
(1965) 12 AHC CK 0028

In the Allahabad High Court

Case No : Writ Petition No's. 338, 385, 483 and 510 of 1963

Prem Chandra and Another

APPELLANT

Vs

Dy. Director of Consolidation and Others

RESPONDENT

Date of Decision : 22-12-1965

Acts Referred:

Constitution of India, 1950 — Article 14

Uttar Pradesh Consolidation of Holdings (Amendment) Act, 1963 — Section 47, 47(1)

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 10, 11, 11(2), 42(2),
44

Citation : AIR 1967 All 180

Hon'ble Judges : M.C. Desai, C.J;Lakshmi Prasad, J;G.D. Sahgal, J

Bench : Full Bench

Advocate : Har Gur Charan Srivastava, for the Appellant; Standing Counsel and
M.L. Trivedi, for Opposite Parties Nos. 5 and 6, for the Respondent

Final Decision : Disposed Of

Judgement

Desai, C.J.—In this petition our brothers Beg and Sharma have referred to a larger Bench the following questions:

"1(a). On the facts and circumstances if the case was a revision against the order of the Deputy Director dated 22-3-1963 maintainable in the present case?

(b) If so, would such a revision be governed by amended Section 48 or Section 48 as it stood prior to its amendment by Act VIII of 1963?

2. On the facts and circumstances of the case, was the Deputy Director, Bara Banki competent to hear a revision petition against the order of the Deputy Director Camp Bara Banki dated 22-3-1963 passed in the second appeal by the latter?

3. Is the order of the Deputy Director Bara Banki dated 14-6-1963 depositing the aforesaid revision a legally correct order? Similar questions have been referred in the associated petitions.

The material facts in this petition are as follows:

An order u/s 10 of the Consolidation of Holdings Act was passed by a Consolidation Officer on 17-10-1962. u/s 11(1) an appeal lay from an order passed u/s 10 to a Settlement Officer and such an appeal was filed and was decided by a Settlement Officer on 21-12-1962 u/s 11(2) as it stood prior to the amendment in Section 11 by Act No. 8 of 1963 which came into force on 8-3-1963 a second appeal lay from a Settlement Officer's order to a Deputy Director and a second appeal was filed Prior to 8-3-1963 and was decided by him on 22-3-1963. Section 48 also was amended by Act No. 8 of 1963; prior to its amendment the Director had the power to revise a Deputy Director's order on a ground similar to a ground on which a High Court can revise an order of a subordinate civil Court u/s 115 of the CPC and since the amendment the Director has the power to revise an order of any "subordinate authority" on the ground that it is incorrect, illegal or improper Section 48 as it existed prior to its amendment on 8-3-1963 will be referred to as "the old section" or "the unamended section" and the section as it stands now, as "the new section" or "the amended section" The petitioner, who felt aggrieved by the Deputy Director's order dated 22-3-1968 filed an application for revision of it to the District Deputy Director on whom the Directors powers have been conferred. A Deputy Director, also exercising the Director's powers, rejected the petition on 14-6-1963 on the ground that it was not maintainable under the amended section 48 because a Deputy Director is not an authority subordinate to the Director under the amended section. The prayer sought in this petition is for certiorari quashing the order of the Deputy Director dated 14-6-1963 and the earlier orders of the Consolidation Officer and the Settlement Officer and any other writ direction or order that may be necessary.

2. The material facts in Writ Petition No. 338 of 1963 are these. A statement of proposals prepared u/s 21 of the Consolidation of Holdings Act was confirmed u/s 28 on 30-3-1961. An objection could be filed u/s 21 against it but no objection had been filed by opposite-party No. 1. The confirmation of the statement was followed by delivery of possession to the tenure-holders of the land given in their chaks. Thereafter on 12-5-1962 the opposite-party filed an objection against the land given in his chak before a Settlement Officer, who on 19-2-1963 forwarded it to a Deputy Director u/s 21 (6) Section 21 was another section that was amended by Act No. 8 of 1963 with effect from 8-3-1963. Under the old section an appeal lay from an order on an objection filed against a statement of proposals to a settlement Officer and a second appeal lay from the Settlement Officer's order to a Deputy Director and the Deputy Director was authorized by Sub-section (6) also to revise an order of a Consolidation Officer or Settlement Officer in the interest of justice suo motu.

While the matter was pending before the Deputy Director Section 21 was amended by Act No. 8 of 1963 and Sub-section (6) was deleted. The Deputy Director on 23-3-1963 decided the matter in the opposite party's favour by

altering the land given in his chak. The petitioner aggrieved by his order applied to the Director to revise it u/s 48 and on 15-6-1963 the Joint Director dismissed it on the ground that it was not maintainable under the amended section (presumably because in his opinion a Deputy Director is not an authority subordinate to the Director now) The petitioner now seeks certiorari for the quashing of the orders of the Joint Director and the Deputy Director and any other order that may be considered necessary.

3. The material facts in Writ Petition No. 385 of 1963 are these. An objection u/s 21 was dismissed by a Consolidation Officer and an appeal from his order was dismissed by a Settlement Officer on 25-9-1962. A second appeal from the Settlement Officer's order was dismissed by a Deputy Director on 25-2-1963. After 7-3-1963 a revision application was filed by the petitioners against the Deputy Director's order before the Joint Director, who on 2-5-1963 rejected it as "infructuous" (presumably because he thought that the Deputy Director was not an authority subordinate to him within the meaning of the new Section 48). The petitioners now seek certiorari for the quashing of the orders of the Joint Director and the other consolidation authorities and for any other writ or direction that may be necessary.

The petitioners have not joined any tenure-holders as opposite parties to the petition, the only opposite-parties being the State of U. P. and the Consolidation authorities. But only the State was a party to the revision application as also to the first appeal and the second appeal. No tenure-holder was an opposite party to the revision application or a respondent to either of the two appeals. There is, therefore, no defect in the petition.

4. The material facts in Writ Petition No. 483 of 1963 are these. The proceeding before the consolidation authorities was u/s 12. A second appeal from an order of a Settlement Officer was filed on 11-2-1963 before a Deputy Director who on 23-3-1963 dismissed it. The petitioner filed a revision application before the Director on 15-4-1963 and the Joint Director dismissed it on 13-5-1963 on the ground that it was not maintainable under the amended Section 48. The petitioner has now applied for certiorari for the quashing of the orders of the Joint Director and other authorities and such other writ or direction as may be necessary.

5. Three important questions arise in this petition (and in the associated petitions). The first is whether the revision application filed by the petitioners was governed by the old Section 48 or the new Section 48. If it was governed by the old section the revision application was maintainable and the Joint Director or the Deputy Director erroneously refused to exercise the jurisdiction by holding that it was not maintainable. If it was governed by the new section the second question arises whether the Deputy Director, whose order was sought to be revised can be said to be an authority subordinate to the Director within its meaning. The third question that arises is whether Section 47 of Act No. 8 of 1963 is hit by Art. 14 of the Constitution or not.

6. It is necessary to compare the relevant provisions of the Act as it stood prior to its amendment by Act No. 8 of 1963 (to be referred to as "the unamended Act") and of the Act as it stood after its amendment (to be referred to as "the amended Act") "Director of Consolidation" is defined in the unamended Act, Section 3 (4) to mean the person "appointed as such by the State Government to exercise the powers and perform the duties of the Director of Consolidation under this Act." and to "include Joint Director of Consolidation". Act No. 8 of 1963 has not made any change in this definition. "Deputy Director" is defined to mean "a person appointed as such by the State Government to exercise such powers and perform such duties of the Director of Consolidation as may be delegated to him by the State Government" and to "include a District Deputy Director", vide Sub-section (4-A); this definition also remains unchanged by Act No. 8 of 1963. "District Deputy Director" means "the person who is for the time being the Collector of the district", vide Sub-section (4-B), which also remains unchanged.

Section 42 of the unamended Act lays down that the State Government may appoint such number of officers and authorities as may be required for the purposes of consolidation. Section 42 of the amended Act is to the effect that the State Government "may appoint such authorities and officers.....as may be necessary, to give effect to the provisions of this Act". Section 44 lays down that "the State Government may.....(1) delegate to any officer or authority any of the powers conferred upon it by this Act, (ii) confer powers of the Director. . . . , Deputy Director.....under this Act or the rules made thereunder, to any officer or authority". This provision remains unchanged. Powers of the Director have been conferred by the State Government under this provision upon all Deputy Directors but only since 16-4-1963. Where powers are to be exercised or duties to be performed by any authority under the Act they may also be exercised or performed by any superior authority, vide Section 44-A which remains unamended.

