(8) The contention put forward on behalf of the States of Haryana and Punjab that the enquiry during the course of which the Deputy Commissioner is authorised to suspend a Panch is not confined to the enquiry provided under sub-section (2) of section 102, is untenable, as it is not only not borne by the context in which the expression "an enquiry" has been used in sub-section (1) of section 102, but would also lead to anomalous results. Admittedly there is no provision in the Act expressly authorising the Deputy Commissioner to hold an enquiry against a Panch or Sarpanch with a view to remove or suspend him from his office. The word "inquiry" has not been defined in the Act itself and construed in its general sense, it would include even an investigation and going into allegations against a Panch by any person to whom a complaint is made or to whose notice some lapse or misconduct on the part of a Panch or Sapanch comes. There is nothing in section 102 or any provision of the Act which even remoted indicates that in the course of an enquiry other than the one prescribed under sub-section (2) of section 102 a Panch or Sarpanch should be suspended. In fact it has been held by this Court recently in *Ajaib Singh* v. *The State of Punjab. etc.* (4), that the enquiry during the pendency of which a Deputy Commissioner can suspend a Panch does not include investigation into a criminal offence.

(9) In view of what has been said above and for the reasons given by my Lord the Chief Justice on elaborate and careful consideration of the various contentions, put forward before us, I am firmly of the opinion, in agreement with my learned brothers, that it is only in the course of an enquiry ordered by the competent authority under sub-section (2) of section 102 of the Punjab Gram Panchayat Act, 1952, that a Deputy Commissioner can order the suspension of a Panch

FULL BENCH

Before Mehar Singh, C.J., P. C. Pandit and R. S. Narula, JJ.

CHANAN DASS,—*Appellant.*

versus

UNION OF INDIA AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 305 of 1964

May 8, 1968

High Court Rules and Orders Volume V, Chapter 3-B, Rule 1, proviso—Reference of a case by a Single Judge to Division Bench—Division Bench deciding

(4) C.W. 13 of 1966 decided on 10th March, 1966.

only the question of law and remitting the case back to the Single Judge—Case finally decided by the Single Judge—Letters Patent Appeal filed against such decision—Letters Patent Bench—Whether can examine the correctness of the view of the earlier Division Bench.

Held, by majority (Mehar Singh, C.J. and Narula, J., Pandit, J. *Contra*)—that if a learned Single Judge refers a case to a Division Bench and the said Division Bench decides only a question of law and then remits the case to the learned Single Judge, for deciding the other points arising in the case, the Letters Patent Bench, in appeal against the final decision given by the learned Single, Judge cannot examine the correctness of the view of the earlier Division Bench on the aforesaid question of law. The decision on a question of law inter parties by a Division Bench which is not open to reconsideration by another Division Bench even when such a Bench is hearing an appeal under clause 10 of the Letters Patent from an order of a learned Single Judge deciding the case on merits. If it was otherwise, it would mean that in such a Letters Patent Appeal a Division Bench may be able to reconsider a decision of an earlier Division Bench, which cannot be, or it may consider of referring the matter decided by the earlier Division Bench for the reconsideration of a larger Bench, which would undo the conclusive and binding character of such a decision inter parties.

[Paras 7 and 26].

Held, (by Pandit, J. *Contra*)—that if the Division Bench to which the case is referred, after deciding the abstract question of law, applies it to the facts of the case and remits the case to the learned Single Judge for deciding the other points arising therein, the point of law decided by the Division Bench becomes final and *inter parties.* The decision of the Division Bench will operate as *res-judicata* at the later stages and would not be allowed to be challenged in the Letters Patent Appeal from the final judgment of the learned Single Judge, deciding the case on the other points arising therein, provided the plea of *res judicata* is raised in the Letters Patent Appeal at the proper stage. If, however, without itself applying to the case the pont of law decided by it, the Division Bench remits the case to a learned Single Judge for final decision, the order of the Division Bench will not operate as *res judicata,* not having been decided finally *inter parties.* In that case, the decision *inter parties* will be that of the learned Single Judge and in the Letters Patent Appeal from his judgment, it would be open to the appellant to challenge the correctness of the decision of the earlier Division Bench.

[Para 22]

Case referred by a Division Bench consisting of the Hon'ble Mr. Justice Shamsher Bahadur and the Hon'ble Mr. Justice P. C. Pandit to a larger Bench on 22nd August, 1967 for decision of the important question of law involved in the case. The Full Bench consisting of Hon'ble the Chief Justice Mr. Mehar Singh, the Hon'ble Mr. Justice P. C. Pandit and the Hon'ble Mr. Justice R. S. Narula

after deciding the question of law referred to them returned the case to the Division Bench, for decision, on the 8th May, 1968.

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of the Hon'ble Mr. Justice H. R. Khanna, dated the 24th March, 1964, *passed in Civil Writ No.* 1492 *of* 1961.

RAM RANG AND S. K. PIPAT, ADVOCATES, for the Appellant.

V. P. KAKRIA AND R. S. AMOL, ADVOCATES, for the Respondents.

ORDER

Mehar Singh, C.J.—The dispute in this case concerns transfer of evacuee property bearing No. R-765 to 769 in ward No. 7 at Panipat in the district of Karnal, which has been valued by the rehabilitation authorities at Rs. 733. There have been two claimants to the property, Godha Ram respondent 3, and Chanan Das appellant, both displaced persons. In his order of June 1, 1961, with which the Central Government refused to interfere under section 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (Act 44 of 1954), hereinafter to be referred as 'the Act', as appears from the Under-Secretary to Government of India's letter of September 27, 1961, the Chief Settlement Commissioner, exercising powers of revision under section 24 of the Act, decided that as rule 30 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, hereinafter to be referred as 'the 1955 Rules' had been amended on March 24, 1961 to the effect that in a competition between two displaced persons the property shall be offered to the one who has the highest compensation, so the property be transferred to Godha Ram respondent 3 because his compensation of Rs. 5,749 was higher than that of the appellant, the amount of whose compensation was Rs. 4,279. Rule 30 of the 1955 Rules before it suffered amendment on March 24, 1961, provided that the property shall be offered to the person whose gross compensation was nearest to the value of the property, and when the rule was in that form, obviously, the property was to be offered to the appellant because his compensation was the nearest to the value of the property. By the time the revision came to be heard by the Chief Settlement Commissioner, but after the stage of the appeal in this case, the rule had been amended as stated above. The Chief Settlement Commissioner was, therefore, of the opinion that the amended rule applied to the competing claimants, the appellant

and Godha Ram respondent 3. So he decided in favour of Godha Ram respondent.

(2) The appellant on November 2, 1961, filed Civil Writ No. 1492 of 1961 challenging the legality of the order of the Chief Settlement Commissioner and seeking a writ, direction or order for quashing the same. A question having arisen during the hearing of this petition whether the amendment of rule 30 was retrospective so as to apply to proceedings pending in revision on the date of its coming into force, the learned Single Judge hearing the petition, on October 31, 1963, made a reference of the question to a large Bench. On that this petition No. 1492 of 1961, of the appellant, with a number of other similar petitions, and an appeal under clause 10 of the Letters Patent, *Mela Ram* v. *The Government of India* (1), were heard by a Division Bench of Dua and Khanna, JJ., who delivered their judgment on February 19, 1964, in which the learned Judges held that the amended rule 30 was operative retrospectively, applying to revision applications under section 24 of the Act pending before the Chief Settlement Commissioner on the date of the amendment. In the beginning the heading of the judgment starts with L.P.A. No. 92 of 1963, *Mela Ram* v. *The Government of India* (1), but in the very first few lines of the judgment it is clearly stated that along with other petitions and an appeal under clause 10 of the Letters Patent, the petition of the appellant, that is, Civil Writ No. 1492 of 1961, was also heard by the Bench on this question. After having given their decision on the question, the learned Judges directed that "all the writ petitions should now be finally decided by Single Bench". In the appellant's Civil Writ No. 1492 of 1961 the order made by the learned Judges was—"For orders see L.P.A. No. 92 of 1963." So it is unquestionably apparent that that decision of the learned Judges was given also in this petition of the appellant. After that this petition of the appellant came for hearing before Khanna, J., and the learned Judge on March 24, 1964, made this order in it—"In view of the decision of the Division Bench in *Mela Ram* v. *Government of India* (1), this petition fails and is dismissed. No order as to costs". So the petition of the appellant was dismissed by the learned Single Judge on March 24, 1964. Against that order of the learned Single Judge the appellant filed, under clause 10 of the Letters Patent, L.P.A. No. 305 of 1964, *Chanan Das* v, *Union of India*, in which Godha Ram is respondent 3.

