

(1968) 09 AHC CK 0004
In the Allahabad High Court
Case No : Special Appeal No. 390 of 1967

Gauri Shanker

APPELLANT

Vs

Sidhnath Tewari and Another

RESPONDENT

Date of Decision : 25-09-1968

Acts Referred:

Uttar Pradesh Consolidation of Holdings (Amendment) Act, 1963 — Section 47

Citation : (1968) 38 AWR 770

Hon'ble Judges : Satish Chandra, J;S.N. Dwivedi, J;H.C.P. Tripathi, J;G.C. Mathur, J;B.B. Misra, J

Bench : Full Bench

Advocate : K.C. Agrawal, for the Appellant; Ram Surat Singh for Respondents, for the Respondent

Judgement

Satish Chandra, J.—The question before this Full Bench relates to the interpretation of Section 47 of the UP Consolidation of Holdings (Amendment) Act No. VIII of 1963 (hereinafter called the Amending Act. For the sake of convenience I will refer to the principal Act as it stood prior to and after this Amending Act, as the unamended and the Amended Act respectively).

2. Gauri Shanker, the Appellant, filed objections u/s 20(2) of the UP Consolidation of Holdings Act, 1953, to the proposed allotment of chaks. They were dismissed by the Consolidation Officer on 23-2-1963. The appeal filed by Gauri Shanker was dismissed by the Settlement Officer (Consolidation) on 8-3-1963. Gauri Shanker then filed a revision. The Deputy Director of Consolidation on 20-6-1963, allowed the revision and upholding the grievance of Gauri Shanker on facts modified the allotment. Sidhnath, Respondent No. 1, came to this Court Under Article 226 of the Constitution. A learned single Judge quashed the order of the Deputy Director, on, inter alia, the ground that the Deputy Director ought not to have interfered when there was no illegality or irregularity in the exercise of jurisdiction by the subordinate authorities. Gauri Shanker filed a special appeal. At its hearing it appears to have been urged for

the Appellant that in view of the proviso to Section 47 of the Amending Act, the revision would be governed by Section 48 as it stood after its amendment and the Deputy Director of Consolidation was competent to go into facts. For the Respondents reliance was placed on a three Judge Full Bench decision in Prem Chandra v. Deputy Director 1966 AWR 291 : UPRC 103 for the submission that the proviso to Section 47 applied only when the impugned order had been pronounced before 8-3-1963. In the present case the order sought to be reviewed was passed on 8-3-1963. A revision against it would be governed by the unamended Section 48 and would lie only on questions of jurisdiction; and would not be maintainable against an order of the Settlement Officer. The Division Bench (Hon''ble Jagdish Sahai and R.S. Pathak, JJ.) felt that the decision in Prem Chandra's case required reconsideration, but, referred the entire appeal to a larger Bench. This Bench heard the counsel on the interpretation of Section 47 of the Amending Act alone. Other questions arising in the appeal hence need not be dealt with.

3. Sections 11(2) and 21(5) of the UP Consolidation of Holdings Act provided for second appeals to the Dy. Director against the appellate order of the Settlement Officer. Section 48 provided a revision to the Director of Consolidation from the decision of the Deputy Director of Consolidation. The 1963 Amending Act repealed or modified many provisions of the unamended Act. It repealed Sections 11(2) and 21(5). After the amendment, no second appeals lay. Previously a revision lay u/s 48 against the order of the Deputy Director of Consolidation and on questions of jurisdiction alone. Section 48 was repealed and re-enacted by the Amending Act. Now a revision was provided for against orders of all subordinate authorities and the Director of Consolidation could look into the correctness, propriety or legality of the order.

4. Section 47 of the Amending Act was the transitory provision. Its relevant part stated:

47 (1). In units notified u/s 4 of the principal Act, prior to the date on which this Act comes into force, hereinafter referred to as the said date, all work in regard to or connected with consolidation operations--

(i) beyond the stage of publication of that statement of Proposals u/s 20 of the principal Act, where, on or before the said date, that statement had already been published; and (ii) upto and inclusive of the stage of confirmation of the Statement of Principles u/s 18 of the principal Act, where, on or before the said date, notices u/s 9 of the principal Act had already issued j shall be conducted and concluded in accordance with the provisions of the principal Act, as if this Act had not come into force:

Provided that, as respects second appeals and revisions, which lay under the provisions of the principal Act, as it stood prior to its amendment by this Act but had not been instituted before the said date, the principal Act, as amended by this Act, shall apply and be deemed, always to have applied as if this Act had

been in force on all material dates.

5. The Amending Act came in force on 8-3-1963. Under Clause (i) and (ii) of Section 47(1), where either the notices u/s 9 had been issued, or the statement u/s 20 had been published before 8-3-1963, all objections, appeals, second appeals or revisions were to continue to lie, be instituted and decided in accordance with the unamended Act and were not to be affected by the Amending Act. The operation of the Amending Act was kept prospective. The proviso made an exception. Under it the Amending Act was to operate retrospectively as respects second appeals and revisions which "lay" under the unamended Act but had not been instituted before 8-3-1963. The amended Act was to apply to them and it was to apply as if the amending Act had been in force on all material dates. As seen above, under the amended Act, there was no second appeal but only a revision on facts. So, the aim and purpose of the proviso was to take away the pre-existing duplicate remedies of second appeal on facts and a revision on jurisdiction and to substitute therefor a revision on facts. This is amply corroborated out by the, statement of objects and reasons appended to the Amending Act. There it was stated:

...It is also proposed to eliminate second appeals which were introduced through the Amending Act of 1958, as they, while unduly prolonging the proceedings, do not provide any special advantage to the tenure holders.