Under section 11 of the unamended Act an appeal lies from an order of a Consolidation Officer passed u/s 10 to a Settlement Officer within 21 days and a second appeal lies from the Settlement Officer's order within 21 days to the District Deputy Director and can be disposed of by him or by such other Deputy Director as may be authorised in this behalf by the Director. Act No. 8 of 1963 has abolished the second appeal by amending Section 11. u/s 21 of the unamended Act an appeal lies from an order of a Consolidation Officer to a Settlement Officer and (under Sub-section (5)) a second appeal from the Settlement Officer's order to the District Deputy Director (which can be disposed of by him or by such other Deputy Director as may be authorised in this behalf by the Director) and the Deputy Director is authorised by Sub-section (6) to take cognizance of a case "as if it were an appeal filed under Sub-section (5) and decide it accordingly" if he finds that material injustice is likely to be caused to a tenure-holder who has not filed an appeal under Sub-section (5) in giving effect to the statement of proposals as revised by the Settlement Officer or as

confirmed by him u/s 23.

The Amendment Act of 1963 has deleted Sub-section (6) and Sub-section (6) with the consequences that there is now no second appeal and there is no power in a Deputy Director to revise an order suo motu. u/s 23 a Settlement Officer is empowered to confirm a statement of proposals; this provision remains unaffected by the Amendment Act. As mentioned earlier u/s 48 of the unamended Act the Director has jurisdiction to revise an order of a Deputy Director on the ground of jurisdiction or illegality or substantial irregularity in the exercise of the jurisdiction whereas under the amended Act the power vests in him to revise any order of a subordinate authority on the ground of its being incorrect, illegal or improper. Another amendment made in Section 48 is that any subordinate authority can refer a case to the Director for orders. In the whole unamended Act second appeals were provided only under Sections 11 and 21 and no second appeal now lies against any order under the amended Act.

7. Deputy Directors are of two classes;

(1) District Deputy Directors and (2) persons appointed as Deputy Directors to exercise that Director's powers. District Deputy Directors had under the unamended Act, and have under the amended Act, certain statutory powers. They and Deputy Directors of the other class had the statutory powers conferred by Sections 11 (2) and 21 (6) and (6) of the unamended Act; a Deputy Director was named Only in those provisions. They had the powers to hear second appeals and since the legislature abolished second appeals by the amending Act they are now left without any statutory powers barring certain miscellaneous or incidental powers mentioned in Sections 58-A, 38 and 39. After the amendment they have only the powers conferred upon them u/s 44 (ii) and the powers conferred by Sections 38, 39 and 53-A.

The powers conferred by Sections 38 and 39 are incidental to the exercise of the powers conferred u/s 44 (ii). The power conferred u/s 53-A is to recognize a consolidation scheme prepared by the tenure-holders of a village by agreement among themselves. Practically, therefore, they have no statutory powers now. The conferment of the powers under Sections 38, 39 and 58-A has no bearing whatsoever upon the question of their subordination to the Director and will, therefore, be ignored. The word "delegated" in Section 3 (4-A) in the two Acts is inappropriate because the Director's powers are conferred upon, and not delegated to a Deputy Director; delegation can be of only the State Government's power as is made clear by Section 44 (i). The words "subordinate authority" which occur in the amended Section 48 did not occur in the unamended section or elsewhere and are not defined in either of the two Acts. The question whether a Deputy Director is subordinate to the Director did not arise so long as the unamended Act was in force and need not be considered by us though I may mention that in *Lal Singh v. The Commissioner and Director of Consolidation, Meerut* (1964) All WR 68 he was said to be subordinate. Now of course the question arises under the amended Section 48.

8. As the powers of a District Deputy Director differ from those of a Deputy Director of the other class different answers can be given to the question of the subordination of a Deputy Director to the Director; a District Deputy Director may be held to be subordinate while a Deputy Director of the other class may be held to be not subordinate. u/s 42 (2) of the amended Act a District Deputy Director is under the Director's control in the matter of demarcation of circles to be assigned to Consolidation Lekhpals. Consolidators and other authorities appointed for the district; there is, therefore, justification for saying that he is subordinate to the Director but no such justification exists in regard to a Deputy Director of the other class.

9. In deciding the question of subordination of a Deputy Director (oilier than a District Deputy Director) to the Director the first fact to be noticed is that now a Deputy Director has (practically) no statutory powers and has only the powers of the Director which have been conferred upon him by the State Government u/s 44 (ii). Up to 7-3-1963 he had certain statutory powers under the unamended Act; between 8-3-1963 and 15-4-1963 he had no statutory powers (because of the amending Act) and no other powers because no powers had been conferred upon him u/s 44 (ii). Since 16-4-1963 he has the powers conferred upon him u/s 44 (ii). A person upon whom a certain authority's powers are conferred does not thereby become subordinate to it; actually he acquires co-ordinate jurisdiction with it. Even if a Deputy Director was subordinate to the Director prior to 8-3-1963 (on account of his having certain powers) he has ceased to be subordinate now when he has only the Director's powers.

The next fact is that there is no provision conferring upon the Director any jurisdiction over a Deputy Director. Subordination of a person to an authority arises on account of the authority's having some jurisdiction over him. As I said in Lal Singh 1964 All WR 68 one should not be misled by the use of the word "Deputy"; it is a part of the designation and not an adjective. "Deputy Director" has the special meaning given in Section 3 (4-A) and does not mean a Director of a lower grade. The legislature could have chosen any other designation for the officer and if then he could not be said to be subordinate there is no justification for saying that he is subordinate because he is called "Deputy Director".

10. In Lal Singh's case 1964 All WR 68 a Bench of which I was a member held that a Deputy Director exercising powers after 7-3-1963 cannot be said to be subordinate to the Director and I am not persuaded that that decision is incorrect. I respectfully disagree with the contrary view expressed by Dwivedi, J. in Ram Narain and Others Vs. Director of Consolidation and Others, . Even if subordination includes administrative subordination there is no provision making a Deputy Director administratively subordinate to the Director. It is immaterial that a Deputy Director performs judicial or quasi-judicial functions; so does a Magistrate or a Munsif without thereby becoming subordinate to the Director The learned Judge observed at p. 178 that "the language of the section" (section 48) "suggests that the word "subordinate" is used comprehensively"; he has not

referred to any particular words of the section The section simply lays down that the Director may revise an order of a subordinate authority; there is nothing in this provision to suggest that the word "subordinate" is used "comprehensively".

The observation that the Director "is at the apex of the consolidation staff" at p. 173 does not lead to the conclusion that every authority and every official is subordinate to him. Even if only one person can be at the top it does not mean that every other person is subordinate to him. Even though the power to revise is conferred upon the Director, who is supposed to be at the top, it is expressly confined to orders of subordinate authorities; the word "subordinate" used by the legislature is not superfluous as it would be if every authority passing an order were necessarily subordinate to the Director. The Director cannot be subordinate to himself; so an officer exercising the Director's powers cannot be subordinate to the Director.

It is granted that a Deputy Director, even though he exercises the Director's powers does not thereby become a Director and that there is a distinction between being appointed as a certain officer and being invested with the powers of the officer, as was pointed out in *Lallo v. Joint Director of Consolidation* (1965) All WR 666 but he does not become subordinate to the Director just because he is not a Director himself. The learned Judge asked (at p. 174) whether a Deputy Director exercising by virtue of Section 44 the powers of a Settlement Officer or of a Consolidation Officer is not subordinate; we need not answer the question because it does not arise here. The learned Judge then referred to certain rules but rules can never be resorted to for interpreting a statutory provision. Rules cannot change the meaning of a statutory provision. If under the Act a Deputy Director is subordinate to the Director the rules cannot make him not subordinate; on the other hand if he is not subordinate they cannot make him subordinate. The rules have to follow the statute and not vice versa. Even otherwise I do not find anything in any of the rules referred to by the learned Judge to warrant the finding that a Deputy Director is subordinate to the Director.

Rule 110 refers to the "staff" and not to officers or authorities. The Director may be at the apex of the staff without being at the apex of the officers exercising judicial or quasi-judicial functions. His power to revise is derived from section 48 and not from Rule 110 placing him at the apex of the staff The learned Judge did not feel bound by the observation in *Lal Singh's case* 1964 All WR 68 because he thought that it could not be reconciled with the decision in the case that the Director could revise the particular Deputy Director's order. In *Lal Singh's case* 1964 All WR 68 it was held that though a Deputy Director after 7-3-1963 is not subordinate to the Director the Director could revise the order of the particular Deputy Director because it was passed prior to 8-3-1963 when he was subordinate. There was, therefore, no inconsistency whatsoever between the decision in the case and the finding that a Deputy Director after 7-3-1963 is not subordinate to the Director. In the end the learned Judge thought that the observation that a Deputy Director after 7-3-1963 is not subordinate to the

Director was obiter; we are not sitting in appeal over the decision of the learned Judge and I should not arrogate myself the right to criticise this observation but I may respectfully point out that one argument advanced in Lal Singh's case 1964 All WR 68, was that since a Deputy Director is after 7-3-1903 not subordinate to the Director, the Director has no power to revise his order.