(1) L.P.A. No. 92 of 1963 decided on 19 February, 1964.

(3) This L.P.A. No. 305 of 1964, *Chanan Das* v. *Union of India,* came for hearing before Mahajan, J. and myself along with another appeal under clause 10 of the Letters Patent, *Jiwan Das* v. *Union of India,* L.P.A. No. 1 of 1966. We found that on the question raised in those appeals with regard to the effect of the amendment of rule 30 on and from March 24, 1961, there was conflict of decisions of two Division Benches in this Court, that is to say, *Mela Ram* v. *Government of India* (1), and *Harbans Lal* v. *Union of India* (2). In view of the conflicting Division Bench decisions in those cases, we referred this question to a larger Bench—

> "Whether rule 30, as amended on March 24, 1961, applies to revisions pending on that date or filed thereafter under sections 24 and 33 of the Displaced Persons (Compensation and Rehabilitation) Act ?"

The reference was heard by a Bench of three Judges consisting of Dua and Mahajan, JJ. and myself. Our judgement answering the question was delivered on September 26, 1966. Mahajan, J. and I were of the opinion that rule 30, as amended on March 24, 1961, was not operative retrospectively so as to affect pending revision applications under sections 24 and 33 of the Act on March 24, 1961, but Dua, J., adhered to his view in *Mela Ram's case.* So by a majority opinion the answer returned was that the amended rule 30 did not apply to revisions pending on March 24, 1961.

(4) After that the appellant's appeal, L.P.A. No. 305 of 1964, came for hearing before Shamsher Bahadur and Pandit, JJ., and the learned Judges have on August 22, 1967, referred this question to a larger Bench: —

> "If a learned Single Judge refers a case to the Division Bench and the said Division Bench decides only a question of law and then remits the case to the learned Single Judge for deciding other points arising in that case can the Letters Patent Bench, in an apppeal against the final decision given by the learned Single Judge, examine the correctness of the view of the earlier Division Bench on the question of law ? If so, what procedure has to be adopted by it,

(2) C.W. 513-D of 1959 decided on 31st December, 1963.

> if it doubts that Division Bench decision ? Can't it then refer that question of law to a Full Bench ? Or if in the meantime, a Full Bench in some other case has already over-ruled the view of the earlier Division Bench on the question of law, cannot that decision be given effect to by the Letters Patent Bench ?"

It is this question which has come before this Bench for consideration in the circumstances as detailed above.

(5) One matter is first clear that when *Mela Ram* v. *Government of India* (1), was decided by a Division Bench consisting of Dua and Khanna, JJ., on February 19, 1964, along with that appeal was also heard the appellant's Civil Writ petition No. 1492 of 1961. Of course, there were other such petitions as also one other appeal under clouse 10 of the Letters Patent that were heard at the same time. The judgment of the Division Bench consisting of Dua and Khanna, JJ., covered all those cases, including the appellant's Civil Writ No. 1492 of 1961. The Division Bench heard arguments in all the cases and disposed of the question before it by one judgment, which judgment was tagged on to the case of *Mela Ram* v. *Government of India* (1), and, so far as the appellant's Civil Writ No. 1492 of 1961 is concerned, the order in it was that, for the purposes of seeing what order was made in it, reference be made to the main judgment in L.P.A. No. 92 of 1963. Thus there is no manner of doubt that the Division Bench returned the answer in the appellant's Civil Writ No. 1492 of 1961 that the amended rule 30 was operative restrospectively on the date of its coming into force on March 24, 1961, that is, that it was applicable to revision applications pending on that date under section 24 of the Act. This was thus a decision by the learned Judges *inter partes* in Civil Writ No. 1492 of 1961, in other words, between the appellant and Godha Ram respondent 3.

(6) When, after Khanna, J., had dismissed Civil Writ No. 1492 of 1961 following the earlier decision of the Division Bench made in this very case on the operative effect of rule 30 as amended on March 24, 1961, the appellant filed an appeal against that order under clause 10 of the Letters Patent and that appeal was heard by Mahajan, J. and myself, at that time there was the decision of the Division Bench on this aspect of the interpretation of rule 30, as amended, which was *inter partes* and was thus conclusive as between them. In spite of the conflict of decisions on this matter, as

referred to in our order of reference of July 21, 1966, the decision of the Division Bench *inter partes* made on February 19, 1964, in Civil Writ No. 1492 of 1961 was conclusive and binding as between the appellant and Godha Ram respondent 3, parties to that petition. So that this matter was not open to argument before us in the appeal of the appellant against the order of Khanna, J., dismissing his Civil Writ No. 1492 of 1961. It was still a matter open to us to refer to a larger Bench in the other appeal which was *Jiwan Das* v. *Union of India,* L.P.A. No. 1 of 1966. This matter was at that time not argued before us and hence we referred the question of the interpretation of the amended rule 30 as it also arose in the other appeal *Jiwan Das* v. *Union of India,* L.P.A. No. 1 of 1966. Actually, it is obvious that if this matter had been at that stage a matter of contention before us we would not and could not have referred the appellant's appeal to a larger Bench because we could not have in Civil Writ No 1492 of 1961 of the appellant made a reference of the matter decided *inter parties* in the judgment of the Division Bench to a Bench of three Judges in an appeal under clause 10 of the Letters Patent from the dismissal of that petition by the learned Single Judge. The question that is now before this Bench rather throws some doubt upon what I have said just now on this aspect of the matter. It, therefore, becomes necessary to consider what exactly is the position, in law, of the judgment of the Division Bench in Civil Writ No. 1492 of 1961 rendered on February 19, 1964, *inter parties.*

(7) In *Satyadhyan Ghosal* v. *Deorajin Debi* (3), their Lordships considered the question of application of the rule of *res judicata* in cases somewhat akin to the present, and their Lordships observed:

> "The principle of *res judicata is* based on the need of giving a finality to judicial decisions. What it says is that once a *res judicata,* it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter—whether on a question of fact or a question of law— has been decided between two parties in one suit or proceedings and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be

(3) A.I.R. 1960 S.C. 941.

> allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of *res judicata* is embodied in relation to suits in section 11 of the Code of Civil Procedure; but even where section 11 does not apply, the principle of *res judicata* has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct.
>
> The principle of *res judicata* applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings. Does this, however, mean that because at an earlier stage of the litigation a court has decided an interlocutory matter in one way and no appeal has been taken therefrom or no appeal did lie, a higher court cannot at a later stage of the same litigation consider the matter again ?"