6. The controversy arose on the interpretation of the word "lay" occurring in the proviso. The proviso covered second appeals and revisions which lay under the unamended Act, but had not been instituted before 8-3-1963. The question was : When does an appeal or a revision lie under a Law? It was urged before the Full Bench in Prem Chandra's case that "lay" meant "for which provision was made." In other words, "lay" referred to the right of appeal conferred by the unamended Act and the proviso abrogated it. The other side contended that "lay" means that the cause of action had arisen by the pronouncement of the adverse order. The effect of the proviso would then be to prohibit the filing of such second appeals and revisions only which were directed against orders made before the said date, namely, 8-3-1963. If the order was passed on or after 8-3-1963, the proviso would not apply. The main Section 47(1) would govern such an order. It could be challenged by a second appeal or revision according to the unamended Act. The Full Bench accepted the latter interpretation. Sahgal, J. held:

A second appeal or a revision lies only when a first appeal or a second appeal as the case may be has been heard and decided. If the first appeal against an order in which a second appeal lies has not been decided, there is no occasion for saying that a second appeal lies or a second appeal lay.

Desai, C.J. construed the word "lay" in the light of the clause "but had not been instituted." He observed at p. 297, Para 10:

We reject the contention advanced before us that "lay" in the proviso means not that a cause of action had actually accrued for filing a second appeal or revision,

i.e. the first appeal or the second appeal, as the case may be, had been decided before 8-3-1963 but that there was a provision in the unamended Act for a second appeal or for a revision. The words "second appeals and revisions...lay" cannot be interpreted to mean "second appeals and revisions, for which provision was made"; Unless a cause of action for a second appeal or revision had accrued the question whether a second appeal or revision had been instituted or not simply did not arise. If a first appeal was pending on 8-3-1963 one could not say "a second appeal lay but had not been instituted".... But if a first appeal had been decided...before 8-3-1963 one could say a second appeal lay but had not been instituted" or "a revision lay but had not been instituted".

It was held:

"Lay" means "could be instituted" but a second appeal or revision could be instituted only if a first appeal or second appeal had been decided. So long as a first appeal or second appeal was pending merely because the Act provided for a second Appeal or revision it could not be said that a second appeal or revision could be filed.

The opinion of Hon. Nigam, J. (?) was not given in the reported case.

7. On a careful consideration of the various aspects, I am unable to endorse the view that an appeal or revision lies when it could be instituted, that is when the adverse order is pronounced. In my opinion, the word "lay" refers to the right of appeal; and an appeal or revision lies under a law when that law creates or confers a right therefor.

8. The observations of Desai, C.J. and Sahgal, J. quoted above are similar to what Venkatarama Ayyar, J. said in *Garikapatti Veeraya Vs. N. Subbiah Choudhury*, . In paragraph 56 his Lordship held:

Considering the question on principle, an appeal is a proceeding by which the correctness of the decision of an inferior court is (Challenged before a superior court. A right of appeal therefore can arise by its Very nature only when a decision by Which a litigant is aggrieved is given and it sounds paradoxical to say that it arises even before judgment in the case is pronounced.

The view taken in *Prem Chandra's* case would be justified if this was the law. But the majority did not agree. S.R. Dass, C.J. (for himself and Bhagwati, Sinha and S.K. Dass, JJ.) laid down the following propositions, as regards the legal incidents of an appeal (paragraph 23 at page 553):

(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.

(ii) The right of appeal is not a mere matter of procedure but is a substantive right.

(iii) The institution of the suit carries with it the implication that all rights of

appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

(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 lis 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.

(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.

9. When a law makes provisions for appeals, it means that the litigants are conferred a substantive right to go in appeal from Court A to Court B and from Court B to Court G and so on, according to the provisions in force on the date the lis commences; an event which happens much prior to the decision. The right does not accrue or vest on the date of the decision; it exists from before.

10. Article 133 of the Constitution provided that "an appeal shall lie" to the Supreme Court from any judgment, decree or final order of a High Court, if the High Court gives a certificate mentioned in it. In the aforementioned *Garikapati*'s case the Supreme Court held that Article 133 was prospective and so an appeal shall not lie under this provision in a suit filed before the commencement of the Constitution, even though the High Court passed the decree after that date. The appeal would lie under the pre-existing law. This authority does not countenance the position that an appeal lies when the adverse decision is made. It proceeds on the view that in law, an appeal lies on the commencement of the litigation.

11. A Full Bench decision of our Court in *Syed Shabbir Husain and Another Vs. Syed Ghulam Husain*, is also instructive. Section 240, Agra Tenancy Act, 1926, provided "an appeal shall lie" to the District Judge in the mentioned kinds of cases. The Full Bench held that this provision will not apply to decrees passed after the commencement of the 1926 Act in cases instituted prior to it. Why? Because, the right of appeal was governed by the Law prevailing at the date of the institution of the suit and not by the Law that prevailed at the date of its decision or at the date of the filing of the appeal. In effect, the Full Bench ruled that when the Legislature says "an appeal shall lie" it refers and points, not to the date of the decision, but to the date of the institution of the suit; because, it is then that the right of appeal vests in the litigant.