The question before the Bench was whether the Director could revise his order or not and in answering it the Bench had to deal with all arguments. The Bench, therefore, was directly concerned with the question whether after 7-3-1963 a Deputy Director is subordinate to the Director or not; it is immaterial that in spite of answering it in the negative it held for other reasons that the Director could revise the Deputy Director's order. I may also say that another reason given by the learned Judge for not following Lal Singh 1964 All WR 68 was that the provisions referred to by him were not brought to the notice of the Bench. That was only an assumption presumably based on the absence of reference to them in the judgment. The Bench could have refrained from referring to them even though its attention was drawn to them if it thought that they were irrelevant and that the argument based upon them was so devoid of reason that it need not be noticed in the judgment.

No court deals with every single argument advanced before it, regardless of its merits, in the judgment. Certain arguments are left unnoticed on the ground that there is no force at all in them. It seems to me that a decision of a Bench on a certain question binds a single Judge when he has to answer that question and that he cannot refuse to be bound on the ground that a certain argument or a certain provision was not noticed by the Bench. If the Bench found that there was no force in the argument and that the provision was irrelevant, a single Judge cannot overrule that finding of the Bench, and hold that there was force or relevancy and then refuse to be bound by it.

11. Section 48 is about the Director's examining the record of a case decided by a subordinate authority; a subordinate authority decides a case on one date and the record of it is called for and examined by the Director on a subsequent date. No question arises when the authority is subordinate on both the dates or is not subordinate on either of the dates; in one case the Director has the power to revise the order and in the other case he had not. But the matter is not so clear when the authority was subordinate on the date of the decision and has ceased to be subordinate on the date on which the Director proposes to exercise the power u/s 48 or when it was not subordinate on the date of its passing the order but became subordinate later. In Lal Singh's case the Bench took the view that the authority has to be subordinate on the date on which it passes the order and I am not persuaded that that view is wrong. If the authority was not subordinate on the date on which it passed the order it was not revisable on that date and there is nothing in section 48 to suggest that it can become revisable subsequently when the status of the authority is altered.

Even though it becomes subordinate subsequently the record cannot be said to

be of a case decided by a subordinate authority. The word "subordinate" is the description of the authority at the time of its passing the order and not of the authority at the time of its order being revised. If the authority was subordinate at the time of passing the order the Director acquired jurisdiction at once to revise it and is not divested of it by any express provision on account of its subsequently ceasing to be subordinate. If the authority was not subordinate at the time of passing the order the order cannot be said to be one passed by a subordinate authority and the Director will not have revisional jurisdiction over it even if the authority subsequently becomes subordinate to it. I am therefore, of the view that an authority is subordinate within the meaning of section 48 if it was subordinate on the date on which it passed the order sought to be revised.

12. In this connection I may dispose of a contention advanced by Sri Har Gur Charan Srivastava that u/s 44(ii) the powers can be conferred not upon the authorities mentioned in it but upon other persons. I see no justification to accept it. The words "to any officer or authority" are wide enough to include the officers mentioned in the provision. A Deputy Director is an officer or authority within the meaning of the provision and the Director's powers can be conferred upon him. A Deputy Director is a person appointed as Deputy Director by the State Government for the purpose of exercising such powers of the Director as may be conferred upon him. A Deputy Director, therefore, comes into existence as soon as the State Government appoints a person as a Deputy Director; it is not obligatory upon the State Government to confer upon him any of the powers of the Director simultaneously.

It is enough to state in the order of appointment that he "is appointed as a Deputy Director to exercise such powers and perform such duties of the Director of Consolidation as may be conferred upon him by the State Government" and the actual conferment of the Director's powers may be done later. Naturally when the conferment is done later the relevant notification will state that such and such Director's powers are conferred upon a Deputy Director. Therefore, it is not meaningless to speak of conferment of the Director's powers upon a Deputy Director. What is meant by conferring upon a Deputy Director powers of the Director . . . under this Act is conferring upon him powers which the Director has under the Consolidation of Holdings Act on the date of the conferment. Whatever powers the Director has under the Act on a certain day can be conferred upon a Deputy Director on that day. What has to be seen is the powers that the Director possesses on the day of the conferment. The first conferment of the powers took place on 16-4-1963 and whatever powers the Director had on that date could be conferred upon a Deputy Director.

Under the amended Section 48 he had the power on that date to revise an order of a subordinate authority on the ground of incorrectness, illegality or impropriety and it was this power that could be conferred upon a Deputy Director. The notification dated 16-4-1968 confers "on all the Deputy Directors of Consolidation. . . .the powers of Director of Consolidation as laid down in

SECTION 48" Only in this petition the revision application was made to, and was disposed of by, a Deputy Director; the revision applications in the other petitions were disposed of by the Jt. Director. The Deputy Director and the Joint Director rightly observed that if the amended Section 48 applied they could exercise the revisional jurisdiction only over an order of an authority subordinate to them. A Deputy Director has been found by me to be not sub-ordinate to the Director or the Joint Director.

It may be said that a Deputy Director is all the more not subordinate to another Deputy Directors upon whom the Director's powers of Section 48 are conferred but really nothing depends upon the comparison of the status of a Deputy Director and that of another Deputy Director exercising the Director's powers. What is to be seen for the purpose of section 48 is the relation between the status of a Deputy Director and that of the Director; if it is of subordination and consequently the Director has the power to revise a Deputy Director's order, on that power being conferred upon another Deputy Director the latter can revise the order even though it is of a co-ordinate authority. The revising authority, though it is a Deputy Director, exercises the Director's power of revising a Deputy Director's order which has been lawfully conferred upon it. If the Director himself has no power to revise a Deputy Director's order (because he is not subordinate to him) a Deputy Director on whom that power of the Director is conferred equally cannot revise another Deputy Director's order.

This is the position if the amended section 48 applies. Prior to 8-3-1963 the unamended section applied and a Deputy Director's order could be revised not only by the Director but also by a Deputy Director upon whom this power of the Director was conferred. There was no Deputy Director upon whom this power was conferred prior to 8-3-1963 and, therefore, no Deputy Director could revise a Deputy Director's order prior to 8-3-1963. Thus even if the unamended section applied, a Deputy Director's order could not be revised by another Deputy Director though it could be revised by the Director.

13. The question whether the revisional jurisdiction after 7-3-1963 is governed by the amended section or the unamended section depends upon Section 47 of the amending Act. That section has been interpreted in Lal Singh's case and also by a Bench of which I was a member in Sukhdeo v. Sunder Lal, Special Appeal No. 79 of 1961 dated 7-1-1963 (All) . I adhere to all that was said in those two decisions. In Chotkannu v. Deputy Director of Consolidation, Writ Petn. No. 723 of 1963 dated 20-9-1965 (All) my brother Sahgal took the same view. In this petition the proviso to Section 47(1) is not applicable because as a second appeal was pending on 8-3-1963 it could not be said that revision lay but had not been instituted. 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 revisionslay" 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" Similarly if a second appeal was pending on 8-3-1963 one could not say "a revision lay but had not been instituted". But if a first appeal had been decided or a second 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." "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. When the first appeal or second appeal was pending on 8-3-1963 there was no question of filing a second appeal or revision.

14. In the instant petition and petitions Nos. 338 and 483 the proviso is not applicable because second appeals were pending and revision from the orders passed on the second appeals was governed by the unamended section 48 u/s 47 (1) of the amending Act. In writ petition No. 385 the proviso was applicable because an order had been passed u/s 21(6) as if it were a second appeal and the revision was governed by the amended section 48.

15. The question what are the material dates within the meaning of the proviso arises only when it applies. As was pointed out in Lal Singh's case, 1964 All WR (HC) 68 the only possible material dates are the date on which the last order was passed prior to 8-3-1963 and the date on which a second appeal or revision was instituted. The last order was passed under the unamended Act and is not to be deemed to have been passed under the amended Act. Under the proviso the question whether a second appeal or revision can be instituted after 7-3-1963 or not is to be decided by considering the provisions of the amended Act but whether a second appeal or revision lay or not is to be decided with reference to the unamended Act. The proviso is not applicable if a second appeal or revision did not lie under the unamended Act. As second appeals have been abolished no second appeal can be filed even though it could have been filed before 8-3-1963 and a revision application will lie but will be governed by the amended Section 48 and will lie only if the authority passing the last order was subordinate on the date of the order to the Director and on any ground of incorrectness, illegality or impropriety.

If the last order passed before 8-3-1963 was on a second appeal, it being a Deputy Director's order was revisable under the unamended Act and the proviso will apply and revision will lie on or after 8-3-1963 only under the amended Act, i.e., on any ground of incorrectness, illegality or impropriety. Since the Deputy Director was subordinate to the Director prior to 8-3-1963 the order passed by

him on second appeal is an order passed by a subordinate authority within the meaning of the amended section. I do not know what other meaning can be given to the phrase "as if this Act had been in force on all material dates." The amended Act is to be deemed to be in force on all material dates only for the purpose of deciding whether a second appeal or a revision lies and if so on what ground.

