quashed on the ground of want of jurisdiction, the same order, also without jurisdiction with regard to respondent 2, gave this respondent the licence for a cinema, and pursuant to such a licence respondent 2 has set up a cinema and gained thereby. Not that this consideration would weigh in regard to the matter of the claim of the appellant in this appeal, but it supports the contention of the learned counsel for the appellant that the basis of the order is not any consideration in public interest but a consideration for the economic benefit of a private party, respondent 2. This is merely a suggestion based on an inference drawn from the past history of the effort of those parties to obtain a licence for a cinema in this town.

In any event, monopoly is to be deprecated and is not in public interest. It is no duty of the State and the authorities to avoid healthy competition. So the one consideration, upon which the licensing authority has proceeded to reject the application of the appellant, is not germane to the matter of granting a licence for a cinema. The learned Judge was of the opinion that a licensing authority is not compelled to grant a licence for a cinema to everybody and this is correct, but for that matter it has to look to the provisions of the Act and the Rules made thereunder and to proceed to act in accordance with the same.

In the result, this appeal succeeds, the order of the learned Singla Judge is reversed, and so the order of the licensing authority is quashed, with a direction that it shall proceed to decide the application of the appellant according to the provisions of the Act and the Rules made thereunder. There is no order in regard to costs in this appeal.

K. S. K.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur and R. S. Narula, JJ.

SEWA SINGH,—*Petitioner.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 1197 of 1964.

October, 4, 1966.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—S. 42—East Punjab Holdings (Consolidation and Prevention

of Fragmentation) Rules (1949)—*Rule* 18—*No period of limitation prescribed when impugned order passed and revision petition filed—Rules prescribing such period promulgated during the pendency of the petition—Period of limitation—Whether to start from the date of the order or the date of the promulgation of the Rules—Order passed by competent authority on a petition without noticing it to be barred by time—Whether bad for lack of inherent jurisdiction—Decision on a point of limitation—When to be set aside in writ proceedings—Condonation of delay by competent authority—Whether to be made for sufficient cause.*

Held, that the time for filing a revision petition under section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, starts to run from the date of the impugned order as provided for in the statutory rule. Even though the rule is promulgated after the date of the order, an aggrieved party does not acquire a vested right to file the Revision petition without the fetter of limitation. The time runs from the date of the order in accordance with the statutory rule and not from the time of its promulgation.

Held, that when a competent authority passes an order on a petition without noticing it to be barred by time, it cannot be said that it assumes jurisdiction which does not vest in it. The authority is under no duty to find whether the petition is barred by time unless the matter is brought to his notice. The order is, therefore, not bad for lack of inherent jurisdiction.

*Held, t*hat an order passed by competent authority under section 42 of the Act will be set aside by the High Court in writ proceedings when knowing it to be barred by time, the authority or official proceeds to its disposal on merits without first extending the period of limitation prescribed by the Rules. The competent authority which extends the period of limitation must do so on being satisfied that "sufficient cause" for not making the application within time exists, to say that the application under section 42 is meritorious would not constitute a finding about the sufficiency of cause within the meaning of the second proviso to Rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules. In other words, the reasons for extending the time-limit should not be extraneous to those envisaged by the Rules. If the order does not disclose that the authority acting under section 42 was either conscious of the question of limitation or has otherwise noticed it, it must be deemed that no objection was raised about it. The failure to raise an objection by a party which could have done so would be a bar to a *certiorari* petition made to quash such an order. Except for a patent or inherent defect of jurisdiction, an objection which would oust the jurisdiction of a quasi-judicial tribunal ought to be raised in the first instance before the tribunal itself.

Petition under Articles 226 *and* 227 *of the Constitution of India, praying that a writ in the nature of* certiorari mandamus *or any other appropriate writ order or direction be issued quashing the orders dated* 2*nd March*, 1964, *and* 14*th May*, 1964, *respectively.*

Case referred by the Hon'ble Mr. Justice Shamsher Bahadur on 11th May, 1966, *to a Division Bench for decision of an important question of law invovled in the case, and the case was finally decided by the Hon'ble Mr. Justice Shamsher Bahadur and the Hon'ble Mr. Justice R. S. Narula, on 4th October,* 1966.