12. The Letters Patent, provided an appeal to the High Court from the judgment of a single Judge of the High Court, without any leave of the single Judge. It used the phrase "an appeal shall lie". On 14-1-1928, the Letters Patent was amended and a condition was imposed that the appeal would lie only "where the Judge who passed the judgment declares that the case is a fit one for appeal." A Special Bench of the Calcutta High Court in *Sadar Ali and Others Vs. Doliluddin*

Ostagar, negated the plea that where the single Judge decided the appeal after the amendment, in a suit instituted before it, the further appeal would lie according to the amended provision. The same view was taken by a Full Bench of five Judges of the Madras High Court In Re: Vasudeva Samiar alias Vasudeva Pillai, . Coutts Trotter, C.J. observed:

The institution of the suit carries with it the implication that all appeals then in force are preserved to it through the rest of its career, unless the legislation has either abolished the Court to which an appeal then lay or has expressly or by necessary intendment given the Act a retrospective effect. We agree with the Calcutta High Court that the words of the amended Letters Patent do not permit of such an interpretation. (Emphasis mine)

Notice the import of the word "then" in the phrase "to which an appeal then lay". It means that an appeal lay on the date of the institution of the suit.

13. All these cases lead to the inevitable conclusion that an appeal does not "lie" or "lay" when a decision is given but when the right arises and vests. It depends on the existence and not on the exercisability or the actual exercise of the right. This being the well settled meaning of the term of art "lay" the legislature would be presumed to be aware of it and to have used it in that sense in the proviso. If the intention was different, the legislature could easily have said "could be instituted" instead of "lay". In my opinion the word "lay" in the proviso to Section 47 ought to be understood in its traditional meaning.

14. The proclaimed purpose of the proviso was to abrogate the second appeals. That could be done effectively by taking away the substantive right. The right could properly be repealed only if the repealing law operated on the day it accrued or vested. To assure this, the Legislature specifically used the word lay and stated in the proviso not only that the amended Act shall apply, but further, that it shall be deemed always to have applied as if the Amending Act had been in force on all material dates. The most material date was the date of vesting of the right. The Amending Act was made to retrospectively operate upto that date and not merely the date of decision.

15. If the word "lay" is construed to mean "could be instituted", the aforesaid last clause of the proviso would become superfluous. The proviso had already said that the amended Act shall apply. That was enough to make it apply to the future institution of the appeals or revisions which could be, but had not been, instituted till 7-3-1963. It is well accepted that normally no part of a provision is to be treated as redundant.--See The State of Bombay Vs. Ali Gulshan, of the two constructions, the one which harmonizes the various provisions and lends value and meaning to all of them should be preferred--Vide The State of Bihar Vs. Hiralal Kejriwal and Another, . If the word "lay" is construed to mean "for which provision was made", the last clause gains the full play of its amplitude. That is another reason for rejecting the view that "lay" means "could be instituted."

16. The proviso applies when two conditions exist : the appeal or the revision should be one which lay under the unamended Act and that it had not been instituted by 7-3-1963. In Prem Chandra's case it was; observed that if a first appeal was pending, one could not say that a second appeal lay but had not been instituted. I am with respect, unable to endorse this view. If in law the word "lay" refers to the right of appeal, one could legitimately say that a second appeal lay but had not been instituted even though the occasion for its institution had not till then arisen, because the substantive right was in existence from before the decision.

17. It was suggested that an appeal could in fact lie only when the decision is given. The unamended Act and the rules required the memorandum of appeal or revision to be accompanied with the copies of the relevant orders (Vide Section 41, Rule 111). So an appeal could not be instituted till the copies are available. The mere making of the order would not hence mean that an appeal could be instituted or that it then lies. The absence of an adverse order would be one circumstance for the non-filing of the appeal. It would be one reason for which the appeal "had not been instituted." An appeal may not be filed for a variety of reasons. It may be because the adverse order has not been made, or where it has been pronounced, the litigant has not made up his mind, or has not been given the requisite copies, or because for some unavoidable reason, he could not lodge the memorandum of appeal before the appointed date. All these categories of cases would furnish an equally good cause for and would be covered by the clause "but had not been instituted before the said date." It is apparent that this clause provided for the fact, whatever be the reason or cause, of the non-institution. It was also put in to ensure the exclusion of pending second appeals or revision from the purview of the proviso.

18. So, the point is, this clause having covered and provided for the contingencies where it may be said that an appeal could be instituted, there was no need to provide for the same thing again by employing the term "lay". That would be an unwarranted duplication. This construction would violate the cardinal principle of interpretation that normally the legislature does not intend surplusage.

19. But, the clause "had not been instituted" could not be stretched to include and deal with the existing vested right of appeal. To achieve the object of eliminating the second appeals and revisions, it was necessary to bring the substantive right within the reach of the proviso. To that end, it was purposely said "appeals and revisions which lay under the principal Act." It is thus clear that "lay" does not relate to the factual institution of the appeal, but refers to the right of appeal.

20. The professed purpose of the amending Act to eliminate second appeals is not effectively achieved on the view expressed in Prem Chandra's case. According to it, second appeals could not be filed on or after 8-3-1963 against orders passed prior to that date. But second appeals could be filed if the order

was passed later. That is no real elimination. A construction which leads to a large scale evasion of the provision resulting in its object being defeated is to be avoided--See Shanti Prasad Jain Vs. The Director of Enforcement, .

21. There was some argument at the Bar that the legislature has used the word "lay" and not "lie". "Lay" is only the past tense of the verb "Lie". "Under the proviso, the question of the lying of the appeal would require consideration in respect of the second appeals which are sought to be filed after the coming into force of the Amending Act on 8-3-1963. On either interpretation of the word "lay", the event of the lying of the appeal would have taken place in the past, that is to say either on the date of the commencement of the lis or the date of the decision. So the past tense had to be used. The use of the present tense would have been grammatically incorrect.