16. My brothers Beg and Sharma in their referring order have emphasized the words "all material dates" but I confess my inability to understand what more is meant by them than that indicated above. The legislature might have used them because the date on which a first appeal or second appeal was decided and the date on which a second appeal or revision is instituted vary from case to case. My learned brothers have not stated what third date can be a material date and the words "all dates" cannot be used when there are only two dates. My learned brothers contended that if the proviso applies the result would be that the amended Act will apply on the date on which the second appeal was decided by a Deputy Director, that under the amended Act a Deputy Director is not subordinate to the Director and that consequently revision would not be maintainable after 7-3-1963. With great respect I do not agree. Under the proviso the amended Act is deemed to be in force on the date of the decision on a second appeal by a Deputy Director but after the decision and not at the time of the decision.

The decision was lawfully given because a second appeal lay under the unamended Act which was in force on the date of the decision and it is not the intention behind the proviso to treat the second appeal itself as non-existent and the decision as void. It would be absurd if the proviso laid down that the decision of the second appeal itself should be deemed to be non-existent and it has not done so. On the other hand by referring to revision lying under the unamended Act it has made it clear that up to the moment of the decision of the second appeal the unamended Act has to be applied. There cannot be any question of revision under the unamended Act unless there was an order by a Deputy Director and normally the Deputy Director's order came into existence only when he decided a second appeal. The date of decision of a second appeal is material but is material only after the decision. For deciding whether revision lay or not the unamended Act has to be considered and if under it revision lay then whether revision can be instituted after 7-3-1963 or not will be decided on the basis of the amended Act. The amended Act is deemed to have come into force immediately after the decision of the second appeal. As it is deemed to be in force from that date right up to the date on which revision is instituted the words "all material dates" have been used.

17. It was contended that the above interpretation will result in infringement of the guarantee of Article 14 of the Constitution suppose a second appeal had been decided just before 8-3-1963 and revision had not been filed before 8-3-1963, according to the above interpretation revision will lie under the amended section

48 though it will not be confined to the ground of jurisdiction. If revision had been filed before 8-3-1963 it will be confined to the ground of jurisdiction. Thus a party which was prompt in applying for revision suffers and a party which postpones to the last date applying for revision gains by having a larger remedy. This anomaly, if it be called so, is there but is not the result of any intention on the part of the legislature to discriminate between litigants who applied for revision before 8-3-1963 and other litigants who did not.

It is an accidental result and the legislature cannot be said to have denied equality before the law to the litigants who were parties to second appeals. The legislature had no animosity against those litigants who rushed with revision applications promptly. The anomaly results not from the provisions of the proviso but from the amendment in section 48. As far as the proviso is concerned it does not infringe Article 14. 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 legislatures. It has never been held that a legislature's applying the unamended law to pending cases and the amended law to future cases infringes Article 14. It is rational to let pending cases be governed by the unamended law and to apply the amended law to cases instituted in future.

It is not unconstitutional not to give retrospective effect to an amendment in the law so as to make it applicable to pending cases. The proviso achieves nothing other than that the unamended Act will apply to pending second appeals and revisions and the amended Act, to future second appeals and revisions. The question whether the proviso is constitutional or not does not depend upon the contents of the amended law. Moreover it seems to me that it is open to a litigant who had applied for revision prior to 8-3-1968 to withdraw his application and apply again for revision after 8-3-1963; the second application will be governed by the proviso and will lie on the ground of incorrectness, illegality or impropriety. It may be said, by way of reply to the suggestion that the Director may not grant permission for the second application but revisional jurisdiction is always discretionary and is not a matter of right as is well settled. If the last order passed prior to 8-3-1963 was by the first appellate court and a second appeal was filed prior to 8-8-1968 it will continue to be heard; if no second appeal was filed the proviso applies to bar a second appeal now.

This classification, between a litigant who filed a second appeal prior to 8-3-1963 and litigant who did not for the purpose of denying the other a right to file it after 8-3-1963 is not irrational. If a litigant wants to file a second appeal there is no reason why he should not file it before the law is amended. A legislature by taking away the right of a second appeal does not infringe Article 14. If it decides to bar second appeals in future it is not bound to provide for dismissal of pending second appeals. Since second appeals had been filed allowing them to go on is not irrational. It was because the legislature abolished second appeals that it

widened the scope of revision by amending section 48: now the Director can interfere in revision on any ground on which ;t second appeal could succeed under the unamended Act. There is thus nothing irrational in the amendment to Section 48. I, therefore, see no substance in the contention that the proviso is hit by Article 14.

18. I am not at all impressed with the argument advanced on behalf of one petitioner that the object behind the proviso was to curtail litigation and that it was not served by the interpretation placed in Lal Singh's case 1964 All WR 68. In the first place the legislature has nowhere indicated its object behind the proviso; curtailment of litigation was the object behind the amending Act. Moreover the object of curtailment of litigation is not defeated by allowing pending second appeals and revisions to go on.

19. Suppose a first appeal had been decided just before 8-3-1963. A second appeal cannot be filed after 8-3-1963 because the proviso applies bringing in the amended Act but instead revision will lie. If a second appeal had been filed before 8-3-1963 it will continue to be heard. This difference, however is not material at all because revision under the amended section lies on any ground on which an appeal lies. Therefore a litigant who did not file a second appeal before 8-3-1963 does not suffer by his being deprived of the right to file it; whatever he could get on second appeal he can get on revision.

20. Sri D. K. Trivedi argued in Petition No. 483 of 1963 that Section 47 (1) of the amending Act applies to executive, and not judicial or quasi-judicial functions. According to him "all work in regard to or connected with consolidation operations" means executive work and not deciding disputes, e.g., claims and objections. "Work" is a comprehensive word including not only acts necessary for consolidation but also determination of disputes arising in connection with consolidation. The provision deals not with consolidation operations but with work in regard to or connected with such operations and deciding disputes arising in consolidation operations is work in regard to or connected with consolidation operations. The Act dealing with consolidation operations itself requires determination of disputes arising in the course of carrying out consolidation operations.

The argument of Sri D. K. Trivedi loses sight of the fact that the dominant word in the provision is "Work" and not "operations". Further the proviso expresses to be an exception to the provision and since it deals with second appeals and revisions it is clear that the provision also deals with second appeals and revisions. The argument that the proviso deals with something not dealt with in the provision cannot be accepted for a moment. There may be difference between "operations" and "proceedings" but it is irrelevant when we have to interpret Section 47 (1) because the question before us is whether "work" includes second appeals and revisions or not.

21. In Writ Petition No. 338 of 1963 the statement of proposals was confirmed u/

s 23 and then an application was made u/s 21 (5) of the unamended Act and during its pendency the amending Act came into force. The question is whether Section 47 (1) applied at all or not. It cannot be disputed that on 8-3-1963 the work was at the stage mentioned in Sub-section (1) (i) of Section 47; therefore, Section 47 applied to it. The next question is whether the proviso applied and the answer depends upon whether the proceeding u/s 21 (6) could be said to be a second appeal or revision within its meaning. It is not expressed to be revision though the power is analogous to that of revising a subordinate authority's order. On the other hand it is required to be treated as if it were a second appeal and to be dealt with as such. I would, therefore, say that a proceeding u/s 21 (6) is not a revision proceeding. I would also say that it is not a second appeal.

Section 21 (6) requires it to be conducted as a second appeal would be conducted but does not enact the legal fiction that it shall be deemed to be a second appeal. To say that it should be dealt with "as if it were an appeal filed under Sub-section (5)" is not the same thing as "it shall be deemed to be an appeal filed under Sub-section (5)". By the former phrase only the procedure applicable to the hearing of an appeal filed under Sub-section (5) is made applicable and by the latter it becomes in the eye of law such an appeal, i.e. for all purposes and not only for the purpose of being entertained and disposed of. There is no reason to think that it must be treated as a second appeal within the meaning of the proviso. Moreover the jurisdiction conferred by Sub-section (6) is discretionary and, therefore, even if it were treated as a second appeal it cannot be said that on 8-3-1963 a second appeal "lay". "Lay" suggests "as a matter of right". Whether a second appeal came into existence or not would depend upon the discretion of the Deputy Director. The proviso therefore, is not applicable in this petition and the jurisdiction of the Deputy Director under Sub-section (6) was governed by the unamended Act under which his order was revisable by the Director. The Joint Director wrongly refused to exercise the jurisdiction vested in him and the petition must be allowed.