S. S. SANDHAWALIA, ADVOCATE, for the Petitioner.

A. C. HOSHIARPURI AND BACHITTAR SINGH, ADVOCATES, for the Respondents.

ORDER OF DIVISION BENCH

Shamsher Bahadur, J.—The facts and the point of law involved in this case have been set out in my order of reference of 11th of May, 1966, and only the salient aspects of the legal controversy may briefly be recapitulated. It was on 29th of September, 1959, when the consolidation operations in village Viran Kotli were concluded and the estate is stated to have "reverted to the revenue authorities". Ishar Kaur, a right-holder in village Viran Kotli had been provided with a pathway under the scheme. Jabbar Singh, the fourth respondent, who used to be in cultivating possession of the land of Ishar Kaur purchased her entire holding in village Viran Kotli by a registered sale-deed of 1st of February, 1960. It may be mentioned that village Viran Kotli is admitted to be a *bechiragh* Village. The mutation of this sale transaction was sanctioned on 26th of April, 1962. The fourth respondent filed a petition under section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, (hereinafter also called the Act) on 8th of September, 1960 (Annexure 'B'), and such aspects of it as are important for the point under reference may be briefly mentioned. The relief sought in this petition under column (b) is provision of a pathway. Jabbar Singh, the fourth respondent, as a petitioner, under column (c) is stated to be a resident of village Rajab and a cultivator of village Viran Kotli. In column (h) it is stated by Jabbar Singh that he had not filed any appeal under sub-sections (3) and (4) of section 21 of the Act because he had purchased the holding on 1st of February, 1960, "and the limitation for objections has been finished". Various reasons are assigned in column 10 for granting of the relief sought in the application under section 42, the principal one being that village Viran Kotli is uninhabitated and from Rajab, where the petitioner resides, he has to pass through other right-holders' lands to come in the fields he had purchased from Ishar Kaur. It was also stated that their existing pathway provided for his fields was under *sem*.

According to section 42 of the Act, the State Government "may at any time" to satisfy itself about the legality or propriety of any order made by any officer "call for and examine the record of any case .... and may pass such order in reference thereto as it thinks fit". The fetter of limitation on such an application was placed for the first time by clause 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 (hereinafter referred to as the Rules) on 18th of March, 1960. The State Government, which under clause (ff) of sub-section (2) of section 46 of the Act is empowered to make rules for "applications made under this Act .... and the period within which applications shall be filed," provided under clause 18 in a notification of 18th March, 1960, that "an application under section 42 shall be made within six months of the date of the order against which it is filed". It is common ground that the order which had determined the right to the pathway for the land acquired by the fourth respondent from Ishar Kaur was that of 29th of September, 1959 when the record-of-right was completed and the possession had passed. An application under section 42, under clause 18, therefore, had to be made within six months from 29th of September, 1959, that is to say, by the 30th of March, 1960.

The Additional Director, who disposed of the application under section 42 without discussing or indeed noticing that the application was barred by time, accorded Jabbar Singh the relief prayed for. In the impugned order, the Additional Director after hearing the right-holders including Sewa Singh petitioner, provided a passage to the fourth respondent through the fields of Sewa Singh. The relevant passage in the order may briefly be reproduced:—

> "The repartition took place in 1959, and this petition was given in 1960. The petition says that ever since then he has been reaching his plot by the courtesy of the right-holders of the adjoining village, Chhotapind. He wants a path along the boundary of this village with village Chhotapind. Sewa Singh is stoutly opposed to this path. There does not appear to be any good reason behind the objection except that he does not want the petitioner to have the very reasonable convenience desired by him............ Sewa Singh's opposition is based on the fact that he is not on good terms with the petitioner. .... The petitioner needs this path so badly that he has offered to give to the respondent even two or three times the area needed by him

> for the path, and Sewa Singh is not prepared to give a path at any price. The request of the petitioner is most reasonable."

The path was accordingly provided to the fourth respondent and Sewa Singh was given an equivalent amount of land in value from another *Khewat*.