22. A right of appeal imports two concepts. It means that a litigant has a right to go from-one Court to another higher Court and further that he has a right to invoke the aid of the higher Court to redress his grievance. When it is said that a litigant has a substantive right of appeal, it means that he not only can go up to the higher Court but demand redress if he makes out a case therefor. The appellate court has no power to refuse the remedy if the litigant is entitled to it in law. When it is said that a litigant does not have a right of revision and that a revision is a power conferred on a court or authority to be exercised at its discretion, it only means that the litigant cannot in a revision compel the authority to grant him the remedy; but that proposition does not mean that the litigant does not possess the right to go to the court of revision or to present his petition for revision. When a revision is provided for by law, the litigant does have a right to approach the Court of revision. I need not elaborate this aspect further, because the proviso to Section 47 uses the word "lay" with reference to both appeals and revisions in the same breath. The significance of the word "lay" in the context of the section and the proviso would, in my opinion, be the same, both in the case of an appeal and a revision.

23. In Prem Chandra's case the question whether the Deputy Director of Consolidation is subordinate to the Director of Consolidation within the meaning of Section 48 of the Act as it stood after its amendment was also considered. Desai, C.J. held that he was not. He relied upon his observations in the Division Bench case of Lal Singh v. The Commissioner 1964 AWR 68 : UPRC 37. Sahgal, J., however, was of the opinion that the Deputy Director of Consolidation was subordinate to the Director of Consolidation. He accepted the opinion expressed by Dwivedi, J. in Ram Narain and Others Vs. Director of Consolidation and Others, . The opinion of Nigam, J. has not been reported. This precise question does not arise in the present case, because here we are not concerned with the power of revision against the second appellate order of the Deputy Director of Consolidation. Here the revision was filed against the order of the Settlement Officer (Consolidation). I, therefore, need not express any opinion on that controversy.

24. In my opinion, the decision in Prem Chandra's case that the word "lay" in the proviso means "could be instituted" was with respect, incorrect. The word "lay" means "for which provision was made". The proviso would apply to all second appeals and revisions in cases where the lis had commenced prior to 8-3-1963 and in which the unamended Act in force on the date of the commencement of the lis had provided for a second appeal or a revision". In all such cases, if the second appeal had not been instituted till 7-3-1963, it could not be instituted thereafter because the right of second appeal stood repealed on 8-3-1963. Only a revision could be instituted on or after 8-3-1963, in accordance with the amended Section 48. In the present case, the Settlement Officer (Consolidation) decided the first appeal on 8-3-1963. The litigation had commenced prior to 8-3-1963. Then the unamended Act had provided for a second appeal as well as a revision. Since no second appeal had been filed till 7-3-1963, the proviso applied and the right to file the second appeal or the revision under the unamended Act stood extinguished. The Appellant could only file a revision under the amended Section 48. The Deputy Director of Consolidation validly examined the findings of fact in exercise of his revisional jurisdiction. His order was not liable to be set aside on the ground that the revision was confined to questions of jurisdiction alone. The decision of the learned Single Judge on this point is liable to be set aside.

S.N. Dwivedi, J.

25. I agree with brother Satish Chandra.

G.C. Mathur, J.

26. The question, which arises for consideration before this Full Bench, is whether the proviso to Section 47 of the UP Consolidation of Holdings (Amendment) Act, 1963 (hereinafter referred to as the Amending Act) is applicable to this case or not. The Amending Act came into force on 8-3-1963. For convenience, the UP Consolidation of Holdings Act, 1953, as it stood before and as it stands after the Amending Act will be referred to as the Unamended or the Principal Act and the Amended Act respectively.

27. The question arises in the following circumstances: After the publication of the statement of proposals, the Appellant filed objections u/s 20(2) of the Unamended Act. These objections were dismissed by the Consolidation Officer on 23-2-1963. The Appellant filed an appeal against the order of the Consolidation Officer which was dismissed on 8-3-1963. Thereupon he filed a revision. This revision was entertained and allowed by the Deputy Director of Consolidation as if it were a revision u/s 48 of the Amended Act. The order of the Deputy Director of Consolidation was challenged before this Court by way of writ petition. Asthana, J. allowed the writ petition, holding that the Deputy Director had no jurisdiction to interfere, except on questions of jurisdiction, thereby implying that Section 48 of the Unamended Act was applicable. The Appellant has preferred this special appeal against the judgment of Asthana, J. The Bench, before which

the special appeal came up for hearing, was of the opinion that the decision of a Full Bench of this Court in *Prem Chandra v. Deputy Director of Consolidation* (supra), which supported the view taken by Asthana, J., required re-consideration by a larger Bench.

