heard by that Bench was laid on the question whether the amended rule was at all retrospective, the rival contentions chiefly centring round the problem whether the amended rule affected vested rights or merely regulated procedure for the mode of payment of compensation or whether otherwise it was intended to operate retrospectively. But since before us in the instant cases, the question referred is framed on the assumption that the amended rule is retrospective--though this assumption extends the retrospective operation only upto the stage of appeal--we are not called upon to deal with the contention that the amended rule being a provision affecting vested rights has no retrospective operation at all and is completely prospective. The Bench in Mela Ram's case took the view that the scheme of the Act suggests that the amended rule was intended to govern cases in which the payment of compensation was not completely finalised under the statute. It is the correctness of the above view of the Bench which is now questioned before us mainly--if not solely--on the basis of the argument that the retrospective operation of the amended rule can, in law, only extend to the pending cases upto the stage of appeal and pending revisions cannot be governed by it. It may be pointed out that unfortunately the Bench decision in the case of Harbans Lal was not brought to the notice of the Court hearing Mela Ram's case along with the other connected cases. Cases in which this was the only question raised were disposed of finally, but those cases in which it was in fact represented that some other point still remained to be determined were remitted back to Single Benches for decision of the remaining points and for final orders in the cases. The point of retrospective operation was finally decided in all cases heard by the Bench. In C.W. 1194 of 1962, before P.D. Sharma, J., on 3rd February 1965, an adjournment was sought on the plea that the effect of deletion of Rule 30 was awaiting decision in another case. The fresh point was raised before S.B. Kapoor, J., on 5th November, 1965; who passed final orders. In C.W. 1492 of 1961, however, surprisingly enough no other point was argued by the counsel before Khanna, J., on 24th March, 1964.

20. Now it is the reasoning adopted in the case of Harbans Lal, which is the main plank of the argument which" seeks to stop the retrospective operation of the amended rule at the stage of appeal and to prohibit its extension to proceedings in revisions as such. As this point was not pressed with such seriousness before the Bench hearing Mela Ram's case and as my Lord the Chief Justice (Mehar

Singh, C.J.), who was also a party to the decision in the case of Harbans Lal has in his present judgment re-affirmed that view, I have again devoted my most anxious thought, care and attention to the arguments for and against, to which our attention has been drawn and have deliberated, with all the sense of responsibility on the case from all the relevant aspects. But I regret that I have not been able to persuade myself to agree with the view that the operation of the amended rule must stop at the stage of the appeal u/s 22 of the Act. In an earlier part of this judgment, I have noticed some decisions of the Privy Council and of the Supreme Court which do not seem unequivocally to support, as is assumed, the existence of rigid universal rule of law in the abstract that a revision as such unlike an appeal as such must necessarily be outside the operational sphere of an admittedly retrospective law applicable to pending cases. It is, in my view (and I speak with great respect) always for the Court to look to the statute creating the right of revision as also to the nature and scope of the amended law for the purpose of determining whether the revisional authority is in the particular case intended to be competent to apply the amended law and also whether the amended law is intended to govern pending revisions as distinguished from appeals. It is difficult to lay down a general proposition of law that a retrospective legal provision applicable to pending cases including pending appeals must necessarily always be held inapplicable to pending revisions merely because the pending proceeding is described or labelled as a revision. An appeal has been held according to our procedural law to amount to a rehearing mainly because of the provisions contained in the Code of Civil Procedure. I need not refer in detail to the provisions of Order 41 and Section 107 of the Code of Civil Procedure. Turning now to the Act and the Rules framed thereunder, it may be recalled that the rules framed u/s 40 of the Act have to be laid before each House of Parliament during its session for a period of 30 days and the Houses are empowered to make modifications in those Rules. The Rules are accordingly clothed with a greater sanctity than those rules which do not pass through such a controlling process empowering the Parliament to scrutinise them. I need not dilate on the question of the retrospective nature of the amended rule because this Bench is proceeding on the assumption that the amended rule is retrospective, the only dispute being whether the revisional authority under the Act is also competent to apply the amended rule made during the pendency of the revision. Indeed, the amendment taken as a whole does seem to suggest its retrospective character. Chapter XVIII of the Rules deals with the procedure for appeals review and revision. Rule 103 provides procedure for appeals and Rule 104 procedure for revision, it being laid down in the latter rule that a petition for revision under the Act shall be drawn up and presented in the same manner and within the same period as a memorandum of appeal and shall be accompanied by a copy of the order sought to be revised. Sub-rule (2) of this rule provides for a notice to be issued to any person to whom a reasonable opportunity of being heard u/s 24(3) of the Act is to be given. Rule 107 provides for a notice in appeal, revision or review in the same manner without any distinction. Rule 105 is in the following terms:

Provisions of Order XLI of the CPC apply to appeals and revision--Except as otherwise expressly provided in the Act or in these rules, the procedure laid down in Order XLI of the Code of Civil Procedure, 1908 (Act V of 1908) shall, so far as may be applicable, apply to the hearing and disposal of appeals and revisions under the Act.

Order XLI, it may be remembered, contains not only Rule 33, but also rules 23, 25, 27; 28 and 29. Nothing has been brought to our notice at the bar to exclude the applicability of these provisions to the hearing and disposal of revisions under the Act. It is unnecessary to reproduce the rules contained in Order XLI except Rule 33. Suffice it to say that these rules deal inter alia with the power of remand, of taking additional evidence and of passing orders which ought to have been passed. Rule 33 of Order XLI may appropriately be read at this stage:

The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the Respondents or parties, although such Respondents or parties may not have filed any appeal or objection:

Provided that the Appellate Court shall not make any order u/s 35-A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.

Now, if on revision all the powers contained in Order XLI can be exercised, it is somewhat difficult to understand how the power and Competence of the revisional authority can be considered, as a matter of law, to be more restricted than or materially different from, that of an Appellate Authority for the purpose of applying a retrospective law made during the pendency of the proceedings described as a revision. The procedural law governing appeals and revisions under the Act seems to me for all practical purposes to be exactly similar and if an appeal is to be treated as a rehearing for the purpose of attracting the applicability of a retrospective law, I find no logical reason why a revision under the Act should also not be clothed with the same characteristic. I am not unmindful of Section 22(3) which, empowers the Appellate Authority for hearing the appeal to confirm, vary or reverse the order appealed from and pass such order in relation thereto as he deems fit. But then the object of extending Order XLI to appeals and revisions as contemplated by Rule 105 also serves the same purpose. Again, it is said that on revision the revisional authority cannot re-appraise evidence and reconsider the impugned decision on questions of fact. Now does the Court of second appeal possess such powers? And what about the observations of the Federal Court in the case of Shyamakant Lal? For my part, I do not think the absence of power to re-appraise evidence and to interfere with questions of fact can by itself derogate from the competence of the revisional authority to apply a retrospective law otherwise applicable to pending proceedings.

21. It is next argued that there is no right of revision under the Act expressly given to an aggrieved party. Connected with this argument is the contention that the power of revision is discretionary and the revisional authority can never be considered to be bound in law/to interfere even if a serious legal infirmity is made out, unless justice of the cause demands interference. In so far as the right of the aggrieved party to seek relief on revision is concerned, it is a question which pertains to the discovery of legislative intent in providing for this remedy construed in the light of the Act, the Rules and the underlying scheme. Rule 104 read with Rule 103, quite clearly shows that the petition for revision has to be drawn up and presented in the same manner as a memorandum of appeal and has to be presented within the same period of limitation. This would be a futile provision if the power of revision could only be exercised suo motu and an aggrieved party were not entitled as a matter of right to present a revision petition. It must not be for, gotten that the Legislature is ordinarily not presumed to make redundant and unnecessary provisions of law. And then a petition for revision u/s 24 has under Rule 122 to bear a court-fee of the value of Rs. 20 which incidentally is higher by Rs. 5 than the court-fee prescribed for appeals. An application for revision does not seem to me to be a mere miscellaneous application requiring a court-fee of 0-8-0 annas for the purpose of bringing the facts of a case and the legal infirmity or impropriety to the notice of the revisional authority, leaving it to its discretion whether or not to exercise the revisional power. This does not seem to me to be the scheme of the Rules. The Petitioner filing a revision has also a right to be heard and refusal to hear him appears to me to be a serious legal infirmity open to correction even by this Court on writ side. This position was settled by a Full Bench of this Court consisting of G.D. Khosla, C.J. and Grover and P.C. Pandit JJ., as for back as 1961, in Hiralal Kher Vs. Chief Settlement Commissioner and Others, . Now if this is the right of an aggrieved party, then I find it somewhat difficult to sustain the contention that an aggrieved party has no right to prefer a revision and ask for being heard in support of it and also that interference on revision is left to the subjective, arbitrary and private will or opinion of the revisional authority whether or not to exercise its power of revision. The exercise of the power of revision under the Act and the Rules; if I may say so with all respect; is governed and controlled by law and the revisional authority has no more uncontrolled discretion in the final decision than he has in allowing or declining a hearing to the Petitioner. Incidentally Section 24(4) itself expressly confers the right on an aggrieved person to seek revision. It is true that the revisional authority need not interfere if it does not find injustice requiring remedy, but then that pertains to the nature and extent of the legal limitation on the exercise of its power in just the same way as the second Appellate Court is subject to limitation in the matter of interference on second appeal with questions of fact. Now according to our procedural law also a decree need not be reversed or substantially varied on appeal on account of certain infirmities not affecting the merits of the case. The rule regarding interference only in the case of injustice, therefore, does not derogate from the competence of a revisional authority to