And their Lordships then rendered a reply that in such a case, except in cases noted where the order is a final dispoal of the matter, the decision in on interlocutory matter does not operate as *res judicata* and is open to reconsideration in appeal against the final appealable decision or decree. Obviously the decision of the Division Bench on February 19, 1964, in the appellant's Civil Writ No. 1492 of 1961 on the question of law as to the retrospective operation of the amendment rule 30 from March 24, 1961, was a decision not of interlocutory matter or of interlocutory character, but a decision on vital question of law in the case and on merits. It was a decision *inter partes* by a Division Bench from which there is no room for an appeal in this Court, and it can only be reconsidered when an appeal is before the Supreme Court against the disposal of the appellant's Civil Writ No. 1492 of 1961, by this Court. It is, therefore, a decision on a question of law inter parties by a Division Bench which is not open to reconsideration by another Division Bench even when such a Bench is hearing an appeal under clause 10 of the Letters Patent from an order of a learned Single Judge dismissing the writ petition of the appellant. If it was otherwise, it would mean that in such a Letters Patent Appeal a Division Bench may be

able to reconsider a decision of an earlier Division Bench, which cannot be, or it may consider of referring the matter decided by the earlier Division Bench for the reconsideration of a larger Bench, which would undo the conclusive and binding character of such a decision inter parties. Of course, as I have said, when the matter goes in an appeal to the Supreme Court the rule of *res judicata* will not apply there, but, so far as this Court is concerned, the decision of the Division Bench in the petition of the appellant is conclusive and binding between the parties. It is obvious that the decision of the Full Bench in L.P.A. No. 305 of 1964, *Chanan Das* v. *Union of India*, and L.P.A. No. 1 of 1966 *Jiwan Das* v. *Union of India*, is only effective in the latter case, that is to say, in the case of *Jiwan Das* v. *Union of India*, but not in the case of the appeal of the appellant, *Chanan Das* v. *Union of India*. A similar question came for consideration in *Employee's State Insurance Corporation* v. *Spongles and Glue Manufacturers and others* (4), which was a case heard by Grover, J. and myself. In that case it was first held by a Division Bench, in the case inter parties, that rule 17 of the Employees' Insurance Court Rules, 1949, was *intra vires*, but in another case a Full Bench subsequently held that rule 17 was *ultra vires*. If rule 17 was to be treated as *ultra vires*, the claim of the Employees' State Insurance Corporation could be considered, but if not, it was out of time. After a decision by a learned Single Judge when an appeal was taken under clause 10 of the Letters Patent by the Employees' State Insurance Corporation it was urged that although earlier in the same case inter parties the Division Bench had held rule 17 to be *intra vires*, of which the consequence was that the claim of the Employees' State InIsurance Corporation failed, but as after that a Full Bench had held that rule to be *ultra vires*, so the claim of the Employees' State Insurance Corporation could not be dismissed as out of time. To this objection was taken that this argument was not available to the appellant, Employees' State Insurance Corporation, because the earlier decision of the Division Bench inter parties on the vires of the rule in question was *res judicata* between the parties and not open to reconsideration in the wake of the subsequent Full Bench decision in an appeal by the Employees' State Insurance Corporation under clause 10 of the Letters Patent. The judgment was given by Grover, J., with whom I concurred; and following *Satyadhyan Ghosal's case* and other cases on the matter it was held

(4) I.L.R. (1967) 2 Punj. 694=1967 Curr. Law Journ. (Pb. and Hry.), 329.

that the previous decision of the Division Bench inter parties was *res judicata* so far as this Court was concerned and barred its reconsideration in the Letters Patent appeal by the appellant in that case in spite of a subsequent Full Bench decision in another case which was contrary to the decision of the Division Bench and supported the appellant's claim. The other cases considered in support of this approach were *Balkishan Das* v. *Parmeshri Das* (5), which is a Division Bench decision of this Court, *Laxminarain* v. *Sultan Jehan Begum* (6) and *Shyamacharan Raghubar Prasad* v. *Sheojee Bhai Jairam Chattri* (7), in all the three cases the view taken was the same as we took in *Employees' State Insurance Corpoartion* v. *Spangles and Glue Manufacturers* (4). The Hyderabad and Madhya Pradesh High Courts had not agreed with *Pichu Ayyangar* v. *Ramanuja* (8), bacause it was regarded as contrary to the decision of their Lordships in *Satyadhyan Ghosal's case.* Two arguments, in particular, which were urged by the learned counsel for the appellant in that case may be noted. The first was that as an appeal is in the nature of a re-hearing, so in moulding the relief to be granted in appeal the appellate Court was entitled to take into account even facts and events which had come into existence after the decree, such as legislative changes since the decision in appeal was given and its powers were not confined only to seeing whether the decision appealed against was correct according to the law as it stood at the time when it was given. This argument was urged in the wake of the decision of the Federal Court in *Lachmeshwar Prasad Shukul* v. *Keshwar Lal Chaudhri* (9), and *Gummalapura Taggina Matada Kotturuswami* v. *Setra Veeravva*. (10). This argument was met with the observation that "a perusal of the aforesaid two decisions shows that the facts there were entirely different and distinguishable and that there is no parallel between them and the present case. There has been no legislative change and although the law declared by the Full Bench is quite different from the one laid down by the Division Bench in these cases, it is not possible for the reasons which have been stated, particularly owing to the applicability of the rule or principle of *res*

(5) A.I.R. 1963 Punj. 187.
(6) AI.R. 1951 Hyd. 132.
(7) A.I.R. 1964 M.P. 288.
(8) A.I.R. 1940 Mad. 901.
(9) A.I.R. 1941 F.C. 5.
(10) A.I.R. 1959 S.C. 577.

judicata to apply the law declared by the Full Bench to the first group of appeals." So this contention on the side of the appellant in that case did not prevail. Another argument which was urged was that in the wake of the judgment of their Lordships in *Satyadhyan Ghosal's case* the decision of the Division Bench on a question of law only was at an interlocutory stage and, therefore, the rule of *res judicata* did not apply. What was observed on this argument was— "It seems to me that the analogy of a remand cannot hold good in the present case. The entire appeal had been referred to the Division Bench and whatever points the Bench decided were conclusive. Only certain points were left for decision by the learned Single Judge which were referred back to him but this could not detract from the conclusiveness of the decision of the Bench on the vires of rule 17. Moreover, on the principles laid by the Supreme Court in *Satyadhyan Ghosal's case* the previous order of the Division Bench with regard to the vires of rule 17 would not be open to challenge before us whatever the position may be in an appeal to the Supreme Court against our judgment." So this argument also failed. The learned counsel for the appellant in this case has then referred to *A. C. Estates* v. *Serajuddin & Co.* (11), and *Management of the Northern Railway Co-operative Credit Society Ltd., Jolhpur* v. *Industrial Tribunal, Rajasthan, Jaipur* (12), but the facts in those cases were somewhat different and therefore, it is not necessary to go into the details of the same. Suffice it to say that on facts the cases have no bearing so far as the present controversy is concerned. In *State of West Bengal* v. *Hemant Kumar Bhattacharjee* (13), at page 1066, their Lordships observed—"This argument proceeds on a fundamental misconception, as it seeks to equate an incorrect decision rendered without jurisdiction. A wrong decision by a court having jurisdiction is as much binding between the parties as a right one and may be superseded only by appeals to higher tribunals or other procedure like review which the law provides. The learned Judges of the High Court who rendered the decision on 4th April, 1952, had ample jurisdiction to decide the case and the fact that their decision was on the merits erroneous as seen from the later judgment of this Court, does not render it any the less final and binding between the parties before the Court. There is,

(11) A.I.R. 1966 S.C. 935.
(12) A.I.R. 1967 S.C. 1182.
(13) A.I.R. 1966 S.C. 1061.

thus, no substance in this contention. The decision of the High Court, dated 4th April; 1952; bound the parties and its legal effect remained the same whether the reasons for the decision be sound or not." This observation of their Lordships applies exactly to the present case. Even if subsequently the opinion of the Full Bench is different from the opinion of the Division Bench, that does not mean that the decision of the Division Bench inter parties is no longer binding and conclusive between those parties. There are perhaps different ways of giving meaning and definition to the world 'interlocutory' by different authors of dictionaries, but this definition in Bouvier's Law Dictionary, 1914 Edition, taken from Sir William Holdsworth's History of English Law, is perhaps more appropriate and better— "Something which is done between the commencement and the end of a suit or action which decides some point or matter, which, however, is not a final decision of the matter in issue; as, interlocutory judgments, or decrees, or orders. The term seems to have originated with Lord Ellesmere; 1 Holdsw. Hist. E.L. 213." The decision of the Division Bench on the question whether the amended rule 30 was so retrospective as to be applicable to revision applications pending on the date of its amendment or not, was a decision which, on a point in issue in the petition of the appellant, and so far as this Court is concerned, was final and conclusive inter parties. It was, therefore, not an interlocutory judgment or order.