28. Before considering the scope of the proviso to Section 47 of the Amending Act, it is necessary to notice the relevant provisions of the Principal Act and the changes which were brought about by the Amending Act. Section 9 of the Unamended Act required the Assistant Consolidation Officer to send notices of the corrected records to the tenureholders and for the filing of objections by the tenureholders. Section 10 provided for the disposal of the objections by the Consolidation Officer. Section 11(1) provided for an appeal against the order of the Consolidation Officer and Section 11(2) provided for a second appeal from the order of the Settlement Officer (Consolidation) to the District Deputy Director of Consolidation. Section 19 provided for the preparation of the statement of proposals and Section 20(1) required them to be published in the unit. Section 20(2) gave the affected persons a right to file objections to the statement of proposals. Section 21(1) provided for the decision of those objections by the Consolidation Officer. Section 21(2) gave the persons aggrieved by the order of the Consolidation Officer a right to file an appeal before the Settlement Officer (Consolidation). Section 21(5) provided that any person aggrieved by the order of the Settlement Officer (Consolidation) may file a second appeal both on questions of fact and law before the Distt. Deputy Director of Consolidation. Section 48 conferred power on the Director of Consolidation to revise the orders of the Dy. Director of Consolidation passed in second appeals. The power was similar to the power conferred by Section 115 Code of Civil Procedure. Section 11 of the Amending Act repealed Section 11(2) of the principal Act and Section 22 of the Amending Act deleted Sub-sections (5) and (6) of Section 21, thereby taking away the right to file and to entertain a second appeal. Section 39 of the Amending Act substituted a new Section 48 for the old one, thereby giving the Director of Consolidation a power to revise the order of any subordinate authority on the grounds of correctness, legality and propriety.

29. Section 47 of the Amending Act made certain transitory provisions. Sub-section (1) of Section 47, with which we are concerned, reads thus:

(His Lordship then quoted Section 47 of the Amending Act as already referred to in para 4 at page 772).

The proviso applies to cases where a second appeal or a revision lay under the unamended Act but had not been instituted before 8-3-1963. The view taken by the Full Bench in *Prem Chandra's* case is that the proviso applies only to those cases where the first appeal or the second appeal, as the case may be, had been decided before 8-3-1963 and no second appeal or revision had been filed against the decision before that date. Desai, C.J. rejected the contention that the words "second appeal or revision...lay" meant that there was provision for a second appeal or revision and held that "lay" meant "could be instituted. Sahgal, J.

observed : "...in order to apply the proviso to second appeals and revisions they must lie prior to 8-3-1963. A second appeal or a revision lies only if a first appeal or a second appeal, as the case may be, has been heard and decided." Lakshmi Prasad, J. merely followed a previous decision of his which we have not had the advantage of perusing. The consequences of the interpretation put on the proviso by the Full Bench are these:

i) If the first appeal or the second appeal was decided before 8-3-1963 and a second appeal or revision was filed before that date. The second appeal or revision will be governed by the Unamended Act. ii) If the first appeal or second appeal was decided before 8-3-1963 but a second appeal or revision was not filed before that date. A revision under the Amended Act will lie. iii) If the first appeal or second appeal is decided on or after 8-3-1963. A second appeal or revision will lie under the unamended Act.

As to (i) and (ii), there is no dispute or difficulty and the same result would follow on any interpretation of the word "lay". The difficulty arises only in respect of (iii). It will be noticed that this interpretation results in an incongruity that, if the first appeal or second appeal was decided before 8-3-1963, the law, as amended after that date, would apply, whereas if the first appeal or second appeal is decided on or after 8-3-1963, the law, as it stood unamended before that date, would apply. In the latter case, not only a second appeal but a revision against the decision of the second appeal would also lie under the unamended Act.

30. Section 47(1) of the Amending Act has been set out above. The main part of this sub-section provides for two contingencies:

1. If the statement of proposals has been published on or before 8-3-1963, then all work beyond that stage shall be conducted in accordance with the Unamended Act; and
2. If notices u/s 9 had been issued on or before 8-3-1963, then all work upto and including the confirmation of the statement of principles shall be conducted in accordance with the Unamended Act.

Then comes the proviso. Shorn of all verbiage, it reads:

...as respects second appeals and revisions which lay under the Principal Act but had not been instituted before 8-3-1963, the Amended Act shall apply....

In my opinion, the words "which lay under the Principal Act" mean "which were provided for under the Unamended Act". According to Oxford and Webster Dictionaries, the word "lie" when used in law, means "be admissible or sustainable." "Lay", being the past tense of "lie", means "was admissible or sustainable". This is equivalent to "was provided for". There is no reason why this meaning should not be given to the word "lay" used in the proviso. The expression "had not been instituted before 8-3-1963" includes cases of second appeals and revisions which had not been filed before 8-3-1963 because the

party had not chosen to file them even though the occasion to do so had arisen as well as cases where the party had not filed them as the occasion had not yet arisen. In both cases, factually, the second appeal or revision had not been filed before 8-3-1963. Some argument was addressed on the use of the word "lay" rather than "lie" in the proviso. In my opinion, since no second appeal or revision under the Unamended Act lies after 8-3-1963, the word "lay" was used in respect of the second appeal or revision which lay before that date under the Unamended Act. The object of the Amending Act in deleting Sections 11(2) and 21(5) and (6) of the Principal Act and in substituting Section 48, obviously, was to takeaway the right of second appeal and of revision which lay against orders passed in first appeals and second appeals and to provide for a revision on facts as well as on law. The proviso to Section 47 of the Amending Act preserves second appeals and revisions filed before 8-3-1963 and provides that they shall be decided in accordance with the Unamended Act. It further provides that, if second appeals and revisions were not filed before 8-3-1963, they will not be allowed to be filed under the Unamended Act but, in their place, a revision under the Amended Act may be filed. The language of Section 48 of the Amended Act clearly shows that all orders passed by the subordinate authorities on or after 8-3-1963 shall be revisable under this section. In this interpretation, all cases, in which the second appeal or revision had not been filed before 8-3-1963, stand on the same footing and will be governed by the Amended Act and the incongruity, which results from the decision in Prem Chandra's case will disappear. There appears to be no rational reason why the Legislature should have intended to apply the Amended Act to those cases in which the first appeal or second appeal had been decided before 8-3-63 and no second appeal or revision had been filed before that date and not to cases where the first appeal or second appeal was decided on or after 8-3-63. The Legislature could not have intended to shut out a second appeal if the first appeal was decided before 8-3-63 and to permit it if the first appeal was decided on or after that date. The intention was to shut of the institution of all second appeals and revisions under the Unamended Act which had not already been filed before 8-3-63.