apply a retrospective amendment if it is otherwise applicable. If, on an objective consideration of the controversy on revision; a case of serious legal infirmity and failure of justice is made out, I would have no hesitation in holding that the revisional authority has a duty and an obligation to interfere and it cannot on the pretext of the power of revision being discretionary decline interference. If, however, it does so decline, then in a suitable case, that order will be liable to be set right by higher Tribunals and even open to challenge in this Court on the writ side. Indeed, this Court has not infrequently interfered with such infirmities whenever grounds for Interference in the Interest of justice have been made out. This power, I have little hesitation in observing, is coupled with a duty and an obligation to exercise it in a suitable case under the law to promote the objective of the statute in accordance with the Act and the Rules. Its exercise does not depend on the whim, pleasure or private opinion or will of the revisional authority. As a matter of fact, even u/s 33 of the Act, the Central Government has on several occasions interfered with the decisions of the Chief Settlement Commissioner including decisions declining interference on revision if that decision does not conform to the law as laid down in the Act and the Rules and such interference has often been upheld by this Court.

22. Considerable stress has been laid on the contention that Section 23(2) of the Act provides a positive prohibition against a further appeal from an order passed in appeal u/s 22 of the Act. This prohibition is, in my view, inconclusive. The Rules validly made under the Act particularly when they are made under a provision like Section 40 of the Act--become almost a part of the Act. Indeed it is nobody's case that rules 103, 104 and 105 are ultra vires or inconsistent with the Act and therefore, bad. In fact Section 40, widely worded as it is, merely requires the rules to be framed to carry out the purposes of the Act. This would seem to show that by virtue of Section 23(2) of the Act no appeal, technically so called, would lie from an order passed in appeal u/s 22. It cannot have the effect of nullifying the conscious and express provisions contained in the Rules mentioned above extending the scope of the revision. Of course the revision under the Act does remain a revision but its scope is rendered wide enough to empower the revisional authority to apply the amended rule to the pending revisions, if the law is intended to apply to pending proceedings. It may be remembered that it is the Court's duty to harmonise all the provisions of the Act and the Rules. Construing the Act and the Rules harmoniously, Section 23(2), in my view, deserves to be construed in a manner which would not nullify the Rules and this can appropriately be done by holding the word "appeal" to be confined to the remedies actually so described.

23. There is one further aspect which remains to be noticed. It is urged that there is also suo motu power of revision in the Chief Settlement Commissioner and for the exercise of this power, there is no period of limitation prescribed. This, according to the suggestion, would keep the title of the successful party in state of uncertainty for an indefinite period; in other words, in a state of eternal uncertainty and also subject to all subsequent amendments of the rules. I am