(8) There remains only for consideration one other case which takes a view directly opposed to what I have said above, and the case is *Kanta Devi* v. *Kalavati* (14). It was a decision by Abdur Rahman and Mahajan, JJ., the judgment having been delivered by Abdur Rahman, J., with whom Mahajan, J., agreed. The plaintiff in the case Kanta Devi brought a suit for a declaration that compromises in certain suits, during her minority, to one of which suits she was a party but not to the other, by her husband, as her next friend, were not binding on her because her husband had acted with gross negligence and carelessness in entering into the compromise in one suit and in agreeing to be bound by the debts enlisted in the other suit. It was this matter which was referred to a larger Bench and the answer given by the earlier Division Bench was that the negligence of a guardian ad-litem was not, in itself, a ground for setting aside a consent decree

(14) A.I.R. 1946 Lah. 419.

against a minor, which could only be set aside on the ground of fraud, actual or constructive. The learned Judges then returned the case to be tried by the Judge who was trying it. Ultimately when the case came before a trial Subordinate Judge, he dismissed the suit following the decision of the Division Bench inter parties reported as *Kanta Devi* v. *Kalawati*. (15) Kanta Devi plaintiff then filed an appeal against the decree of the Subordinate Judge, which came for hearing before the learned Judges. In the meantime the question had been before a Full Bench in *Iftkhar Hussain Khan* v. *Beant Singh*. (16), in which the learned Judges had returned the answer unanimously that it was not necessary to allege or prove fraud in order to enable a person to get rid of a decree passed against him during his minority and that gross negligence of his next friend or guardian ad-litem would alone, if established, entitle him to avoid the decree if found to have been passed in consequence of that negligence. In the first appeal to the High Court by Kanta Devi plaintiff, reliance was then placed on this case, but the reply of the other side was that the matter was *res judicata* having been concluded inter parties by the decision of the Division Bench earlier, reported as *Kanta Devi* v. *Kalawati* (15). Abdur Rahman, J., first says this—"When this appeal came up before us yesterday, I was of the view that although the decision given by the Division Bench in *Kanta Devi* v. *Kalawati* (15), was not correct, yet it would be binding on the parties to this suit on the principles of *resjudicata*—section 11, Civil Procedure Code, not being exhaustive—for the question had been heard and finally decided by this Court in this suit and the fact that the decision was erroneous in law would be immaterial." Having so observed, the learned Judge then proceeded to say that what was decided by the Division Bench was purely a question of law which is the sphere of a Full Bench and on that account the decision of the Division Bench could not be accepted. Then the learned Judge proceeded to doubt this approach of his own and observed that even if he was not correct in this respect, he felt that even otherwise the previous decision of the Division Bench did not operate as *res judicata*. The first reason given by the learned Judge in this respect was, in his own words,—"If I were to hold that we were prevented by the principles of *res judicata* from deciding this case, it would be not on account of the decision by

(15) A.I.R. 1942 Lah. 205.
(16) A.I.R. 1946 Lah. 233.

the Division Bench in *Kanta Devi* v. *Kalawati* (15), but on account of the decision of the Subordinate Judge although it must be admitted that in deciding the matter he had applied the opinion expressed by the Division Bench. But would not his decision have been open to attack if he had applied the decision of another Division Bench given in a case between different parties altogether if we found that the law laid down by the Division Bench in that case was erroneous and was subsequently over ruled by a Full Bench of this Court ?" With due deference to the learned Judge, this approach is not correct. The appeal before the learned Judges was obviously an appeal from the decree of the Subordinate Judge, and what was conclusive before the learned Judges was not the decision of the Subordinate Judge but that of the High Court, which was inter parties and thus conclusive not only for the Subordinate Judge trying the suit but also for the learned Judges hearing the appeal. The other approach cannot be taken to be sound that the decision is the same when it is in another case and not even inter parties. It is settled that a decision inter parties is conclusive and binds the parties in spite of the fact that a decision in another case may be by a larger Bench, may not take the same view of law as a decision inter parties. So that this approach of the learned Judge cannot possibly be supported on any consideration. The learned Judge then thought that the previous decision of the Division Bench was open to question before that Bench in the appeal from the decree of the Subordinate Judge because it was a decision 'on an abstract question of law', and the learned Judge then observed that if the learned Judges of the earlier Division Bench had given the decision having regard to the facts of the case, then it would not have been possible for the Bench hearing the first appeal to question the correctness of that decision. If I may say so with great respect, a decision inter parties is equally *res judicata* on a question of law as on a question of fact. and this reasoning of the learned Judge cannot possibly be taken as sound. The learned Judge admitted as much when he observed—" I must concede for obvious reasons that it is improper for a Division Bench to dissent from the opinion of another Division Bench." And again the learned Judge proceeded to say—"At all events, even if the Division Bench in *Kanta Devi* v. *Kalawati* (15), was competent to express its opinion without applying it to the facts of the case, it is not that decision but the decision which applied that law to the

facts of this particular case which could debar a Court from rehearing the question that had been heard and finally decided and as that decision which applied the law is at present under appeal, it cannot be held to be *res judicata*." This is another way of repeating the same argument as earlier. The appeal before the learned Judges was from the decree of the Subordinate Judge, but the question of law, which in the same suit between the same parties had earlier been disposed of by the Division Bench, being inter parties, was conclusive on the question of law decided, and the rule of *res judicata* operated so far as that decision of the Division Bench was concerned and not the decision of the Subordinate Judge. This is about all that was said in the case of *Kanta Devi* v. *Kalawati* (15), and with respect to the learned Judges, I dissent from the very approach in that case, and now that approach is completely negatived by the decision of their Lordship in *Satyadhyan Ghosal's case.*

In consequence, my reply to the first part of the question before this Bench is that the decision rendered by the Division Bench on February 19, 1964, in the appellant's petition No. 1492 of 1961 between him and Godha Ram respondent 3, being a decision inter parties even though on the question of application of the amended rule 30, is conclusive and binding between the parties. It was conclusive and binding between the parties before the learned Single Judge and it is so before the Bench hearing the appelllant's appeal under clause 10 of the Letters Patent from the order of the learned Single Judge dismissing his petition, and this is so in spite of the subsequent Full Bench decision to the contrary, which decision must now be limited only to the case of *Jiwan Das* v. *Union of India, L.P.A., No.* 1 *of* 1966. So as stated, the decision or the Division Bench in the petition of the appellant on February 19, 1964, inter parties, is binding on the learned Judges hearing the appellant's appeal under clause 10 of the Letters Patent from the judgment of the learned Single Judge dismissing his petition. On this approach, the remaining half of the question, in my opinion, does not arise.

(9) Pandit, J.—I have had the advantage of persuing the judgment prepared by my lord the Chief Justice, but with great respect to him, I have not been able to persuad myself to agree with the same. I am, therefore, writing a separate one.