Mr. Sandhawalia, the learned counsel for the petitioner, has forcibly urged that the order passed by the Additional Director should be set aside on the ground that he lacked the inherent jurisdiction to entertain the application under section 42 made after the period of six months, provided for by the statutory rules. It is true no doubt that under the second proviso to clause 18, an application under section 42 "may be admitted after the period of limitation prescribed therefor if the applicant satisfies the authority competent to take action under section 42 that he had sufficient cause for not making the application within such period". Mr. Sandhawalia contends that the time starts running from the "date of the order" which is 29th of September, 1959, and the petition having been filed on 8th of September, 1960, the Additional Director could not have granted the relief on merit alone without first making an order for admitting the petition for sufficient cause. In view of the variance of opinion taken in the Single Bench decisions of this Court, the matter was referred for disposal by a Division Bench.

The first contention of Mr. Sandhawalia that the time should start to run from the date of the order as provided for in the statutory rule seems to be correct and must be sustained. On behalf of the fourth respondent, it is submitted that between the 29th of September, 1959, when the final order was passed, and the 18th of March, 1960, when the rule for the first time was promulgated, no period of limitation was prescribed and he had in consequence come to acquire a Vested right to file an application under section 42 without the fetter of limitation. Such a right could not have been taken away and at least the period of six months should commence from 18th of March, 1960, when the rule for the first time was published in the gazette notification. In a Full Bench decision of the Allahabad High Court in *Ram Karan* v. *Ram Das* (1), it was ruled by Sulaiman, C.J. that :—

> "When a question of limitation is raised, it ought to be decided in accordance with the law of limitation in force at the

(1) A.I.R. 1931 All. 635. (F.B.).

time of institution of the suit and not that in force at the time of the cause of action, unless there be any express provision to the contrary in the Act itself."

The reason for this is not far to seek. The rules of limitation, as stated in another Full Bench authority of the Allahabad High Court in *Bankey Lal* v. *Babu and others* (2) are *"prima facie,* rules of procedure and do not create any rights in favour of any person nor do they define or create causes of action but simply prescribe that the remedy could be exercised only up to a certain period and not subsequently". This principle of law appears to be so firmly settled that it would be superfluous to refer to all the authorities cited at the Bar on this subject. Suffice it to say that considerations of equity and hardship are not relevant for considering the question of limitation, and when the statute does not admit of any ambiguity, the terms must be given their fullest scope. It may be useful to refer to a Full Bench decision of this Court in the *Dominion of India* v. *Firm Amin Chand-Bhola Nath* (3), A.I.R. 1957, Punjab 49. Bishan Narain, J., speaking for the Court, said at page 51:—

"It is therefore, well established that the provisions of Limitation Act must be construed according to the plain meaning of the words used by the legislature and considerations of convenience or hardship are to be ignored."

While discussing the Limitation Act, it was similarly noticed by the Supreme Court in *Boota Mal* v. *Union of India* (4) that :—

"Ordinarily, the words of a statute have to be given their strict grammatical meaning and equitable considerations are out of place, particularly in provisions of law limiting the period of limitation for filing suits or legal proceedings."

The Consolidation Act has made inroads to the right of property and to shorten the period of suspense limitation has been prescribed in the various provisions relating to appeals under sub-sections (2), (3) and (4) of section 21 and the Legislature has thought it fit to introduce a period of limitation even for applications under section 42 by the insertion of clause 18 in the Rules. There is no edge at

(2) A.I.R. 1953 All. 747 (F.B.).
(3) I.L.R. 1958 Punj. 10=A.I.R. 1957 Punj. 49 (F.B.).
(4) A.I.R., 1962 S.C. 1716.

all in the argument that the fourth respondent not being subject to any rule of limitation earlier than 18th of March, 1960, should be allowed the period of six months with effect from that date and not from the date of the order itself passed on 29th of September, 1959. The provisions in clause 18 being clear and unambiguous, there is no justification in the argument that the time should run not from the date of the order in accordance with the statutory rule but from the time of its promulgation.