fully conscious of this aspect and I quite see the startling consequences flowing from such a result and the suggestion does pose a matter for serious consideration. In my opinion, it is only a pending revision at the time of the amendment which would attract the applicability of the amended rule; it would of course also cover cases in which the decision of an appeal is given before the amendment and the revision is filed within the prescribed period of limitation (or period legally extended) by an aggrieved party because in such a case the filing of the revision can appropriately be assumed to have the effect of retrospectively rendering the proceedings to be a pending proceeding. In the case of suo motu exercise of power, several other varying considerations may arise peculiar to each case. If the suo motu revision is not actually pending at the time of amendment, then prima facie it would not attract the amended rule. The effect of the amended rule on suo motu revisions initiated after the date of the amendment will depend on diverse factors on which I need express no opinion in this case because no arguments at all have been addressed on this precise aspect. I would leave it to be decided if and when such a question arises in a case. Here I may appropriately point out that even amended Rule 30 has since been abrogated with the result that for all practical purposes, discussion on such a point at this stage would perhaps be purely academic. Incidentally, it may be stated that although I for my part consider that eternal uncertainty in a citizen's title to property is not favoured by Courts and is not lightly to be inferred from a legislative enactment which is capable of an alternative construction militating against such a situation, a Full Bench of this Court has by majority found nothing unusual about such uncertainty in the case of Section 42 of the Consolidation of Holdings Act in *Narsingh v. The State*, C.W. No. 2200 of 1963, decided on 17th March, 1966.

24. In the case of *Mela Ram*, the Bench was to some extent influenced by the assertion made at the bar on that occasion that the department had generally been extending to this amended rule retrospective operation upto the stage of revision. It was suggested that previously in some cases, the department did construe the amended rule prospectively but later the practice changed and retrospective operation began to be favoured. This was not controverted and this later practice was considered an additional reason to treat the rule to be retrospective in its operation. It is now asserted that the practice of the department in this respect has not been uniform. Whether or not it is so, is, in my opinion, immaterial because the question referred to us assumes the amended rule to be retrospective upto the stage of appeal and the Division Bench in *Harbans Lal's* case held it to be so retrospective; the only controversy now requiring solution is whether the retrospective operation extends to revisions or only extends upto the stage of the appeal. In cases falling under Sub-sections (2) and (4) of Section 24, where no appeal is provided, it would have to be confined to the original proceedings pending when the amendment was made. Unfortunately, arguments before us were not specifically directed to the cases falling under these sub-sections apparently because we are not concerned with

these provisions in the cases before us, but the fact remains that the various considerations arising in the cases covered by Section 24(2) and (4) were not fully canvassed before us. The question as to what is the nature of the proceedings under Sub-section (2) which is apparently a power conferred without prejudice to the generality of the power conferred on the Chief Settlement Commissioner under Sub-section (1) is by itself not quite so simple as is likely to be assumed.

25. The Respondent's counsel has also placed reliance on a Bench decision of this Court in *Gurbux Sinvh v. The Union of India*, C.W. No. 330 of 1962. This writ petition was referred to a larger Bench by Grover, J., on 6th November, 1963 on the ground that the question of the retrospective nature of Rule 30 as amended had been raised in Letters Patent Appeal No. 384 of 1962 and had been referred to a larger Bench by Gurdev Singh, J., in C.W. No. 1586 of 1961. C.W. No. 330 of 1962 was accordingly also directed to be placed before the same Bench for disposing of the aforesaid matters. The Bench heard this writ petition along with other connected matters and after finally deciding the question of retrospective nature of Rule 30 remitted this case along with some other cases back to the Single Bench for final disposal. This was done on 19th February, 1964. When the matter came up before Grover, J., in pursuance of the decision of the Division Bench disposing of Letters Patent Appeal No. 92 of 1963 and Letters Patent Appeal No. 384 of 1962 as also other writ petitions including C.W. No. 330 of 1962, Mr. Prem Nath Aggarwal, counsel for Respondent No. 5, in that writ petition, stated that Shri Gandhi had before the Division Bench given up the second point. This was controverted by Mr. Gandhi. The learned Judge faced with this peculiar situation directed that the writ petition be fixed before me or before Khanna J., because we would be in a better position to know the true situation since there was nothing in the judgment on the abandonment of the other point. On 6th November, 1964, when the matter came up before me sitting in Single Bench, I felt that the other point which had also been referred to a larger Bench by Grover, J., had not been decided by us by oversight because the counsel for the parties in that case did not draw our attention to this part of the referring order of Grover, J., I thereupon directed that the second question referred by Grover, J., be also decided by a Division Bench. Apparently, in pursuance of this order, the matter was placed before Dulat and Grover, JJ. That Bench, according to the Respondents, followed the decision recorded on the earlier occasion by Khanna, J. and myself when all the connected cases were heard together. I do not think the decision by Dulat and Grover, JJ., gives any additional reasons for upholding the retrospective operation of the amended rule to the pending revisions indeed that Bench merely seems to recognise that the earlier Bench decision in the same proceeding was binding on the parties in this Court. It is true that the Bench decision by Khanna, J. and myself on the present question of retrospectivity which was given in all the cases heard by us may well be considered to be binding on the parties thereto, but that is a matter with which this Full Bench is not concerned; we are only to consider the question referred as

formulated.