The facts of this case had been given by me in the referring order, dated 22nd August, 1967, and taken from there, they are as under .

(10) The dispute in the case relates to the transfer of an evacuee property No. R. 765 to 769 in Ward No. 7, at Panipat in district Karnal. Portions of this property were allotted to Godha Ram and Chanan Dass, who were both displaced persons and had verified claims of Rs. 5,749 and Rs. 4,279, respectively. The assessed value of this evacuee property was Rs. 4,733. Property No. R765 was in the first instance transferred to Godha Ram by the Regional Settlement Commissioner. Against that decision, Chanan Dass filed an appeal before the Assistant Settlement Commissioner and submitted that the said transfer was improper inasmuch as the whole property consisting of Nos. R-765 to 769 was a Single unit and he was entitled to its transfer under rule 30 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 (hereinafter called the Rules), because the gross compensation was nearer to the assessed value of the property than that of Godha Ram. By his order dated 12th January, 1961, the Assistant Settlement Commissioner accepted his appeal and directed that the entire property be transferred to Chanan Dass. Against this, Godha Ram filed a revision petition under section 24 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter called the Act) and the same was disposed of on 1st June, 1961 by Shri C. P. Sapra, Settlement Commissioner with delegated powers of Chief Settlement Commissioner. In the mean time rule 30 had been amended on 24th of March, 1961, and it was provided that instead of a property being transferred to the occupant, whose gross compensation was nearest the value of the property, it should be offered to the occupant whose gross compensation was the highest. Godha Ram contended that the amended rule 30 should apply to his case and the entire property should be transferred to him, his compensation being higher than that of Chanan Dass. Shri Sapra was of the view that the amended rule 30 would apply to pending revision petitions under section 24 of the Act. He, consequently, accepted the revision petition and directed that the entire property be transferred to Godha Ram. The application under section 33 of the Act filed by Chanan Dass against this order was rejected by the Central Government on 27th of September, 1961. That led to the filing of a petition (C.W. 1492 of 1961) under Articles 226 and 227 of the Constitution by Chanan Dass in this Court. This writ petition came up for hearing before Khanna, J., on 31st October, 1963, and he observed that the point involved in the writ petition was the same as in C.W. 1586 of 1961 which had been referred to a Division Bench by Gurdev Singh, J. He, therefore, directed that

the writ petition be set down for hearing along with C.W. 1586 of 1961, L.P.A. 92 of 1963 (Mela Ram *v*. Government of India, Ministry of Rehabilitation) and some other cases. This petition was then heard by Dua and Khanna, JJ. On 19th February, 1964, they decided the question of law which was involved in all those cases and held that rule 30 was by necessary intendment retrospective in its operation and it applied not only to the appeals under the Act but also to the revisions before the Chief Settlement Commissioner under section 24 and to proceedings before the Central Government under section 33 of the Act. They further observed that in most of the cases, counsel were not agreed that this decision on the point of law would be conclusive of the controversy and some of the petitioners wanted to raise other points and it would, therefore, be proper to direct that all the writ petitions should be finally decided by Single Benches. As a result of this decision, Chanan Dass's writ petition was placed before H. R. Khanna, J., on 24th March, 1964, and he dismissed the same in view of the decision of the Division Bench in *Mela Ram* v. *Government of India, Ministry of Rehabilitation and others* (1). Against this decision, a Letters Patent Appeal was filed by Chanan Dass. One of the grounds taken by the appellant was that the Bench decision in L.P.A. 92 of 1963 (Mela Ram's case) required reconsideration by a larger Bench. This appeal came up for hearing before Mehar Singh, C.J. and Mahajan, J., on July 21, 1966. The learned Judges were of the opinion that there was a direct conflict between two Division Bench decisions of this Court regarding the point whether rule 30, as amended on the 24th of March, 1961, applied to revisions pending on that date or filed thereafter under sections 24 and 33 of the Act. It was, therefore, directed that the following question of law be decided by a Full Bench:

> "Whether rule 30, as amended on March 24, 1961, applies to revisions pending on that date or filed thereafter under sections 24 and 33 of the Displaced Persons (Compensation ant Rehabilitation) Act, 1954 ?"

This question of law was than heard by a Full Bench consisting of Mehar Singh C.J., Dua and Mahajan, JJ. On September 26, 1966, by a majority decision (Dua, J. dissenting), it was held that the amended rule 30 did not apply to revisions pending on the date of its coming into operation or filed thereafter under section 24 or applications under section 33 of the Act. After this decision the

Letters Patent Appeal was placed before Shamsher Bahadur, J. and myself; In view of the Full Bench decision given in this case, we were inclined to accept the Letters Patent Appeal and set aside the judgment of the learned Single Judge dismissing the writ petition. But it was contended by the learned counsel for Godha Ram, that in view of a Bench decision of this Court in *Employee's State Insurance Corporation* v. *M/s. Spangles and Glue Manufacturers and another* (4), this Full Bench decision could not be given effect to in the instant case, because the question of Law settled by Dua and Khanna, JJ., on 19th February, 1964, had become final and would act as *res judicata* between the parties to this litigation and the same could not be re-agitated before and reversed by the Full Bench. The difficulty, however, arose, because in the present case, the Letters Patent Bench consisting of Mehar Singh, C.J., and Mahajan, J., as already mentioned above, allowed the law point, decided by the earlier Division Bench consisting of Dua and Khanna, JJ. on 19th February, 1964, to be re-agitated and since they were of the opinion that there was a direct conflict between two Division Bench decisions of this Court regarding that point, they framed the question of law decided by that Bench and referred the same to a Full Bench. If the view of law taken by the Division Bench in the *Employees' State Insurance Corporation case* was correct then we felt that Mehar Singh, C.J. and Mahajan, J. could not have examined the correctness of the decision given by Dua and Khanna, JJ., as it had become *res judicata* between the parties and further they could not refer the point of law to the Full Bench. Since there was a conflict of judicial opinion between the two Letters Patent Benches referred to above, it became necessary for us to refer the question of law mentioned by the learned Chief Justice in his judgment to be decided by a Full Bench. That is how the matter has now come before us.

(11) The only argument raised by the learned counsel for Godha Ram was that the decision given by Dua and Khanna, JJ., on 19th February, 1964, in Mela Ram's case along with which the appellant's writ petition (C. W. 1492 of 1961) was also heard, operated as *res judicata* between the parties and the correctness thereof could not be questioned in the Letters Patent Appeal against the judgment of Khanna, J., dated 24th March, 1964, whereby he had dismissed the appellant's writ petition in view of that

decision. The first question that immediately arises for consideration is whether Godha Ram, respondent, can be permitted to raise the plea of *res judicata* at this stage when he did not do so at the proper time, when the Letters Patent Appeal of the appellant Chanan Dass (L. P. A. 305 of 1964) against the decision of Khanna, J., dated 24th March, 1964; came up for hearing before the Letters Patent Bench consisting of Mehar Singh, C.J. and Mahajan, J. on 21st July, 1966. It is common ground that the correctness of the decision in Mela Ram's case was challenged before that Bench and it was specifically mentioned in one of the grounds of appeal that it reqiured re-consideration by a larger Bench. It was not pleaded by the respondent Godha Ram, at that time that it operated as *res judicata* between the parties and Chanan Dass was debarred, under the law, from questioning it. In view of the conflict between that judgment and the one given by Falshaw, C.J. and Mehar Singh, J. (as he then was) in *Harbans Lal* v. *Union of India* (2), the Letters' Patent Bench referred the question of law, which had been decided in Mela Ram's case, to the Full Bench for decision. Respondent Godha Ram did not object to the reference to the Full Bench either before the Letters Patent Bench or even before the Full Bench where the point was argued by him without pleading the bar of *res judicata*. He invited the Full Bench to decide that point of law afresh. It is undisputed that the plea of *res judicata* is not one of jurisdiction of the Court, but is one which can be waived. It has to be raised at the proper time by the party who wishes to set it up in restraint of further proceedings in the litigation. If a party does not raise the plea of *res judicata* at the proper stage, he will be taken to have waived it. It was held by a Division Bench of the Calcutta High Court in *Rajani Kumar Mitra and others* v. *Ajmaddin Bhuiya* (17)—

> "The bar of *res judicata* is one which does not affect the jurisdiction of the Court, but is a plea in bar, which a party is at liberty to waive.
>
> Where there are two conflicting decrees, the last should prevail on the ground that in the eye of law it is binding between the parties and the previous decree should be taken as pleaded in the latter suit and not given effect to, or must henceforth be regarded as dead."