22. My answers to the questions referred to this Bench are as follows:

1 (a). Yes. The proviso to Section 47 (1) of Act No. 8 of 1963 was not applicable and the proceeding u/s 9 was governed by the unamended Act under which revision lay from a Deputy Director's order on second appeal.

(b) As the unamended Act applies the revision would be governed by the unamended Section 48.

2. Yes. The Deputy Director, Bara Banki was admittedly invested with the Director's powers. Though he himself was a Deputy Director he exercised the jurisdiction which the Director could have exercised. The Director had jurisdiction to revise the order of the Deputy Director. Camp. Consequently Deputy Director, Bara Banki could revise the order passed by the Deputy Director, Camp, on second appeal.

3. No. He has refused to exercise jurisdiction vested in him.

22-a. The case should be laid before the Bench concerned with these answers. No order as to costs of this reference.

Sahgal, J.

23. Certain common questions of law that arise in these writ petitions have been referred for decision to a Full Bench.

24. Writ Petition No. 338 of 1963 is directed against an order of the Joint Director of Consolidation dated the 15th of May, 1963. passed in revision against an order of the Deputy Director of Consolidation, U. P. Lucknow, Camp at Lucknow. u/s 21 (6) of the U. P. Consolidation of Holdings Act, on the 23rd of March, 1968. The order directs that the revision be deposited as it did not lie in view of the proviso to Sub-section (1) of Section 47 of the U. P. Consolidation of Holdings (Amendment) Act, 1968 hereinafter to be referred to as the Amending Act or the Amendment Act.

25. Writ Petition No. 385 of 1968 is directed against an order of the Joint Director of Consolidation dated the 22nd of May, 1963, passed on a revision application which was filed on the 25th of March, 1968 against an order of the Deputy Director of Consolidation, Lucknow, dated the 25th of February 1963, passed in a second appeal u/s 21(5) of the U. P. Consolidation of Holdings Act. 1953. This revision also has been disposed of by a similar order on the ground that the revision was infructuous u/s 47 of Act VIII of 1963.

26. Writ Petition No. 483 of 1963 in directed against an order dated the 13th of May, 1963 of the Joint Director of Consolidation in revision against an order of the Deputy Director of Consolidation, Camp Sitapur, dated the 23rd of March, 1963 passed in a second appeal u/s 11(2) of the U. P Consolidation of Holdings Act 1953. This order also disposes of the revision by an order similar to that by which the above revisions have been disposed of on the ground that no revision lay in view of the provisions of Section 47 of the Amending Act.

27. Writ Petition No. 510 of 1968 is directed against an order of the District Deputy Director of Consolidation, Barabanki dated the 14th of June, 1963 in revision against an order of the Deputy Director of Consolidation Camp Barabanki, dated the 22nd of March. 1963 in a second appeal u/s 11(2) of the U. P. Consolidation of Holdings Act. 1953. Under this order also the revision application has been ordered to be deposited, but the ground is that it being directed against an order passed by the Deputy Director of Consolidation was not maintainable u/s 48 of the amended Act as he cannot be treated as a subordinate authority of the District Deputy Director of Consolidation. Barabanki.

28. The questions that have been referred to in Writ Petition No. 338 of 1968 are:

1. On the facts and circumstances of the present case, was a revision against the order of the Deputy Director dated 23-3-1963 maintainable before the Joint Director and is the order of the Joint Director dated 15-5-63 depositing the aforesaid revision a legal and a correct order?

2. In case the said revision is held to be maintainable would it be governed by the amended section 48 or by Section 48 as it stood prior to its amendment by Act VIII of 1963?;

29. The questions that have been referred to in Writ Petition No. 385 of 1963 are:

1. On the facts and circumstances of the present case, was the revision petition against the order of the Deputy Director dated 25th February. 1963 maintainable before the Joint Director of Consolidation. U P.?

2 If the answer to the first question is in the affirmative, then would the said revision petition be governed by Section 48 as it stands after its amendment by the Amendment Act or as it stood prior to the said amendment?

3(a). Is the proviso appended to Sub-section (1) of section 47 of the Amendment Act hit by Article 14 of the Constitution of India and void in law for that reason?

(b). If so, what would be its effect on the maintainability and scope of the revision petition in the present case?

30. The questions that have been referred to in Writ Petition No. 483 of 1963 are similar to the questions referred to in Writ Petition No. 388 of 1968 and are as follows:

1. Whether on the facts and circumstances of the present case, a revision against the order of the Deputy Director dated 23-3-1963 was maintainable and is the order of of the Joint Director dated 13-5-68 depositions the said revision legally correct?

2. If the said revision is held to be maintainable, would such a revision be governed by the amended Section 48 or by Section 48 as it stood prior to its amendment by Act VIII of 1968?

31. In Writ Petition No. 510 of 1963 the questions referred to the Full Bench are:

1(a). On the facts and circumstances of the case, was a revision against the order of the Deputy Director dated 22-3-1963 maintainable in the present case?

(b) If so, would such a revision be governed by amended Section 48 or Section 48 as it stood prior to its amendment by Act VIII of 1963?

2. On the facts and circumstances of the case, was the Deputy Director, Barabanki competent to hear a revision petition against the order of the Deputy Director, Camp Barabanki dated 22-8-1968 passed in the second appeal by the latter?

3. Is the order of the Deputy Director, Barabanki dated 14-6-1968 depositing the afore-said revision a legally correct order?

32. Considerable changes were introduced in the provisions of the U. P. Consolidation of Holdings Act, 1953 (U. P. Act V of 1954), as amended from time

to time (hereinafter to be described as the Principal Act or the Unamended Act) by the U. P. Consolidation of Holdings (Amendment) Act 1968 (Act VIII of 1968). We are concerned only with a few of those changes.

33. The Unamended Act provided u/s 11(2) for an appeal against an order of the Settlement Officer (Consolidation) under Sub-section (1) of that section on a question of fact or a question of law, or on both, before the District Deputy Director of Consolidation or such other Deputy Director of Consolidation, as may be authorized in this behalf by the Director of Consolidation, whose decision was to be final and not questioned in any court of law.

34. Sub-section (6) of Section 21 of the Unamended Act provided that any person aggrieved by the order of the Settlement Officer, Consolidation, under Sub-section (2) of that section may file a second appeal either on a question of fact or on a question of law, or both before the District Deputy Director of Consolidation or such other Deputy Director of Consolidation, as may be authorized in this behalf, whose decision was to be final and not be questioned in any court of law.

35. Sub-section (6) of the same section provided that the Deputy Director, Consolidation may, also where he is of the opinion either in the course of hearing of an appeal under Sub-section (5) or otherwise, that material injustice is likely to be caused to a tenure-holder in giving effect to the Statement of Proposals as revised by the Settlement Officer, Consolidation under Sub-section (4) or as subsequently confirmed by him u/s 23, as the case may be but not later than the date of notification issued u/s 52 for reasons to be recorded in writing take cognizance of the case as if it were an appeal filed under Sub-section (5) and decide it accordingly.

36. Section 48 provided as follows:

"48. The Director of Consolidation may call for the record of any case decided or proceeding taken, where he is of the opinion that a Deputy Director, Consolidation has-

(i) exercised jurisdiction not vested in him in law; or

(ii) failed to exercise the jurisdiction vested in him; or

(iii) acted in the exercise of his jurisdiction illegally or with substantial irregularity; and as a result of which substantial injustice appears to have been caused to a tenure-holder, and he may after affording reasonable opportunity of hearing to the parties concerned, pass such orders in the case or proceeding as he thinks fit."

37. The Amending Act abolished the second appeals against the orders of the Settlement Officer, Consolidation provided u/s 11(2) and section 21 (5) already referred to above and made the order of the Settlement Officer, Consolidation final. It also abolished the provision contained in Sub-section (6) of Section 21. It

further amended Section 48 also which after amendment reads as follows:

"48(1). The Director of Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings; or as to the correctness, legality or propriety of any order passed by such authority in the case or proceedings and may, after allowing the parties concerned an opportunity of being heard, make such order in the case or proceedings as he thinks fit.

(2) Powers under Sub-section (1) may be exercised by the Director of Consolidation also on reference under Sub-section (8).

(3) Any authority subordinate to the Director of Consolidation may, after allowing the parties concerned an opportunity of being heard refer the record of any case or proceeding to the Director of Consolidation for action under Sub-section (1)."

38. It would thus appear that by the amendment of section 48 the scope and ambit of revision was enlarged. While the unamended provision provided for a revision only against the order of the Deputy Director of Consolidation on question as to jurisdiction only, the amended provision provided for the revision being entertained as to the correctness, legality or propriety of any order. The revision was not restricted to an order of the Deputy Director, but to the order of any subordinate authority. One of the questions that comes up for consideration is as to whether the Deputy Director would be such a subordinate authority.