31. For these reasons, I am of opinion that Prem Chandra's case was not correctly decided and that the proviso to Section 47 of the Amending Act applies to all cases where the Unamended Act provided for second appeals and revisions and such second appeals and revisions had not been filed before 8-3-63. In this view, the revision filed by the Appellant was covered by the proviso to Section 47 of the Amending Act and was governed by the amended Section 48. We have not heard the special appeal on merits. It will now be put up before the Bench concerned for disposal.

B.B. Misra, J.

32. I have had the advantage of reading the judgments proposed by my learned brothers G.C. Mathur, Satish Chandra and Tripathi, JJ.

33. As the relevant facts have been given in detail by them, I do not consider it

necessary to set them out again. Suffice it to say that the Amending Act, which came into force on 8-3-1963, purports to have taken away the right of second appeal which was given under the principal Act and has, in its place, widened the scope of revision. The main point for consideration is as to how far the Amending Act has taken away the rights that had accrued in that regard under the principal Act prior to 8-3-1963. That depends on the interpretation to be placed on the language of Section 47 of the Amending Act which makes a provision in respect of it. The relevant portion of Section 47 of the Amending Act is as follows:

(His Lordship then quoted Section 47 of the Amending Act as already referred to in para 4 at page 772).

34. There is no dispute about two principles of law which are well recognised and need no elaboration. The first is that a subsequent legislation cannot take away or, in any way, curtail the substantive rights of a party unless that has been so done expressly or by necessary implication. And the second is that the right of appeal is a substantive and vested right which accure with the very institution of the suit.

35. In the instant case, proceedings were initiated under the principal Act. As the right of second appeal had come to be vested at that very time, it could not be taken away unless there was an express provision in that regard in the subsequent legislation.

36. On a perusal of the language of the proviso to Section 47(i) of the Amending Act, quoted above, it is quite clear that the right of filing second appeals and revisions under the principal Act has been taken away in express terms.

37. Nevertheless, it was held by a Full Bench of this Court in *Prem Chandra v. Dy. Director* (supra) that the word "lay" used in the proviso meant "could be instituted and that a second appeal or revision could be instituted only after a first appeal or second appeal had been decided, implying thereby that the language was not explicit and that when a provision was capable of two interpretations the one that was favourable to the party affected should be accepted. It was argued on behalf of the Appellant that the word "lay" connoted "for which provision was made" and not "could be instituted" and in that view of the matter, there was no ambiguity of any kind in the language of the proviso. The contention is sound and well founded. Firstly, the dictionary meaning of the word "lie which is admissible or sustainable" supports that contention. Secondly, the argument is in keeping with the purpose of the Amending Act which was to expedite the proceedings. It has also to be borne in mind that the rights of the parties have not been affected in any way. Only one stage of the proceedings has been done away with. Under the principal Act questions of fact were gone into in second appeals. Now, under the Amending Act, the scope of revisions has been widened and questions of fact can also be looked into in revisions. Thirdly, the interpretation put by the Full Bench in *Prem Chandra's* case would militate against the second principle of law enunciated earlier that the right of appeal is a

substantive and vested right which accrues with the very institution of the suit. The right of appeal or revision does not accrue when the decision is given, that is to say, when it becomes exercisable. It does not come into being at any intermediate stage. It accrues with the very commencement of the lis and holds good till the last stage of its career. That is what has been laid down by the Supreme Court in *Garikapati Veeraya v. N. Subbiah Choudhry and Ors.* (supra).

38. Consequently, I agree with the reasonings and conclusions arrived at by my learned brothers G.C. Mathur and Satish Chandra, JJ.

Tripathi, J.

39. I have read the judgments proposed by my learned brothers G.C. Mathur and Satish Chandra, JJ. I regret my inability to agree.

40. My learned brothers have detailed the relevant facts in their respective judgments and I do not propose to recount them.

41. The central question which arises for the consideration of the Full Bench relates to the interpretation of Section 47 of the UP Consolidation of Holdings (Amendment) Act, 1963, (hereinafter referred to as the Amending Act) which came into force on 8-3-1963.

42. Section 11 of the UP Consolidation of Holdings Act, 1953, (hereinafter referred to as principal Act) provided for two appeals; first from the decision of the Consolidation Officer to the Settlement Officer, Consolidation and the second from the decision of the Settlement Officer, Consolidation, to the Deputy Director of Consolidation.

43. Section 11 of the principal Act as amended by the Amending Act now provides only for one appeal from the order of the Consolidation Officer to the Settlement Officer, Consolidation and has dropped the provision of second appeals as envisaged in the principal Act. The Amending Act has also enlarged the scope of revisions provided u/s 48 of the Act. Section 47 of the Amending Act is in the nature of transitory provisions. The relevant part of Section 47 reads:

His Lordship then quoted Section 47 of the Amending Act as already referred to in para 4 at page 772 and also referred to Sub-section (2).