(17) A.I.R. 1929 Cal. 163.

In *Nagenbala Dasee* v. *Sridam Mahato and others* (18), it was observed:—

> "If a party does not put forward a plea of *res judicata*, he must be taken to have waived it and to have intentionally invited the Court to decide the case on the merits."

To the same effect is the decision of another Bench of the Calcutta High Court in *Khaje Habibulla and others* v. *Bepin Chandra Rai and others* (19), where it was remarked:—

> "Where in an appeal by the plaintiff, from a suit which has been dismissed, although it is open to defendants to support the order of dismissal on the ground of *res judicata*, they do not do so and the suit is remanded to be heard on merits, they are precluded from raising the plea of *res judicata* subsequently."

In *Firm Sansarchand Lachhman Das* v. *Dina Nath Dube* (20), it was held—

> "If two conflicting decrees have been obtained by parties in two different Courts or even from the same Court then the last one should be the effective decree between the parties and the first decree should be regarded as dead. The basis of this salutary rule is that if a party who could raise the plea of *res judicata* does not raise the same when an opportunity is given to him he must be deemed to have waived it. The plea of *res judicata* is not one which affects the jurisdiction of a Court. It is a plea in bar and such a plea can be waived........."

Apart from the principle of waiver which is applicable in the instant case, Godha Ram, respondent, is estopped from raising the plea of *res judicata* at this stage. He invited the decision of the Full Bench on the question of law and Chanan Dass was made to undergo the expense of getting the matter argued on his behalf before

(18) A.I.R. 1933 Cal. 69.
(19) A.I.R. 1936 Cal. 454.
(20) A.I.R. 1935 All. 645.

the Full Bench and when the decision of the Full Bench has now gone against Godha Ram, he cannot be permitted to say that the Full Bench could not re-examine the matter which had become *res judicata* between him and Chanan Dass.

(12) There is yet another way of looking at the matter. If a party does not raise the plea of *res judicata* when it ought to have been raised, it will be deemed to have been directly and substantially in issue,—(*vide* Explanation IV to section 11 of the Code of Civil Procedure) and to have been heard and finally decided against him. Godha Ram did not raise this plea of *res judicata* before the Letters Patent Bench consisting of Mehar Singh, C.J. and Mahajan, J. when he ought to have raised it. That being so it would be deemed to have been directly and substantially in issue at that stage and to have been heard and finally decided against him.

(13) Under all these circumstances, I am of the view that Godha Ram could not, under the law, be permitted to raise the plea of *res judicata* after the Full Bench decision had gone against him, and he would be bound by the later decision. I am unable to subscribe to the view taken by the learned Chief Justice, and I say this with great respect, that the Full Bench decision would be deemed to be effective only in the Letters Patent Appeal No. 1 of 1966 (*Jiwan Dass* v. *Union of India*) which was also heard alongwith the Letters Patent Appeal of Chanan Dass, and not affect the appellant's case. As I have said, the plea of *res judicata* does not affect the jurisdiction of the Court, but is a plea in bar which a party is at liberty to waive. The Full Bench decision in *Chanan Dass's case*, therefore, cannot be held to be withoht jurisdiction.

(14) It is unfortunate that the appellant had not taken this position before Shamsher Bahadur, J., and myself, because had that been done, possibly there would have been no necessity of this reference to the Full Bench. But, at any rate, the question of law referred to this Full Bench cannot be divorced from the facts of the case in which it had arisen and argued in a vaccum. The view that I have taken regarding the first point, in my opinion, would result in the acceptance of the appeal on the basis of the Full Bench decision and there is no necessity of answering the reference.

(15) If I am wrong on the first point that I have mentioned above, the next question that requires decision is whether the Bench decision of Dua and Khanna, JJ., dated 19th February, 1964 in Mela Ram's case operated as *res judicata* between Chanan Dass and Godha Ram. It is beyond doubt that the Division Bench decided the point of law as to the extent of the retrospective operation of rule 30 of the Displaced Persons (Compensation and Rehabilitation) Rules, as amended on 24th March, 1961 and in accordance with its decision dismissed L.P. As Nos. 384 of 1962 and 92 of 1963. The Division Bench, however, considered it proper to direct that in the circumstances all the writ petitions which had been referred to it for decision including Chanan Dass's writ petition (C.W. 1492 of 1961) "should now be finally decided by Single Benches". It was then Khanna, J., before whom C.W. 1492 of 1961 came up for decision, who dismissed it on 24th March, 1964 in view of the judgment of the Division Bench in Mela Ram's case. It would thus be seen that the Division Bench in Mela Ram's case only decided the point of law in the abstract and *applied* it only to L.P. As 384 of 1962 and 92 of 1963 and *left it to the learned Single Judge to apply it to the* other writ petitions including that of the appellant. It is, therefore, clear that the decision of the Division Bench in Mela Ram's case could not be said to be *inter partes qua* Chanan Dass and Godha Ram who were parties to C.W. 1492 of 1961. It was the judgment, dated 4th March, 1964 passed by Khanna, J., which could be considered in law to be *inter partes.* It was he who had applied the decision of the Division Bench on the abstract proposition of law to the facts of Chanan Dass's writ petition and it was the correctness of his judgment which could be and was challenged in Letters Patent Appeal No. 305 of 1964 filed by Chanan Dass. The appellant could not have questioned the decision of the Division Bench in Mela Ram's case, as it had not been applied to his writ petition by the said Bench. His only remedy was to file a Letters Patent Appeal against the order of Khanna, J., and to urge there that the decision of the Division Bench in Mela Ram's case which was applied to his case by the learned Single Judge, was wrong. The decision in Mela Ram's case not being *inter partes* could not, therefore, operate as *res judicata.*

(16) A good deal of reliance was placed by the learned counsel for the respondent on the Bench decision of Mehar Singh, C.J., and Grover, J., in *Employees' State Insurance Corporation* case in support of his argument that the decision in Mela Ram's case

operated as *res judicata* between the parties. In the first place, in that case, the plea of *res judicata* was taken when the Letters Patent Appeal against the judgment of the learned Single Judge deciding the writ petition in accordance with the decision of the earlier Division Bench came up for hearing. There, the plea of *res judicata* was taken at the proper time and could not be said to have been waived. Such was not the position in the instant case. Secondly, I am of the opinion that the point of law relating to *res judicata*, I say so with great respect to the learned Judges, had not been correctly decided. It is unfortunate that the case decided by Sir Abdur Rahman and M. C. Mahajan, JJ., in *Mt. Kanta Devi* v. *Smt. Kalawati and others* (14), was not brought to the notice of the learned Judges, which in my opinion, I again say with respect, lays down the correct law on the point. Therein, it was held—