39. There is a transitory provision in the Amending Act contained in Section 47. It reads as follows:

"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 the 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) up to and inclusive of the stage of confirmation of the Statement of Proposals 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; 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."

40. The amendment came into force from the 8th of March, 1963.

41. In Writ Petition No. 338 of 1963 proceedings u/s 21(6) of the Un-amended

Act were pending before the Deputy Director at the time of the coming into force of the Amending Act, while in Writ Petitions Nos. 483 of 1963 and 510 of 1963 second appeals u/s 11(2) of the Unamended Act were pending before the Deputy Director on that date. In Writ Petition No. 385 of 1963, however, the second appeal u/s 21 (5) of the Unamended Act had been disposed of on the 25th of February, 1963, prior to the coming into force of the Amending Act, but the revision application was filed before the Director on the 25th of March 1963, after the coming into force of the Amending Act.

42. Had there been no proviso to Subsection (1) of Section 47 of the Amending Act, there would have been no difficulty in applying the Unamended Act to all these cases as they would be covered either by Sub-clause (i) or Sub-clause (ii) of that provision. There is, however, a slight controversy as to whether Sub-section (1) applied at all, but for the present we leave aside that controversy. We may take it at this stage that Sub-section (1) of Section 47 would have applied to the cases and they would have been concluded in accordance with the provisions of the unamended Act, had the proviso not been appended to the Sub-section. The main question in these cases is as to what is the impact of this proviso on those cases.

43. A close analysis of the proviso, therefore, is required in order to determine its impact on the cases referred to this Bench.

44. The proviso applies to second appeals and revisions which lay under the provisions of the unamended Act as they stood prior to the Amending Act but which had not been instituted before the date of the amendment i.e. the 8th of March, 1963. Thus in order to apply the proviso to second appeals and revisions they must lie prior to the 8th of March, 1963. 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. Similarly if a second appeal has not been disposed of and decided, no occasion arises as to whether any revision lies or not. Therefore, the first appeals or the second appeals from which second appeals or revisions as the case may be are contemplated, must have been decided before the 8th of March, 1963. The proviso does not apply to second appeals and revisions in connection with which the first appeal from which the second appeal lies or the 2nd as peal from which the revision lies has not been decided before the 8th of March, 1963.

The second condition is that in cases in which second appeals and revisions lay, they had not been instituted before the coming into force of the Amending Act, i.e., the 8th of March 1963. When these two conditions are satisfied then the Amending Act is to apply and be deemed always to have applied as if it had been in force on all material dales. The question would arise as to what are those material dates. According to one contention, the material dales would be the date of the decision of the first appeals in cases in which the second appeals lay and in cases in which the revisions lay prior to the amendment, the dale of

decision of the second appeal, and in both the cases the other material date would be the date of the institution of the revision application. On the other hand, the other contention is that the material date would only be the date of the institution of the 2nd appeal or the revision application as the case may be. The criticism against the latter view is that this view misses the significance of the words "all" and "material dates". If this interpretation is correct, then only one date will be the material date while the words "all" and the plural "dates" contemplate that there are more than one material dates. This interpretation would not be in consonance with the specific provisions of the Amending Act by restricting the material date only to one when they are contemplated to be more than one.

One of the grounds to be considered is that if the material date on which a Deputy Director passes an order in a second appeal prior to the 8th of March, 1963 is taken into consideration, then the order in the second appeal itself will be vitiated inasmuch as an order could not have been passed under the amended Act which does not contemplate a second appeal. But the reply to this argument is that the purpose of the proviso is not to provide any test for determining validity of the order itself but simply to provide a test for the filing of the revision against that order. The order will remain intact; only the law as to the applicability of the amended provisions with respect to the institution of the second appeal or the revision, as the case may be, and as to its maintainability will apply. The view that prevailed with a Bench of this Court to which the Hon'ble the Chief Justice was a party, vide 1964 All WR 68 was that the material date was the date of the institution of the revision application. The relevant portion may be quoted with advantage:

"In regard to a revision from the order of the Deputy Director the amended section must be read as if it had been in force on all material dates. In such a case there are only two possible material dates, (1) the date on which the Deputy Director passed the order and (2) the date on which the revision application is filed and the Director or any other authority is called upon to assume revisional jurisdiction over it. The question before us is on which of these two dates is the amended Act to be deemed to have been in force. Now as regards the former date amended Act cannot be deemed to have been in force because the order was passed by the Deputy Director on second appeal and under the amended Act such an order could not have been passed. Once he had passed the order in second appeal nothing was to be gained by treating the amended Act as having been in force on that date. He had passed the order and it was final and the question whether the amended Act was in force on that date or not did not arise. It follows that what is meant by "material dates" in the proviso is the date on which the revision application is filed and the authority before which it is filed is called upon to assume jurisdiction over it. Whether it lies or not and whether it should assume jurisdiction over it or not are the questions to be decided by it on the basis of the amended Act and this is the meaning of the proviso "As respects revisions" means "as regards the exercise of

the power of revision": the amended Act is to be applied and is to be applied with retrospective effect only as regards the exercise of the power of revision. The date on which an authority is asked to assume revisional jurisdiction is a material date and on that date it must apply amended Act and on that date the amended Act will be deemed to have applied. No date prior to that date could be said to be a material date. The date on which the order sought to be revised was passed could not be said to be material date because no right to revise accrued on it. An appeal is a matter of right but not a revision; revising an order passed by a subordinate authority is a power conferred upon a superior authority and no party has right to ask for revision. The power of revision may be exercised by a superior authority suo motu or on an application by a party and, though a party may make an application he is not conferred a right to ask for revision just as a party has a right to approach superior authority by way of an appeal where an order is appealable. No period of limitation is prescribed for an application for revision. Therefore, it cannot be said that a right vests in a party to apply for revision of an order on the date on which it is passed."

45. This reasoning does not, with respect, take into consideration the use of the word "all" and the words "material dates" in plural. The framers of the proviso by using these two words intended to convey that there will be more than one material dates. The principle that the plural will include the singular will not be applicable as according to this interpretation, the plural will mean only singular and in no case will it mean plural. One of the grounds that has influenced the decision is that if the material date on which the Deputy Director passed the order is to be taken into consideration the order in the second appeal itself will be vitiated inasmuch as such an order could not have been passed under the amended Act as the amended Act does not contemplate a second appeal. This point has already been discussed earlier. Thus according to the interpretation, which interpretation appears to me to be the correct interpretation of the proviso, if a first appeal under the un-amended Act has been decided by the Settlement Officer. Consolidation before the 8th of March, 1963, and no second appeal has been filed before that date, then only a revision will be maintainable under the amended Act, in case a second appeal has been decided by the Deputy Director either u/s 11(2) or Section 21(5) of the unamended Act or an order has been passed u/s 21(6) of the unamended Act and no revision has been filed before the 8th of March, 1963, then revision will lie in accordance with the provisions of the amended Act if one is maintainable.

As both the dates are material dates namely, the date on which the first appeal or the second appeal, as the case may be, has been decided and the date on which the revision application is instituted, we have to see whether a revision is maintainable against the orders complained against passed in the first appeal or the second appeal as the case may be, and whether it can be Instituted after the 7th of March, 1968 under the amended law. Under the amended section 48, which has already been referred to above, a revision lies to the Director of Consolidation only if the case or the proceeding has been taken by any

subordinate authority. The question, therefore, would arise in case of a first appeal whether the Settlement Officer, Consolidation is an authority subordinate to the Director of Consolidation and in case of a second appeal whether the Deputy Director of Consolidation who decided the second appeal is an authority sub-ordinate to the Director of Consolidation. As the cases that have been referred to above are all cases of either a second appeal or a decision u/s 21(6) of the unamended Act which are decided by a Deputy Director, we have to see whether a Deputy Director is a subordinate authority to the Director under the amended Section 48 of the Act.

46. Under the amended Act u/s 3(4) "Director of Consolidation" means the person appointed as such by the State Government to exercise the powers and perform the duties of the Director of Consolidation under the Act or the rules made thereunder and shall include an Additional Director of Consolidation and Joint Director of Consolidation.

47. u/s 4(4-A) "Deputy Director, Consolidation" means a person appointed as such by the State Government to exercise such powers and perform such duties of the Director of Consolidation as may be delegated to him by the State Government and shall include a District Deputy Director of Consolidation and Assistant Director of Consolidation.

48. Section 3 (4-B) gives the definition of the term "District Deputy Director of Consolidation" which means the person who is for the time being the Collector of the district.

49. So far as the definitions themselves go, they do not indicate that the Deputy Director of Consolidation is subordinate to the Director of Consolidation.

50. A reference has been made to the Director of Consolidation u/s 44 which provides that the State Government may, by notification in the official Gazette and subject to such restrictions and conditions as may be specified in the notification confer powers of the Director of Consolidation. Deputy Director of Consolidation, the Settlement Officer, Consolidation and the Consolidation Officer under this Act or the rules made thereunder, to any officer or authority. Here again this provision does not indicate that the Deputy Director is subordinate to the Director of Consolidation.