44. In this case we are concerned only with the proviso to Sub-section (1) which speaks of second appeals and revisions and not with its main provisions. It is, however, pertinent to note that the main part of Sub-section (1) of Section 47 provides that where certain steps have already been taken in accordance with the principal Act, further proceedings in that regard shall be conducted and concluded unaffected by the Amending Act. This in my opinion gives a definite clue to the intention of the Legislature and it will be reasonable to infer that the Legislature did not intend to unduly interfere either with the vested rights of the parties or with the processes which had already been set in motion in accordance with the principal Act. The proviso, however, calls for an exception in the case of

second appeals and revisions. The question which immediately arises for consideration is as to whether it is an undiluted exception or is hedged by various conditions. In other words we are required to interpret the ambit of the exception.

45. There is no definition of the word "Appeal" or "Revision" in any legislative enactment. Neither the principal Act nor the CPC which provides for Appeals and Revisions give their definition.

Wharton's Law Lexicon (14th Edition) defines "Appeal" as "the judicial examination of the decision by a higher Court of the decision of an inferior Court." In Webster's Dictionary the meaning assigned to "Revision" is "fact of seeing again; re-examination or careful reading over for correction or improvement.

In the case of Nagendra Nath Dey and another (11) (1932 Privy Council 165) Sir Dinshaw Mulla while delivering judgment of the Judicial Committee inter alia defined "Appeal" as "any application by a party to an appellate Court, asking it to set aside or revise a decision of a Subordinate Court....

46. Section 96 of the CPC inter alia provides that "an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Courts" and Section 100 speaks of second appeals to the High Court "from every decree passed in appeal by any Court subordinate to the High Court...." Articles 132, 133, 134 and 136 of the Constitution which deal with the appellate jurisdiction of the Supreme Court also speak of Appeals from any judgment, decree or final order of a High Court or judgment, decree, determination, sentence or order in any cause or matter passed or allowed by any Court or Tribunal in the territory of India.

47. It is, therefore obvious that Appeal and Revision postulate the existence of an adverse judgment or order and if there is no such judgment or order in existence there is, neither any right to nor occasion for appeal or revision. When a judgment, order or decree to be impugned comes into existence the right of appeal shall be deemed to have vested in the litigant as on and from the date the lis commenced and shall be exercisable in accordance with the law which prevailed at the time of such commencement. In other words the right of appeal which vests in the suitor on the date of the commencement of the lis is in the nature of a contingent right which assumes its shape on the happening of an event namely the rendering of the impugned judgment.

48. The decision of the Supreme Court in the case of Garikapati v. Subbiah (supra) is an authority only for this proposition that the right of appeal is not a mere matter of procedure, but is a substantive and vested right to be governed by the law prevailing at the date of the suit and not by the law that prevails at the date of the decision or at the date of the filing of the appeal and further that the vested right of appeal can be taken away only by a subsequent enactment if it so provides expressly or by necessary implication but not otherwise (emphasis

is mine). In that case the Supreme Court set at rest the controversy which related to appeals regarding decrees passed after the Constitution came into force in cases where the subject matter was less than Rs. 20,000/- in value by holding that the right of appeal which vests in a litigant carries with it the right to prefer appeals to the superior courts as constituted on the date of suit and that, therefore, where an appeal would have been preferred to the Federal Court before the Constitution it would lie to the Supreme Court thereafter.

In *Rama Singha* (3) the Full Bench was dealing with a case under Agra Tenancy Act (1926). A suit for arrears of rent for less than Rs. 200/- was filed in the Court of the Assistant Collector when the old Tenancy Act was in force. Before it could be decided, the new Act came into force on 7-9-1926. The suit was decreed on 23-9-1926. Under the old Act a Defendant had undoubtedly a right of appeal to the District Judge, if the decree went against him. Under the new Act, there was no appeal from the decision of an Assistant Collector of the first class, when the valuation of the subject matter was less than Rs. 200/- . The question before the Bench was whether the coming into force of the new Tenancy Act, under which no appeal was provided, deprived a Defendant of his right of appeal, which he would have had if the old Tenancy Act had continued to be operative. The Full Bench held that an appeal is a mere continuance of the original proceeding initiated by the filing of the plaint and the right to continue that proceeding cannot be affected by a new Act, unless it expressly says so and held that the right to appeal to the Court of the District Judge was governed by the law prevailing at the date of the institution of the suit and not by the law that prevailed at the date of its decision, or at the date of the filing of the appeal. In this case in spite of the fact that the old Act which had made provision for the appeal had been repealed and a new Act abolishing such appeals had come into force the Full Bench (Sulaiman, C.J. and Mukerji and Boys, JJ.) held that Defendant's right of appeal which vested in him under the old Act remained alive in spite of its repeal.

49. Thus there is a preponderance of authorities that the right of appeal which vests in a suitor when the lis begins cannot be divested by a subsequent change in the law unless it is said so in unequivocal terms or can be gathered by necessary intendment. It is also well settled that where the terms of a statute are not explicit and capable of two reasonable interpretations one which preserves the existing rights should be adopted.

50. It is in the light of the principles enunciated in the decisions referred to above, that we have to examine the terms of the proviso for gathering its intendment. The proviso reads:

Provided that, as respects second appeals and revisions, which lay under the provisions of the principal Act, as it stood prior to its amendment by this Act but had not been instituted before the said date, the principal Act, as amended by this Act, shall apply and be deemed always to have applied as if this Act had been in force on all material dates.