It is to the second submission of Mr. Sandhawalia that the order of the Additional Director is inherently lacking in jurisdiction to which I must now advert. I may say at once that the basis of the argument is that the Additional Director himself had made it known in the order that the application under section 42 was on the face of it barred by time. The Additional Director undoubtedly noticed that "the repartition took place in 1959 and this petition was given in 1960". The mere mention of 1959 and 1960 in the impugned order as the dates of repartition and the application under section 42 respectively does not lead to the inference that the Additional Director was dealing with a time-barred petition. From the face of the record it does not appear that the petitioner Sewa Singh who was present at the proceedings and had opposed the prayer of the fourth respondent had ever raised such an objection. That the Additional Director could admit a petition for sufficient cause when instituted after the statutory period of six months admits of no doubt. It has been earnestly contended by Mr. Sandhawalia that the Additional Director was aware of this inherent infirmity in this application. It is not, however, urged by the counsel that it is the concern of the functionary in every case to see whether a petition is within time; yet such would be the consequence if his argument is carried to its logical conclusion. The basic decision on which reliance is placed by Mr. Sandhawalia is that of *Joy Chand-Lal Babu* v. *Kamalakasha Chaudhry* (5) in which speaking of the jurisdiction of the High Court to interfere under section 115 of the Code of Civil Procedure, Sir John Beaumont, thus observed:—

> ".......... nevertheless, if the erroneous decision results in the subordinate Court exercising a jurisdiction not vested in it by law, or failing to exercise a jurisdiction so vested, a case for revision arises under sub-section (a) or sub-section (b), and sub-section (c) can be ignored. The cases of

(5) A.I.R. 1949 P.C. 239.

Babu Ram v. *Munna Lal* (6) and *Hari Bhikaji* v. *Naro Vishvanath* (7) may be mentioned as cases in which a subordinate Court by its own erroneous decision (erroneous that is in the view of the High Court), in the one case on a point of limitation and in the other on a question of *res-judicata,* invested itself with a jurisdiction which in law it did not possess, and the High Court held, wrongly their Lordships think, that it had no power to interfere in revision to prevent such a result."

It is sought to be argued on the basis of this observation that if an inferior tribunal wrongfully assumes to itself a jurisdiction not vested in it, a cause would arise for interference with it. It has to be reiterated that the question of limitation was never discussed or even noticed by the Additional Director and there is nothing to suggest that he had assumed a jurisdiction which did not vest in him. It has to be repeated that the Additional Director was under no duty to find for himself whether the application under section 42 was barred by time. If the matter was so obvious, Sewa Singh petitioner, who had so violently opposed the prayer, might well have raised the question himself especially when, as it is now contended on his behalf, the fourth respondent himself had made it clear in his own application that it was barred by time. In any event nothing was concealed by the fourth respondent in his application and Sewa Singh petitioner himself could have noticed for himself that the possession having passed on 29th September, 1959, the matter could not have been raised in an application under section 42 in pursuance of clause 18 of the Rules.

The question whether the point of jurisdiction could be waived has been debated at considerable length before us and it would be sufficient to notice two decisions in this connection. A Full Bench of this Court in *Davinder Singh and another* v. *The Deputy Secretary-cum-Settlement Commissioner, Rural, Rehabilitation Department, Punjab and others* (8), ruled that "where there is inherent lack of jurisdiction in an inferior Tribunal and the matter is patent on the record, the failure of a party to raise objection on the point of jurisdiction would not by itself debar it from getting relief on that

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(6) I.L.R. 49 All. 454.
(7) I.L.R. 9 Bom. 432.
(8) I.L.R. (1964) 1 Punj. 905=1964 P.L.R. 555 (F.B.).

score in a writ petition". It was made clear by Khanna, J., who delivered the judgment of the Full Bench, at page 560:—

> "Total want of jurisdiction is an infirmity which is fatal to the proceedings and no amount of consent can cure it. There is also a distinction between want of inherent jurisdiction and irregular exercise or assumption of jurisdiction, and while consent cannot clothe a Tribunal with jurisdiction where none exists, irregular exercise or assumption of jurisdiction can always be waived."

This principle is also to be deduced from a Division Bench judgment of Chief Justice Chagla and Tendolkar, J. in *S.C. Prashar* v. *Vasant Sen Dwarkadas and others* (9) which had been approved by the Full Bench of this Court, Chagla C.J., stated at page 536:—

> "......what is emphasised in those cases is that the want of jurisdiction must be a patent one. In our opinion, the want of jurisdiction pleaded by the petitioner in the case before us is undoubtedly a patent one, and if it is a patent want of jurisdiction, nor only we would be rightly exercising our discretion in interfering, but according to the English Courts it would be our duty and our obligation to prevent an authority from assuming jurisdiction which it patently does not possess."