26. This leaves the question of the applicability of the amended rule to the proceedings pending on the date of its enforcement u/s 33 of the Act. I may appropriately read this section which falls under Chapter V headed "Miscellaneous".

33. Certain residuary powers of Central Government.--The Central Government may at any time call for the record of any proceeding under this Act and may pass such order in relation thereto as in its opinion the circumstances of the case require and as is not inconsistent with any of the provisions contained in this Act or the rules made thereunder.

This section is in terms truly designed to reserve to the Central Government certain residuary powers for calling the record of any proceeding under this Act and passing such orders in relation thereto as, in its opinion, the circumstances of the case require and as are not inconsistent with the provisions of the Act or of the Rules made thereunder. In way, it is wider than Section 24 inasmuch as it is not restricted the consideration of the legality or propriety of an order passed by subordinate officers. Indeed, it is empowered to pass such order in relation to any proceeding under this Act as in its opinion the circumstances require, the only limitation being that its order must not be inconsistent with the Act or the Rules. For my part, I do feel that it is not easy on the bare language of Sections 24 and 33 to treat these two powers to be completely identical in all respects; and when one takes into account the Rules, the distinction between them would become apparent. The Rules expressly make applicable to the hearing of revisions under the Act the procedure laid down in Order XLI of the CPC which in terms would not seem to apply to the proceedings u/s 33. May be it was considered unnecessary on account of the wider content and scope of Section 33 which is not confined to the consideration of any order made by a subordinate officer. Rules validly made under a statute are, it may be remembered, broadly a part of the statute and the Courts, are riot expected to ignore them when considering the statutory scheme. The validity and vires of the rules, I may point out, have not been seriously questioned before us. The Bench, in Mela Ram's case was, however, inclined to favour the view of the amended rule being attached to proceedings pending u/s 33 broadly on the ground that the scheme of the Act suggests that a cause relating to payment of compensation by transfer of evacuee allotable property not finally disposed of by the departmental authorities under the Act was intended to be governed by the amended rule. It may be recalled that in Mela Ram's case the controversy in the arguments mainly rested on the question whether the amendment affected a vested right, the broad argument being that as soon as an offer is made in terms of Rule 30, a vested right is created in favour of the offeree. But this view was rejected and preference was given to the view that the law maker intended to apply Rule 30 to all cases in which the controversy of paying compensation by transfer of allotable evacuee property was pending and not finally settled by the highest

departmental authority. It is significant that in the present case retrospectivity is assumed from which it follows that the rule does not deal with vested rights as was strongly argued in Mela Ram's case. The question is does the amended rule apply to proceedings pending u/s 33? The legal position, as enunciated by Lord Denning, is that in the ordinary way a Court of Appeal cannot take into account a statute passed in the interval since the case was decided in the Court of first instance because the rights of the litigants are generally to be determined according to law in force at the date of the earlier proceedings. It is different only when the statute is retrospective either because it contains clear words to that effect or because it deals with matters of procedure only, for then, the law-giver has shown an intention that the statute should operate on pending proceedings and the Court of Appeal is entitled to give effect to this retrospective intent as well as a Court of first instance. *Attorney General v. Vernazza* L.R. 1960 A.C. 965 at pg.978. The position in India is not different: See *Dayawati v. Inderjit* 1966 CLJ 477, at p. 1426. I have already discussed that the power of revision u/s 24 of the Act in this respect also carries with it the power of applying a retrospective law applicable to pending proceedings.