51. Section 88 of the amended Act gives powers to enforce the attendance of witnesses in certain matters. This section gives powers to certain authorities for the enforcement of attendance of witnesses and it also gives powers in certain other matters. The authorities described in that section are the Director of Consolidation, the Deputy Director of Consolidation Settlement Officer and Assistant Consolidation Officer. Even that section does not indicate that the Deputy Director of Consolidation is subordinate to the Director of Consolidation.

52. Similarly, Section 39 of the amended Act which gives power for production of documents also does not indicate any such thing nor does Section 40 give any indication as to it.

53. In Sub-section (2) of Section 42, no doubt the District Deputy Director of Consolidation may, subject to such directions as the Director of Consolidation may issue from time to time demarcate the circles to be assigned to Consolidation Lekhpals, Consolidators and other authorities appointed for the district under Sub-section (1). This provision does indicate that the District Deputy Director of Consolidation has to follow the directions of the Director of Consolidation which makes him subordinate to the Director of Consolidation. According to the definition of the term "Deputy Director" a Deputy Director may include a District Deputy Director of Consolidation, but the Deputy Director of Consolidation by that definition does not become the District Deputy Director of Consolidation and as such he cannot be said to be subordinate to the Director of Consolidation under Sub-section (2) of Section 42. The Consolidation Lekhpals, Consolidators and other authorities also under this provision become subordinate to the District Deputy Director of Consolidation.

But our problem to find whether the Deputy Director of Consolidation is subordinate to the Director of Consolidation remains unsolved. If we look to the provisions of section 44 we would find that even the Settlement Officer, Consolidation does not appear to have been allotted a subordinate roll to that of a Director of Consolidation. According to the definition of that term, Settlement Officer, Consolidation means the person appointed as such by the State Government to exercise the powers and perform the duties of a Settlement Officer, Consolidation under this Act or the rules made thereunder and shall include an Additional Settlement Officer, Consolidation and Assistant Settlement Officer, Consolidation. u/s 9-B (3) an appeal is provided from an order of the Consolidation Officer to the Settlement Officer, Consolidation, but here too there is no indication as to whether he is subordinate to the Director of Consolidation. Section 11 also provides for appeals to the Settlement Officer, Consolidation but there too there is no indication of his being subordinate to the Director of Consolidation.

Under section 21 (2) also there is an appeal to the Settlement Officer, Consolidation, but that provision also does not help us in finding whether he is subordinate to the Director of Consolidation. u/s 44A the powers of a subordinate authority are to be exercised by a superior authority. Thus a District Deputy Director of Consolidation who is a superior authority of the Consolidation Lekhpals, Consolidators and other authorities appointed for the district under Sub-section (1) may exercise their powers and also a Settlement Officer, Consolidation who hears appeals from orders of a Consolidation Officer may exercise the power of a Consolidation Officer, but this leaves the problem as to whether a Consolidation Officer is subordinate to the Director of Consolidation under the Act unsolved.

64. It would thus appear that if we rely solely on the provisions of the Act itself, neither a Deputy Director of Consolidation nor a Settlement Officer, Consolidation is subordinate to the Director of Consolidation and no revision would lie even

from the order of the Settlement Officer, Consolidation, u/s 48 of the Act as amended.

55. The definitions of Director of Consolidation and Settlement Officer, Consolidation both contemplate powers to be exercised and the duties to be performed by them which may be allotted to them under the rules. Thus the bundle of powers and duties of the Director of Consolidation and the Settlement Officer, Consolidation are those which may be found in the Act and also in the Rules which are framed u/s 54 of the Act. As to the Deputy Director of Consolidation, however he exercises only such powers and performs only such duties of the Director of Consolidation as may be delegated (assigned) to him by the State Government. Therefore, it will not be inappropriate to look to the Rules to find out whether the Deputy Director of Consolidation is an authority subordinate to the Director of Consolidation.

56. Under rule 111 a revision u/s 48 shall be presented to the Director of Consolidation. Under rule 65 (1-A) an officer before whom a case or a proceeding is instituted or taken u/s 48 may transfer such case or proceeding to any other officer empowered to hear and decide such case or proceeding. Thus the Director of Consolidation under this rule gets the power to transfer revision filed before him to such Deputy Directors of Consolidation as have been empowered u/s 44 by the State Government to decide revisions; he is also empowered to recall from their files those revisions to his own files".

57. Under rule 110 the Director of Consolidation shall exercise powers of supervision and superintendence over the staff employed in the consolidation organization of the State and may for that purpose issue such directions as may be necessary.

58. It would thus appear that under the Rules the Deputy Director would be subordinate to the Director of Consolidation. Whether the Consolidation Officer and the Settlement Officer, Consolidation are subordinate to the Director of Consolidation also has to be ascertained from the Rules, for as has been pointed out above, the Act itself does not help us.

59. Under the definition of the term "Settlement Officer, Consolidation", he is the person who exercises the powers and performs the duties of a Settlement Officer, Consolidation under the Act or the Rules made thereunder. It is only under the Rules that he too can be said to be an authority subordinate to the Director of Consolidation. The Rules, therefore, have to be looked into and reliance cannot be placed only on the Act in order to ascertain as to whether the Deputy Director of Consolidation or the Settlement Officer, Consolidation is a subordinate authority within the meaning of that term u/s 48 or not. If the Rules are not looked into, then section 48 in so far as it relates even to a Settlement Officer will have no meaning.

Thus we cannot confine ourselves only to the Act for ascertaining the meaning of the word "subordinate authority" with respect to Section 48 of the amended Act

and looking to the Rules, a Deputy Director of Consolidation is certainly a subordinate authority to the Director of Consolidation. In this respect I am in respectful agreement with my brother Dwivedi when he takes the aid of Rules and decides that the Deputy Director of Consolidation is subordinate to the Om Prakash Agarwal Vs. State of U.P. and Others, disagreeing with the view taken by the Bench in Lal Singh's case 1964 All WR 68 (supra) where it has also been decided apart from what has already been discussed above that a Deputy Director of Consolidation is not subordinate to the Director of Consolidation after the coming into force of the amendment of the U. P. Consolidation of Holdings (Amendment) Act, 1963.

60. The consequences which flow from this interpretation are--I for the present confine myself only to revisions--that in case of a revision which lay under the provisions of the unamended Act, but which had not been instituted before the 8th of March, 1963, a revision will nevertheless lie under the amended Section 48.

61. The question now arises as to the constitutionality of the proviso. The above interpretation of the proviso gives rise to the following classification:

1.

If the first appeal before the Settlement Officer, Consolidation is neither filed nor decided before the 8th of March, 1963

If the first appeal before the Settlement Officer, Consolidation is neither filed nor decided before the 8th of March, 1963

2.

If the appeal before the Settlement Officer, Consolidation, i.e., the first appeal is decided before the 8th of March. 1963

(a) There is a right to file a second appeal provided it is filed before the 8th of March, 1963. If this second appeal is decided before the 8th of March, 1963, then the case will come under the third category described below. If this second appeal is decided after the 8th of March, 1963 then a revision will lie against that decision under the unamended Law.

(b) There is no right to file a second appeal if the 8th of March, 1963, is allowed to pass. Only a revision can be filed against the judgment in the first appeal under the amended Law.

3.

If the second appeal before the Deputy Director of Consolidation is decided before the 8th of March, 1963

(a) If a revision it filed before the 8th of March, 1963 the unamended section 48 will apply as to the scope of the revision.

(b) If the revision is filed after the 8th of March 1963 amended section 48 will apply

62. Let us now examine as to whether this classification is founded on any intelligible differentia and is there any nexus between the classification and the object to be achieved by the proviso.

63. It would appear that there are two kinds of cases to one of which the amended Law begins to apply from the 8th of March, 1963, and the other to which the old law continues to apply. In cases which have been decided by way of first appeal or second appeal and in which new proceedings have to be taken by way of challenging those orders, then if those proceedings are not taken before the 8th of March, 1963, they can be taken only under the amended Act from that date which is the date of the coming into force of the Amending Act. But if the cases are pending, then the old Law will continue to apply. The amendment, therefore, does not disturb the pending cases and they are allowed to continue in the manner in which they were continuing. But if the pending cases cease to be pending by a decision before the 8th of March, 1963 then if that decision is challenged the cases giving rise to the proceedings which challenge those decisions have been treated as new proceedings and in case of those new proceedings if they are instituted after the 8th of March, 1963, the amended Law has been made applicable. The classification made by the Legislature in applying the unamended Law to pending cases and the Amending Law to future cases cannot be said to be an unreasonable classification and it will not infringe Article 14.