In the case before the Bombay High Court, a notice had been issued by the Income Tax Officer under section 34 of the Income-tax Act and even a cursory perusal of this provision showed that the officer issuing such notice had exceeded his competence and authority, and the want of jurisdiction in the circumstances was regarded as a patent one. The Income Tax Officer could not have reopened the assessment after the statutory period had expired. There is no difficulty for us in holding that the sort of case with which the Bombay High Court was dealing is distinguishable from the one with which we are concerned. Here, Additional Director had been approached under section 42 and whatever can be gleaned from the contents of the petition made by the fourth respondent and the order passed by the Additional Director, it is possible that the application could have been entertained for sufficient reasons if it

(9) A.I.R. 1956 Bom. 530.

had been pointed out to this officer that the question of limitation was involved. On this aspect of the case, we are of the opinion that the impugned order does not show that it was passed by a tribunal which patently had no jurisdiction to entertain it. We are, however, in agreement with Mr. Sandhawalia that the decision of their Lordships of the Supreme Court in *Ebrahim Aboobakar* v. *Custodian General of Evacuee Property, New Delhi* (10) does not debar him from raising this plea in *certiorari* proceedings before this Court. What was ruled in *Abboobakar's case* is partly reproduced at page 323 of this report, being to this effect :—

> "Whether an appeal is competent, whether a party has *locus standi* to prefer it, whether the appeal in substance is from one or another order and whether it has been preferred in proper form and within the time prescribed, are all matters for the decision of the appellate court so constituted."

It would be manifest that before an order can be said to be unchallengable on this score there must be a decision on a point. The Additional Director has not decided this question and, as has been said before, he had not even noticed it that the application was barred by time. There was, therefore, no question of a decision. It is only a decision on a point of limitation which according to the Supreme Court is unquestionable in writ proceedings.

The question arises whether this Court can interfere in a case of this nature ? There is some divergence of opinion in the various decisions of this Court and I now proceed to discuss this question. Under the first category, those cases may be discussed where the Additional Director has noticed the point of limitation but has given extraneous reasons for admitting the application. There is practical unanimity on the point that such decisions can be successfully challenged in *certiorari* proceedings. *Partap Singh* v. *Additional Director, Consolidation of Holdings,* (Civil Writ No. 1886 of 1962) is a decision of D. K. Mahajan, J., delivered on 26th of February, 1963. In a petition under section 42 the Additional Director allowed the relief though he had held that the petition was time-barred. The Additional Director, however, considered that the petition being meritorious there was sufficient reason to waive the objection. Now,

(10) A.I.R. 1952 S.C. 319.

sufficient cause has to be shown for not making the application within the prescribed period and the merits of the petition can never provide sufficient grounds under the second proviso to clause 18. Narula, J., in *Sher Singh* v. *The State of Punjab and others* (11) also held that the Additional Director under section 42 could not waive the requirement of clause 18 by saying that the provision of a pathway is fundamental one in consolidation proceedings. To say that the petitioner has merits in his application is wholly an extraneous consideration for waiving the limitation under the second proviso. To a similar effect is a decision of Pandit, J. in *Pat Ram* v. *The State of Punjab* (12). In that case it was admitted that the application under section 42 was filed beyond limitation. While noticing this fact, the Additional Director had given no reasons for condoning the delay. In fact, the Additional Director interfered because there had been a clerical mistake in the *Khasra Girdawri.* This was found not to be a sufficient reason for waiving limitation under the second proviso. Grover, J. in a case decided by him on 13th May, 1966, *Joginder Singh* v. *The Additional Director, Consolidation of Holdings.* (Civil Writ No. 1379 of 1965), followed the decision of Narula, J. in *Sher Singh v. The State of Punjab* (11) mentioned aforesaid, and quashed the order on the ground that the reason given by the Additional Director did not relate to the sufficiency of cause for not filing the application within six months.