51. It is urged that the proviso expressly takes away the right of appeal in all cases where the second appeal had not been preferred before the appointed date (8-3-1963). I am unable to accept this argument for more than one reasons. If that was the intention of the Legislature then the proviso would have been in the following terms:

Provided that, as respects second appeals and revisions which had not been instituted before the said date, the principal Act as amended by this Act shall apply....

For achieving the aforesaid object where was the necessity of putting the clause "which lay under the provisions of the principal Act...." in the proviso and thereby making it cumbersome.

52. A plain reading of the terms of the proviso makes it, obvious that the Legislature was not intending to apply the Amending Act to all second appeals and revisions provided for under the principal Act but only to those which lay under the provisions of the principal Act but had not been instituted before the appointed date. The question which immediately arises for consideration is as to what meaning is to be ascribed to word "lay". Does it mean only "as provided for" or something more?

53. In the case of Prem Chandra v. deputy Director of Consolidation (Supra) the Full Bench interpreted the word "lay" to mean when the cause of action to file the appeal had actually accrued. While interpreting the relevant parts of the proviso Desai Chief Justice observed that the words "the second appeals and revisions....lay" cannot be interpreted to mean "second appeals and revisions, for which provision was made" for unless the cause of action for a second appeal or revision had accrued the question whether a second appeal or revision had been instituted or not simply did not arise. If a first appeal was pending on 8-3-1963 one could not say "a second appeal lay but had not been instituted." Similarly if a second appeal was pending on 8-3-1963 one could not say "a Revision lay but had not been instituted". The other two learned Judges constituting the Bench also arrived at the same conclusion for similar reasons and held that where the impugned judgment had not been rendered it cannot be said that the appeal lay under the Principal Act but had not been instituted within the meaning of the aforesaid proviso. I am in respectful agreement with this view.

54. If the intention of the Legislature was to apply the Amended Act to second appeals and revisions "provided for" under the Principal Act but not instituted before the appointed date why was the word "lie" used in its past tense. The Principal Act has not ceased to be on the statute book. Only a part of the section providing for appeals has been deleted and a part of Section 48 which provided for revisions has been substituted. The proviso, therefore, could have been in the following terms:

Provided that, as respects second appeals and revisions which lie under the provisions of the Principal Act but had not been instituted before the said date,

the Principal Act, as amended by this Act shall apply....

This phraseology would not have done any violence to the grammatical construction of the proviso. It must, therefore, be held that the Legislature deliberately refrained to use the word "lie" in its present tense and preferred to use it in its past tense for giving expression to its intention that the Amended Act was to apply only to such appeals and revisions which could have been filed in law before the appointed date.

55. The Dictionary of English Law by Earl Jowitt provides "An action "lies" if, on the facts of the case, it is competent in law and can properly be instituted or maintained." In Browns Law Dictionary the phrase "an action will not lie" has been explained "to signify that an action cannot be sustained, or that there is no ground upon which to found the action." According to Oxford and Webster Dictionaries the word "lie" when used in law means "be admissible" or "sustainable". In my opinion it cannot be legitimately argued that when the judgment or order to be impugned has itself not been rendered an appeal or revision as the case may be was sustainable before the appointed date because there was no ground in" existence upon which the appeal or revision could have been found. It must, therefore, be held that the words "second appeals and revisions which lay under the provisions of the Principal Act...but had not been instituted before the said date" mean the second appeals and revisions which could have been instituted before the said date but had not been instituted. I am, therefore, of opinion that the proviso excepts those cases from the application of the Amending Act in which the right to file an appeal or revision had vested in the party on the date of the commencement of the lis but the cause of action for filing the second appeal had not arisen because the judgment or order to be impugned had not been rendered before the appointed date. I am inclined to adopt this interpretation of the proviso, in preference to one suggested by my learned brothers, as it not only flows from its terms but also preserves the subsisting rights of appeal in a limited category of cases, where the affected party could not have in law, instituted the appeal before the appointed date.

56. It was argued at the bar that the object of the Legislature in amending the Act was to eliminate second appeals altogether and this interpretation militates against that object an unable to agree. As was observed by Desai, C.J. in Prem Chandra's Case "dividing cases into two classes one of pending cases and the other of future cases, for the purpose of deciding whether they will be governed by the unamended law or the amended law is a well known classification frequently resorted to by the Legislatures." Even on this interpretation second appeals in future cases or in cases where they could have been filed before the appointed date are completely eliminated and only in a limited class of cases where the party has not been able to exercise its vested right of appeal not because of any latches on its part but because it could not have been exercised in law before the appointed date the right for such appeals shall subsist.

57. It was further argued that if the word "lay" is construed to mean "could be instituted" the last clause of the proviso consisting of words "shall apply and be deemed always to have applied as if this Act had been in force on all material dates" would become superfluous. I am unable to agree with, this contention.

58. In appeals there are two material dates one when the right vests in the party namely the date of the commencement of the lis and the second is the date of the accrual of cause of action in its favour for instituting the appeal namely the date when the judgment or order to be impugned is rendered. The Legislature must be presumed to have added the last clause of the proviso to assure the application of the Amended Act even to those cases where the rights had not only vested but the cause of action also had accrued to the parties before the Amending Act came into force.

59. For these reasons I am of opinion that the decision of the Full Bench in Prem Chandra's case (*supra*) is correct and does not need any reconsideration.

By the Court

60. In view of the majority opinion, we hold that the proviso to Section 47 applies also to a case decided by the Settlement Officer on or after 8-3-1963 and that accordingly a revision under the amended Section 48 and not a second appeal, lay from the order of the Settlement Officer in this case. Let the case now go back to the Bench concerned for decision on merits.