64. One of the grounds urged is that if a second appeal has been filed just before the 8th of March, 1963 and a revision has not been filed before that date, a revision will lie under the amended Section 48, the scope of which is wider than in a case in which a revision has been filed before the 8th of March, 1963, for which the latter will be confined to ground of jurisdiction only, the former will embrace almost every question of law and fact. Thus a party which is prompt in applying for revision suffers and the party which postpones the last date gains the advantage of getting the whole case reopened on almost every ground. This anomaly may result from the proviso, but looking to the object to be achieved there appears to be nothing wrong in its applying the Law to future proceedings from a particular date. The object is to enforce the new Law and a date is fixed for enforcing it. So if any future proceeding has to be taken, it provides that it has to be taken in accordance with the amended Law, but the old proceedings are allowed to remain undisturbed to be proceeded with in accordance with the old Law. The proviso, therefore cannot be struck down.

65. One of the points urged by Sri D. K. Trivedi in Writ Petition No. 483 of 1963 is that the main provision of Section 47 (1) did not apply to judicial or quasi judicial matters. His contention was that the word used therein is "work" which does not connote any judicial or quasi judicial proceeding. Work connotes some thing by way of operation. When, therefore. Sub-section (1) of Section 47 in the main

provides for all work being conducted and concluded in accordance with the provisions of the unamended Act, it does not contemplate any judicial or quasi judicial matter being conducted and concluded in accordance with the provisions of the unamended Act. This contention does not appear to be sound. A perusal of the unamended Act shows that there are various stages of consolidation operations. There is the stage of correction of records contemplated u/s 9. There is the stage of publication of revised records contemplated u/s 11-B. There is then the stage of the Statement of Principles contemplated u/s 14. There is the stage of the publication of the Statement of Principles. Then there is the stage of the Statement of Proposals contemplated u/s 19 and there is the stage of the confirmation of the Statement of Proposals contemplated u/s 23. I need not go beyond that stage. All these stages may be the various operations during the course of consolidation. But these operations do not stand by themselves. A process has to be undergone in order to arrive at the stage of these operations. When the records have been corrected, there are disputes as to their correction and they are disposed of when the stage of publication of the revised records arrives. Similarly, after passing through the various stages comes the stage of the Statement of Principles and then comes the stage of the confirmation of the Statement of Principles. Similarly, after the Statement of Proposals after passing through the judicial process of the determination of disputes the stage of confirmation of Proposals arrives Quasi judicial proceedings, therefore, which arise during the various stages of the operations cannot be disjointed from the operations themselves. The word "work" has been used in a comprehensive sense. It will, in the circumstances include the judicial or quasi judicial proceedings undertaken during the course of consolidation operations also.

66. Moreover the proviso is an exception to the main section and when the proviso relates to judicial proceedings or quasi judicial proceedings it is unthinkable that while the proviso which is an exception to the main section deals with judicial matters, the main section does not deal with them. This contention therefore, cannot be accepted.

67. Lastly, we come to the question whether a Deputy Director can hear a revision against the decision of another Deputy Director.

68. A revision application u/s 48 lies to the Director of Consolidation. A Deputy Director has been defined as meaning a person appointed as such by the State Government to exercise such powers and perform such duties of the Director of Consolidation as may be delegated to him by the State Government. On the 16th of April, 1963, the State Government in exercise of the powers conferred by Section 44 issued a notification conferring on all Deputy Directors of Consolidation and other officers given in the list the powers of Director of Consolidation as laid down in Section 48, vide notification No. 1502-CH/I-E-132-63. Under the rules the Director may transfer any or all cases instituted or pending before him u/s 48 to any other officer empowered to hear or decide such proceedings vide Rule 65(1-A). There does not appear to be any bar why the

Deputy Director cannot hear a revision application against another Deputy Director.

The revisions lie to the Director u/s 48 from an order of a subordinate authority. The person who has decided the case against which a revision lies has to be an authority subordinate to the Director. The Law does not provide that it shall be heard by an authority to whom the authority whose decision is challenged would be subordinate. When once the revision has lain before the Director of Consolidation u/s 48 it is not necessary that the authority to whom the hearing of the revision is transferred also be such to whom the Deputy Director against whose order the revision has been filed is subordinate. The condition precedent for starting the proceeding as to revision is that the authority against whose decision the revision is undertaken is subordinate to the Director of Consolidation. But Section 48 does not provide that it is the Director and the Director alone who can dispose of the revision. There are provisions in the Act which contemplate conferment of the powers of the Director or some of his powers on other authorities and the Deputy Director of Consolidation is one of them.

The Deputy Director can hear the revision when once it has been properly filed, under powers conferred on him u/s 44(2) of the U. P. Consolidation of Holdings Act by the Government. Strictly speaking in terms of the notification the Deputy Director against whose order a revision is filed may himself be one of those persons who has been authorised to hear the revision, but as he is the person whose order has been challenged, on principles of natural justice, he cannot give any judgment over his own decision. It is on that ground that he cannot hear a revision filed against his own order, but there can be no bar against any other Deputy Director hearing a revision against his order. For hearing a revision it is not necessary that the person hearing the revision should be superior in rank to the person whose revision he hears, i. e. it is not necessary that the person whose revision is heard should be an authority subordinate to the person who hears the revision. A person who is empowered to hear the revision can hear the revision and when a Deputy Director has been validly empowered under the law, there is no reason why he cannot hear the revision against an order of another Deputy Director.

69. I am, therefore, of opinion that a Deputy Director before whom a revision comes up for hearing in such a matter cannot refuse to hear it on the ground that he cannot hear the revision against another Deputy Director provided powers have been conferred on him to hear the same.

70. As a result of the above discussion, the questions referred to this Court should be answered as follows:

71. Writ Petition No. 338 of 1963.

1. The revision against the order of the Deputy Director dated the 23rd of March, 1968 was maintainable before the Joint Director dated the 15th of May, 1963

depositing it was illegal

2. The case would be governed by the un-amended Section 48, the proviso being not applicable to it.

72. Writ Petition No. 385 of 1963

1. The revision was maintainable.

2. It would be governed by the amended Section 48. 3(a). No.

3(b) The question does not arise.

73. Writ petition No. 483 of 1968

1. A revision did lie. The order of the Deputy Director depositing the revision is illegal.

2. Unamended section 48 will apply.

74. Writ Petition No. 510 of 1963

1(a). Yes. A revision was maintainable.

(b). It will be governed by the unamended Section 48.

2. Yes. The Deputy Director. Barabanki was competent to hear the revision.

3. The order is not legally correct. He has failed to exercise jurisdiction vested in him.

Lakshmi Prasad, J.

74a. The following questions have been referred to the Full Bench:

1(a). On the facts and circumstances of the case was a revision against the Order of the Deputy Director dated 22-8-1968 maintainable in the present case?

(b) If so, would such a revision be governed by amended Section 48 or Section 48 as it stood prior to its amendment by Act VIII of 1968?

2. On the facts and circumstances of the case, was the Deputy Director Bara Banki competent to hear a revision petition against the order of the Deputy Director Camp, Bara Banki dated 22-8-1968 passed in the second appeal by the latter?

3. Is the order of the Deputy Director, Bara Banki dated 14-6-1968 depositing the aforesaid revision a legally correct order?

75. The material facts of the case are that the first appeal in a case u/s 9 of the U. P. Consolidation of Holdings Act as it then stood was decided by a Settlement Officer (Consolidation) on the 21st November, 1962 and the second appeal therefrom was decided by a Deputy Director on the 22nd March 1968. The party aggrieved by the decision in the second appeal preferred a revision which came

up before the District Deputy Director, Bara Banki who by his order dated 14th June, 1963 directed it to be deposited on the ground that it was not maintainable. The revisionist has, accordingly come up before this Court by means of a writ challenging the correctness of the aforesaid order dated the 14th June, 1968.

76. This writ petition was argued along with Writ Petition No. 385 of 1963. The points argued in this case have been fully discussed in my judgment in Writ Petition No. 385 of 1963.

77. For the reasons mentioned therein my answer to the questions are as follows:

1(a). Yes.

(b) It would be governed by unamended Section 48.

2. Deputy Director, Bara Banki exercising powers of the Director conferred on him under notification dated the 16th April, 1963 is competent to hear the revision from the order dated the 22nd March, 1963 passed by the Deputy Director Camp, Bara Banki passed in the second appeal provided he is not the same individual who passed the order sought to be revised.

3. The order of the Deputy Director, Bara Banki dated the 14th June, 1963 is not a legally correct order.

BY THE COURT

78. Our answers to the questions are as follows:

1(a). Yes.

1(b). It will be governed by the unamended Section 48.

2. Yes. The Deputy Director, Bara Banki was competent to hear the revision.

3. No; he has refused to exercise jurisdiction vested in him.

79. The case should be laid before the Bench concerned with the answers. No order as to costs of this reference.