There are a few cases where no reasons are given at all for waiving the delay. The first of the cases in point of time is *Deendar v. The State of Punjab* (Civil Writ No. 1458 of 1962) decided by Mahajan, J. on 8th April, 1963. The Additional Director in this case was of the view that the petition was barred by time but waived the time limit to redress the grievance of the petitioner. While this case may also fall in the first category inasmuch as the redress of the petitioner's grievance was an extraneous cause, it has been taken to be included in the category of those cases where point of limitation has been noticed but no reason have been assigned to waive the delay. Grover, J. noticing the decision of *Deendar's* case followed the principle in *Raghwant Singh* v. *Additional Director, Consolidation of Holdings* (Civil Writ No. 728 of 1962) decided on 7th August, 1964. In this case, the application under section 42 was made seven years after the passing of the order which was sought to be revised. There was no indication in the pleadings or the order itself about the reasons which induced the Additional

(11) I.L.R. (1966) 2 Punj. 745=1966 Curr. L.J. (Pb.) 362.
(12) 1966 Curr. L.J. (Pb.) 533.

Director to condone the delay. Grover, J., considered that no reasons having been given, the delay could not be condoned. Narula, J., in *Bhagwana* v. *The State of Punjab* (13), held that "once the competent authority under section 42 of the Act is satisfied that there was sufficient cause which prevented the petitioner from filing the petition earlier than the date on which it was actually filed, it would not be open to the High Court to go into the question of limitation on merits howsoever wrong the order in this connection on merits may be. But it must appear that the competent authority was aware of the provisions of clause 18 of the Rules and knew the scope of his quasi-judicial functions in that respect." Narula, J., was emphatic in pointing out that the order must show that the authority was alive to the requirement of the proviso in question when he applied his mind to the matter and that he had in fact felt satisfied about the existence of a sufficient cause for the delay. In *Sewa Singh* v. *The State of Punjab*, (Civil Writ No. 477 of 1964) also decided by Narula, J., on 8th December, 1965, the Additional Director had noticed in the impugned order that the petition under section 42 of the Act was barred by time. The order, however, did not show what reasons induced the Additional Director to waive the limitation. In the circumstances, the order was quashed.

A case decided by Capoor, J., on 6th May, 1966, *Gram Sabha Village Sarangpur* v. *State of Punjab*, Civil Writ No. 1509 of 1964, constitutes a category by itself and Mr. Sandhawalia has strongly relied on its support. The repartition proceedings in that case were concluded on 29th March, 1961. As a result of an application made on 31st January, 1963, the Additional Director passed an order on 5th of March, 1964, under section 42 of the Act whereby the area of reservation for common purposes was reduced. On a writ petition preferred by the Gram Sabha it was observed by Capoor, J., that the petition was filed after a delay of one year and two months and while the Additional Director was conscious of the fact that it was a time-barred petition, no reason was mentioned why the delay had taken place. The only ground for interference by the Additional Director was that the persons approaching him were in possession of the land. Holding that the order of the Additional Director was without jurisdiction, the learned Judge quashed it. It is obvious that the Additional Director was conscious of the petition being time-barred and he did not apply his mind at all to consider the question whether sufficient reasons existed for waiving the limitation.

(13) 1966 P.L.R. 307.

In *Chuhar Singh* v. *The State of Punjab,* (Civil Writ No. 861 of 1962) decided by me on 10th April, 1963, the Additional Director had interfered after the period of limitation had expired. From the order it appears that some decision was given about limitation by the Additional Director and on the basis of *Aboobakar's case,* I said that the matter of sufficiency of cause could not be agitated before this Court. Likewise, in *Bhup Singh* v. *State of Punjab* (14), I had said that the limitation provided in clause 18 of the Rules can be waived where sufficient cause is shown, and that, question of limitation even if wrongly decided cannot be questioned in writ proceedings.

An important decision to be noticed is that of a Division Bench of Mehar Singh, J., (as the Chief Justice then was) and Pandit, J., in *Bhagat Singh* v. *Additional Director, Consolidation of Holdings, Punjab and others* (15), Pandit, J., speaking for the Court, while referring to some of the decisions mentioned aforesaid held that where the question of the revision being barred by time is not raised before the Director, the same cannot be raised before the High Court for the first time. In *Sajan Mal Sapra* v. *The Additional Director, Consolidation of Holdings,* (Civil Writ No. 2074 of 1964), decided by me on 22nd July, 1966, it was urged by the respondents that the petition under section 42 decided by the Additional Director was barred by time, the period between the last order and the filing of the application being more than six months. This question concededly was never raised before the Additional Director who might have waived the objection with regard to limitation if it had been brought to his notice.