27. Now power u/s 33 is not described as a power of revision but in the case of Harbans Lal, as well as in the opinion of My Lord the Chief Justice in the present case, this power is supposed to be similar to the power of revision conferred by Section 24. In Harbans Lals' case, Falshaw, C.J., speaking for the Bench after reproducing Section 23 said: "There is, however, no doubt that the powers exercised under this section are of the nature of revisional powers and are intended to be used in much the same way as are the revisional powers conferred on the Chief Settlement Commissioner by Section 24, which enables that officer to call for the record of any proceedings under the Act for the purpose of satisfying himself as to the legality or propriety of any order." My lord the Chief Justice has in his judgment in the present case also taken the view that that the nature and content of the power u/s 33 given to the Central Government "is not in actual substance fundamentally different" from the nature and content of the power of revision given to the Chief Settlement Commissioner under Sub-section (1) or the Central Government under Sub-section (4) of Section 24. The two powers, though differently worded, according to him, "the nature and content of the power of revision under Sub-section (1) of Section 24 and the power of the Central Government u/s 33 are in substantial substance akin. The legislative scheme, however, does seem to me to contemplate some distinction between these two sections; nevertheless, on considering the overall object and scheme of the Act and the object of amending Rule 30, guided presumably as it is by the experience gained by the Central Government in administering this Act, it appears to me that the amended rule is in all probability intended to apply to all cases involving consideration of the question of paying compensation by transferring acquired allottable evacuee property pending before the department till they are finalised and this would also include proceedings actually pending with the Central Government u/s 33 of the Act. To say that Section 33 merely

reserves a discretionary power to the Central Government for its own satisfaction uninfluenced by the grievances of the parties affected, is, in my view...speaking with due respect to ignore the general practice prevailing in the department for invoking and exercising this effective power vested in the Central Government of ultimate overall finality of decisions. In practice, we have come across a number of cases in this Court "where the representations by the aggrieved party u/s 33 have been freely entertained and disposed of as if it is a matter of Tight conferred on him by the statute and as if it is a legal obligation imposed on the Central Government to interfere in order to carry out the object and purpose of the Act and the Rules. The acquired evacuee property vests in the Central Government u/s 12 of the Act and if the delegated power of transferring it in lieu of compensation is subject to the final decision of the Central Government, then I do not see any serious legal objection to the use of this power, unhampered by the broad and general conception of difference between an appeal and a revision as suggested in some of the decided cases noted above. As a matter of fact, to me, reservation of this important power in the Central Government on the question of transfer of its property in lieu of compensation is highly significant and is intended to be exercised in all cases where the question of payment of compensation by transfer of its property has not been finally disposed of under the Act and the Rules. The arguments at the bar have apparently not been concentrated on any marked distinction between the proceedings under these two sections and indeed if Section 24 and 33 are construed, as assumed, to connote the same content of power, then there is little reason why proceedings pending u/s 33 should also not be governed by the amended rule.

28. A suggestion has been thrown in regard to Section 33, just as it was done in the case of Section 24, that the Central Government may choose to interfere with an order made years earlier on the basis of the amended rule. This, according to the suggestion, would lead to some startling consequences notwithstanding the fact that Section 33 postulates a quasi-judicial power. In order to avoid such an undesirable result, it is suggested that proceedings pending u/s 33 should not be considered to be controlled and governed by the amended rule. This aspect had indeed not been fully developed and I do not consider it necessary on the present occasion to go deep into the effect of a hypothetical case in which the Central Government may decide to interfere, even though proceedings were not pending or deemed to be pending at the time of amendment of the Rule. A case of that type would involve consideration of various facts and aspects which have not been properly even touched at the bar. I need only say that pending proceedings u/s 33 would seem to me to be governed by the amended rule, for these proceedings like those u/s 24 and proceedings by way of appeal do seem to me to be but steps in a series of proceedings under the Act, all connected by an intrinsic unity and are to be regarded as one legal proceeding. Such, in my view, is the statutory scheme for the purpose of the cases in hand.

29. Before concluding, I may point out that Rule 30 was omitted from the Rules

as far back as 3rd August, 1963 and the question, as observed earlier, would, for all practical purposes, now be almost academic, except perhaps for a few cases on the writ side which may be pending in this Court.

30. As a result of the foregoing discussion I would answer the question referred in the affirmative. The cases would now go back to the Division Bench for final disposal in accordance with law and in the light of the observations made above.

Mahajan, J.

31. I have gone through the judgments prepared by my Lord, the Chief Justice and by Dua, J., with utmost respect to Dua, J., I am unable to agree with him. I entirely agree with the judgment prepared by my Lord, the Chief Justice.

ORDER OF THE FULL BENCH

32. In view of the majority opinion, the answer to the question is in the negative that the amended Rule 30 does not apply to revisions, pending on the date of its coming into operation or filed thereafter u/s 24 of Act 44 of 1954, or to applications u/s 33 of the same.