> "A Division Bench cannot merely express its opinion on an abstract question of law detached from the facts of the case which it is called upon to decide. That is the province of a Full Bench when a point is referred to it for opinion. Detached from the facts of the case, the opinion of a Division Bench on a pure question of law cannot have the same binding effect on another Division Bench as the decision of a Full Bench would have, although it is improper for a Division Bench to dissent from the opinion of another Division Bench.
>
> (17) A Division Bench, without adjudicating on the case, merely expressed an opinion as to what was the law on the subject, and left that opinion to be applied by the trying Judge who happened to be a Subordinate Judge. In view of the opinion expressed by the Division Bench, the Subordinate Judge dismissed the suit. The plaintiff appealed to the High Court and the appeal came to be heard before a Division Bench. In the meanwhile, a Full Bench gave its opinion on the same subject contrary to the opinion expressed by the previous Division Bench expressly dissenting from that opinion:
>
> (18) Held, that the decision of the Division Bench could not be held to be *res judicata* between the parties to the litigation as it was not its final decision on the facts of

> the case. Even if the Division Bench was competent to express its opinion without applying it to the facts of the case, it was not that decision but the decision which applied that law to the facts of the case which could debar a Court from rehearing the question that had been heard and finally decided and as that decision which applied the law was under appeal, it would not be held to be *res judicata.*"

If a point of law is decided in the abstract by a Division Bench, that decision does not operate as a decision *inter partes* which can be pleaded as *res judicata.* The decision *inter partes* would be the decision of the learned Single Judge who decided the case in view of the decision of the Division Bench and that decision in the instant case was by Khanna, J. The Supreme Court judgment in *Satyadhyan Ghosal and others* v. *Smt. Deorajin Debi and another* (3), relied upon in *Employees State Insurance Corporation case,* was clearly distinguishable. In that case, the earlier decision which was pleaded as being *res judicata* had been given in the revision petition which had been filed in the High Court against the order in that very case and it was not a decision rendered on an abstract proposition or point of law, and, moreover, the bar of *res judicata* was pleaded at the earliest opportunity. The following observations made in *Satyadhyan Ghosal's case,* therefore, did not apply either to the instant case or the Employees State Insurance Corporation case:—

> "The principle of *res judicata* applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings."

(19) If I am right in my view that the Bench decision in Mela Ram's case could not operate as *res judicata* between Chanan Dass and Godha Ram, the position before the Letters Patent Bench, which was finally hearing the appeal of Chanan Dass, was that the Full Bench in *Chanan Dass* v. *Union of India and others,* had in the mean time, over-ruled the decision in Mela Ram's case. The Letters Patent Bench was then bound to follow the Full Bench decision which

was given later, and decide the case in accordance with it. The decision in Mela Ram's case was no more binding on the parties and it was replaced by the Full Bench decision, which became effective and by which the parties were bound.

(20) Suppose, the decision in Mela Ram's case was *inter partes* and binding on Chanan Dass and Godha Ram, what would be the position if in the meantime there was a statutory change in law or a Supreme Court decision taking a contrary view on the question of law decided by the Division Bench had come before the writ petition came up before Khanna, J. on 24th March, 1964? What law would have been applied by Khanna, J. while deciding Chanan Dass's writ petition ? Evidently, in my view, the learned Judge should have taken notice of the change in the statutory law or followed the Supreme Court decision in preference to the one given by the Division Bench, as the writ petition was still pending and had not been finally decided. If it was otherwise, the result would be that the learned Single Judge would obviously be following an incorrect decision and not giving effect to the Supreme Court ruling, knowing full well that the decision that he was giving was not in accordance with law. The aggrieved party would be forced to file Letters Patent Appeal against the said decision and there also he would be met with the plea that the question of law had become *res judicata* between the parties and the Letters Patent Bench would also not follow the Supreme Court decision, though fully conscious of the fact that their decision was opposed to the Supreme Court decision and was bound to be set aside in appeal by the said Court. The result of all this would be that the party would be forced to go to the Supreme Court for getting justice and the High Court at both the stages would be feeling completely helpless to give relief to the party, knowing all the time that he was entitled to it as of right on the basis of the law laid down by the Supreme Court. The aggrieved party would, thus, be compelled to undertake all this expense and botheration for no rhyme or reason. Such a position should not be countenanced and I am unable to subscribe to the view which might lead to result of this kind. It was perhaps because of cases of this kind which would lead to such anomalous results that both the Federal Court and the Supreme Court in *Lachmeshwar Prasad Shukul and other* v. *Keshwar Lal Chaudhri and others*.(9) and *Gummalapura*

Taggina Matada Kotturuswami v. *Setra Veeravva and others,* (10) respectively, held that the change in law and circumstances had to be taken note of while moulding the relief to be given to a party. The appeal being a continuation of the original proceedings, the Bench hearing the appeal, in my opinion, has to decide it in accordance with the statutory change in the law or the law declared by the Supreme Court or propounded by the Full Bench of the Court in which the said appeal was pending. It was observed by the Federal Court in *Lachmeshwar Prasad Shukul's case*—

> "The hearing of an appeal under the procedural law of India is in the nature of re-hearing and, therefore, in moulding the relief to be granted in a case on appeal, the appellate Court is entitled to take into account even facts and events which have come into existence after the decree appealed against Consequently, the appellate Court is competent to take into accunt legislative changes since the decision in appeal was given and its powers are not confined only to see whether the lower Court's decision was correct according to the law as it stood at the time when its decision was given."

Similarly, the Supreme Court in *Gummalapura Taggina Matada Kotturuswami's case* observed that it was well settled that the appellate court was entitled to take into consideration any change in the law. Under these circumstances, since the Letters Patent Appeal was still pending, the change in law effected by the decision of the Full Bench, has, in my opinion, to be given effect to and the relief has to be moulded in accoradnce therewith.

(21) An argument was raised by the learned counsel for the appellant that the decision of the Division Bench in Mela Ram's case was of an interlocutory nature so far as the appellant's writ petition (C.W. 1492 of 1961) was concerned, as it only decided a point of law arising therein and which did not finally determine the rights of the parties. This order, being of an interlocutory nature, could be agitated in the appeal against the final decision of the writ petition by Khanna, J. There seems to be some merit in this contention as well. Wharton's Law Lexicon describes an interlocutory order or judgment as one made or given during the progress of an action, but which does not finally dispose of the

rights of the parties. According to Iyer's Law Lexicon, an interlocutory order is one which is made pending the cause before a final hearing on the merits. An interlocutory order is made to secure some end and purpose necessary and essential to the progress of the suit. The judgment in Mela Ram's case only decided a point of law arising in the various petitions, but left it to be applied to each writ petition, along with the decision on other points arising therein, by the learned Single Judge. It was, thus, a decision rendered during the progress of the writ petition before it was finally disposed of by Khanna, J. That judgment being on an interlocutory matter, could be challenged in Letters Patent Appeal against the final decision of the writ petition given by Khanna, J. on 24th March, 1964. It is note-worthy that no Letters Patent Appeal lay against the Division Bench decision in Mela Ram's case and no appeal could be filed against it even in the Supreme Court, because the appellant would have been met with the plea that no final decision on his writ petition had yet been given by the High Court. As held by the Supreme Court in *Satyadhyan Ghosal's case*, it was clear that an interlocutory order which had not been appealed from either because no appeal lay or even though an appeal lay, an appeal was not taken, could be challenged in an appeal from the final decree or order. Therefore, even on this ground also, the decision in Mela Ram's case could be challenged before the Letters Patent Bench.