On this aspect of the case, we have reached the conclusion that an order passed by a competent authority under section 42 of the Act would be set aside when knowing it to be barred by time the authority or official proceeds to its disposal on merits without first extending the period of limitation prescribed by the Rules. The competent authority which extends the period of limitation must do so on being satisfied that "sufficient cause" for not making the application within time exists, to say that the application under section 42 is meritorious would not constitute a finding about the sufficiency of cause within the meaning of the second proviso to clause 18 of the Rules. In other words, the reasons for extending the time-limit should not be extraneous to those envisaged by the Rules. If the order does not disclose

(14) 1965 P.L.R. 176.
(15) I.L.R. (1966) 2 Punj. 664=1966 P.L.R. 496.

that the authority acting under section 42 was either conscious of the question of limitation or has otherwise noticed it, it must be deemed that no objection was raised about it. In deciding such an application on merits, the Director or the Additional Director cannot be said to have exercised a jurisdiction not vested in him. It is a mere irregular exercise of jurisdiction and the failure to raise an objection by a party which could have done so would be a bar to a *certiorari* petition made to quash such an order. We are in respectful agreement with the Division Bench authority of this Court in *Bhagat Singh* v. *Additional Director, Consolidation of Holdings* (15). The decisions of the Single Benches, both reported and unreported; do not deflect from the *ratio decidendi* of *Bhagat Singh's* case and were disposed of on the facts of each individual case. Except for a patent or inherent defect of jurisdiction, an objection which would oust the jurisdiction of a quasi-judicial tribunal ought to be raised in the first instance before the tribunal itself. As was succinctly put by Chagla, C.J., in the Division Bench judgment of *Gandhinagar Motor Transport Society* v. *State of Bombay* (16), "the Court must tell the petitioner: It was open to you to raise that point before the tribunal whose order you are challenging. You have sat on the fence, you have taken a chance of the tribunal deciding in your favour, and it is not open to you now to come to us and ask for a writ".

It remains finally to notice the argument of Mr. Bachittar Singh, the counsel for the fourth respondent, that this Court should, in any event, dismiss this petition on the principle laid down in *Veerappa* v. *Raman and Raman Ltd.* (17), that no substantial injustice has resulted to the petitioner. As is disclosed in the impugned order, the attitude of the petitioner was unreasonable and intransigent. He was offered more than the value of the land required by the fourth respondent for his pathway and the Additional Director has actually given him the equivalent value of land. In *Veerappa's* case, it was held that:—

> "Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error

(16) A.I.R. 1954 Bom. 202.
(17) A.I.R. 1952 S.C. 192.

> apparent on the face of the record, and such act, omission, error or excess has resulted in manifest injustice."

It is quite true to say that the resultant "manifest injustice" is an essential wing of the requirement for issuance of the writ of *certiorari,* and no injustice having been shown to exist so far as the petitioner is concerned, the petition has also to be dismissed on that score.

This petition accordingly fails and is dismissed. There would, however, be no order as to costs.

R. S. NARULA, J.—I agree.

K.S.K.

REVISIONAL CRIMINAL

Before Gurdev Singh, J.

SHIV CHARAN,—*Petitioner.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Criminal Revision No. 844 of 1966.

October 4, 1966

Code of Criminal Procedure (Act V of 1898)*—S.* 207-*A—Magistrate holding enquiry into a case triable by a Court of Session or High Court—Steps to be taken by him—Such magistrate—Whether can acquit an accused person—Order of discharge of an accused person—When to be made.*

Held, that in conducting an enquiry under Chapter XVIII of the Code of Criminal Procedure the first step that has to be taken by the Magistrate is, when the accused appears or is brought before him, to ensure that copies of all the relevant documents under section 173 of the Criminal Procedure Code are made over to him. The next step in the case is the recording of evidence produced by the prosecution. The provision contained in sub-section (3) of section 207-A of the Criminal Procedure Code is mandatory and has to be complied with before the prosecution evidence starts.

Held, that a magistrate conducting an enquiry under section 207-A of the Criminal Procedure does not conduct trial of the case as jurisdiction to try such