(22) In view of what I have said in the earlier part of my judgment, since the plea of *res judicata* was not available to Godha Ram at this stage, the necessity of this reference, in my opinion, would not have arisen in the instant case. If, however, it is held that the plea of *res judicata* was available to the respondent, then, for the reasons stated above, my answer to the question referred would be as follows. There is, however, one matter which I wish to make clear. The question of law referred to the Full Bench presupposes that the Division Bench, to which the case was referred, after deciding the abstract question of law, had applied it to the facts of that case and remitted the case to the learned Single Judge for deciding the *other points arising* therein, so that the point of law decided by the Division Bench became final and binding *inter partes*. In such a contingency, the decision of the Division Bench will, of course, operate as *res judicata inter partes* at the later stage

and would not be allowed to be challenged in the Letters Patent Appeal from the final judgment of the learned Single Judge, deciding the case on the other points arising therein provided the plea of *res judicata* was raised in the Letters Patent Appeal at the proper stage. The present, however, is, in my opinion, not a case of that kind. If, however, without itself applying to the case the point of law decided by it, the Division Bench remits the case to a learned Single Judge for final decision, the order of the Division Bench will not operate as *res judicata,* not having been decided finally *inter partes.* In that case, the decision *Inter partes* will be that of the learned Single Judge and in the Letters Patent Appeal from his judgment, it would be open to the appellant to challenge the correctness of the decision of the earlier Division Bench. The proper course for the Bench hearing the Letters Patent Appeal would be to refer the question of law to a Full Bench for decision, in case it doubted the correctness of the decision of the earlier Division Bench. If, in the meanwhile, a Full Bench had already decided that point of law differently, the Bench hearing the Letters Patent Appeal would follow and give effect to that decision and not that of the earlier Division Bench. Even if the question of law decided by the Division Bench had been applied to the facts of that case by the said Bench and the point of law had been settled *inter partes* and had become *res judicata,* but if in the meantime, during the pendency of the Letters Patent Appeal, there had been a statutory change in the law or a decision of the Supreme Court or a Full Bench of the same High Court taking a different view had come, the Letters Patent Bench would give effect to the same, while moulding the relief to be given to the appellant.

(23) *Narula, J.*—I have had the benefit of going through the judgment proposed by my Lord, the Chief Justice and the note of my learned brother Pandit, J. I agree with the learned Chief Justice:—

(i) that the Division Bench of Dua and Khanna, JJ., for all practical purposes, gave a decision on February 19, 1964, in the writ petition from which the present appeal has arisen, at the time of disposing of Mela Ram's case that the amended rule 30 applied retrospectively to applications under section 24 of the Displaced Persons (Compensation and Rehabilitation) Act (44 of 1954), which were

pending before the Chief Settlement Commissioner at the time of the amendment of rule 30;

(ii) that the said decision of the Division Bench, dated February 19, 1964, cannot be equated to what is commonly known as an "interlocutory order";

(iii) that the decision of the Division Bench on the issue relating to the retrospectively of the amendment of rule 30 operated as *res judicata* against the writ petitioner-appellant not only at the original stage before Khanna, J., but also bars the reopening of that question before another Bench hearing the appeal against the judgment of the learned Single Judge either by taking it upon itself to give a decision different from that given by the earlier Division Bench at the original stage or by obtaining the same result by reference to a still larger Bench; and consequently.

(24) (iv) that if a learned Single Judge refers a case to a Division Bench and the said Division Bench decides only a question of law and then remits the case to the learned Single Judge for deciding the other points arising in the case, the Letters Patent Bench in an appeal against the final decision given by the learned Single Judge cannot examine the correctness of the view of the earlier Division Bench on the aforesaid question of law.

I also agree with my Lord, the Chief Justice that in view of the aforesaid answer to the first part of the question referred to this Full Bench, the rest of the question so referred does not arise.

(25) After giving my most careful thought to the additional question raised in the judgment proposed by my learned brother Pandit, J., whom I hold in the highest esteem, to the effect whether the respondent can at all be permitted to raise the plea of *res judicata* at this stage when he did not do so "at the proper time when the Letters Patent Appeal of appellant Chanan Das (this appeal) came up for hearing before the Letters Patent Bench consisting of my Lord the Chief Justice and Mahajan, J., on 21st July, 1966", I am of the opinion:—

(i) that the plea of *res judicata* not having been raised before us for the first time, but before the Division Bench of

Shamsher Bahadur and Pandit, JJ. and the other side not having at that time invoked the plea of Godha Ram respondent having waived the right to raise that objection, it is possible to argue, on the analogy of the argument that has appealed to my learned brother, that the petitioner has by his conduct waived the right to raise the plea of waiver against the objection of *res judicata;*

(ii) if the possible objection which has appealed to my Lord Pandit, J. had been raised by the petitioner before the Division Bench of which my learned brother was a member, and if the plea of waiver would have prevailed with the said Letters Patent Bench, no question of that Bench having made this particular reference could ever arise;

(iii) the Letters Patent Appeal as such has not been referred to this Full Bench but a specific question has been referred for being answered. No part of that question in my opinion, admits of the possibility of our entertaining or adjudicating upon the plea of waiver referred to above. In whatever way we answer the question referred to this Full Bench, the Letters Patent Appeal has to go back to the Division Bench for dispcsal in accoradnce with law. If at that stage the objection of waiver is raised before the Bench by the Petitioner and the respondent is not able to urge successfully that the petitioner has waived his right to raise this objection by not having raised it prior to this reference to us, it would no doubt be open to the Bench before which the question is raised to entertain it and decide it as it may appear to the learned Judges constituting the Bench to be fit and proper; and

(iv) in any event, I do not consider myself qualified to pronounce one way or the other on the possible plea of waiver referred to in the order proposed by my learned brother as no one raised this question at the hearing of the reference and our allowing the said plea without hearing the party affected by our possible decision on it would amount to almost deciding the Letters Patent

Appeal (which, as already stated, has not been referred to us) against the respondent on a point on which he had had no opportunity to address us.

I am, therefore, of the opinion that it is not open to us while sitting in this Full Bench to decide whether the plea of *res judicata* was raised at the proper stage or not, and whether the respondent had waived the said plea or was otherwise estopped by his conduct from raising the same. These are matters with which the Bench hearing the appeal in pursuance of our answer to the question referred to us will have to deal. As already stated, I find no escape from the conclusion that the Division Bench which decided Mela Ram's case and answered the question relating to retrospectivity of the amendment of rule 30 in the writ petition from which this appeal has arisen applied its decision as to retrospectivity to the facts of this case and remitted the writ petition to Khanna, J. only for deciding other points arising therein, so that the point of law decided by the Division Bench (Dua and Khanna, JJ.) became final and binding *inter partes*. I agree with my learned brother Pandit, J., that in such a contingency, which according to me is clearly the contingency in the present case, the decision of the Division Bench, dated February 19, 1964, will operate as *res judicata inter partes*, and cannot be allowed to be challenged in this Letters Patent Appeal from the final judgment of the learned Single Judge, to whom the case was sent back expressly for deciding the writ petition only on the other points arising therein. With these observations, I agree with the answer (to the question referred to us) which has been proposed by my Lord, the Chief Justice. I would further direct that costs of this reference shall be borne by the parties as incurred by them. The remaining part of the costs of the Letters Patent Appeal will of course be in the discretion of the Bench finally hearing and disposing of the appeal on other points.

ORDER OF THE FULL BENCH

(26) In view of the decision of the majority, the answer to the first part of the question referred to the Full Bench is that if a learned Single Judge refers a case to a Division Bench and the said Division Bench decides only a question of law and then remits the case to the learned Single Judge for deciding the other points arising in the case, the Letters Patent Bench, in an appeal against the final

decision given by the learned Single Judge, cannot examine the correctness of the view of the earlier Division Bench on the aforesaid question of law. In view of this answer to the first part of the question, the remaining part of the question, so referred, does not arise.

The parties are directed to bear their own costs in this reference.

K. S. K.

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