Judges. We must, therefore, hold that it cannot be said that a tenant for a fixed period can in no case, on the expiry of his lease, be treated as trespasser. It will depend on the facts and circumstances of each case as to whether he is a trespasser or the landlord by his own conduct has indicated an intention to treat him as a tenant after the determination of his first lease. It cannot, in the present case, be said that the rule-making authority exceeded its power of subordinate legislation or made any invalid rule by declaring a lessee whose lease had been determined or cancelled, as an unauthorised person. Clause (k) of section 15 of the Act gives wide powers to the State Government to make rules in any matter in regard to which such rules can be made and it cannot be disputed that rules could be made for carrying out the purposes of the Act. The impugned rules obviously do carry out the objects of the Act as stated above. Mr. Roop Chand, learned counsel for the petitioners has been vehemently contending that it was a case of excessive legislation since a tenant holding over would not be treated as a trespasser contrary to the general law. We are of the considered opinion that a tenant whose lease has been terminated can be treated as a trespasser by the landlord unless he chooses to renew the contract of lease expressly or by implication.

(13) For the foregoing reasons, there is no merit in the contentions of the learned counsel for the petitioners and the writ petition stands dismissed with no order as to costs.

PREM CHAND PANDIT, J.—I agree.

K. S. K.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

M/s. EASTERN ELECTRONICS N.I.T., FARIDABAD,—*Appellants.*

versus

THE STATE OF HARYANA AND ANOTHER,—*Respondents.*

Civil Writ No. 1199 of 1968

March 21, 1969.

Punjab Urban Immovable Property Tax Act (XVII of 1940)—Section 4(1)(g)—Punjab Urban Immovable Property Tax Rules (1941)—Rule 18—Exemption of buildings and lands of a factory—State Government—Whether has power to give

or withdraw such exemption by making new rules or amending the existing rules—Exemption from tax—Whether can be given on an annual value of the property—Such value—Whether can be fixed only by the Legislature and not by State Government by making rules—Property exempt from tax under Rule 18—Rule amended to take away the exemption—Annual value of the property fixed when exemption still in force—Such value—Whether can be acted upon—Fresh value—Whether to be fixed after the amendment.

Held, that the State Government has the power to prescribe what buildings and lands of a factory are to be given the exemption under section 4(1)(g) of the Punjab Urban Immovable Property Tax Act, 1940, by making new rules or amending the existing rules. The power to make rules includes the power to amend, vary or rescind the same and there is no reason why the State Government is not competent to amend Rule 18 of the Urban Immovable Property Tax Rules so as to confine the exemption to a few factories only and withdraw the exemption which had been given to other factories previously. (Para 6).

Held, that from the provisions of the Act it is evident that the tax is levied on the basis of the annual value of the buildings and lands liable to tax. Since the tax is levied on the basis of the annual value, the exemption can also be granted on the basis of the same. The annual value can be fixed by the State Government while making rules and not by the Legislature alone. Clause (g) of sub-section (1) of section 4 of the Act does not in any way indicate that the power given to the State Government is limited in any way. In fact it has been left to the State Government whether or not to grant exemption to any lands and buildings used for the purpose of a factory and if the State Government comes to the conclusion that the lands and buildings of none of the factories should be exempted, it can reasonably so provide. Unless the State Government makes rules with respect to clause (g) of sub-section (1) of section 4 of the Act, no factory can claim exemption for its buildings and lands. It is not only permissible to the State Government but it is logical to grant exemption to lands and buildings on the basis of their annual rental value. Hence the State Government can prescribe the annual rental value of the lands and buildings of a factory for the purpose of granting exemption. (Paras 7 and 8).

Held, that when buildings and lands of a factory are exempt from tax under Rule 18 and the rule is amended to take away that exemption, the annual value of the property has to be determined afresh. The value determined before the amendment cannot be acted upon as on that date the lands and buildings of the factory were totally exempt from the levy of the tax. (Para 10).

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of Mandamus, Certiorari, or any other appropriate wit, order or direction be issued quashing the impugned notification GSR 52/PAZ VII/4/S-24/Amd. (5)/66, dated 21st March, 1966 and the demand notice No. 3347/66-67, 67-68 whereby the petitioner has been required to pay Rs. 11,320, and also praying that the respondents, be directed to ascertain the gross annual rent of the petitioners factory in accordance with law.

D. D. VERMA, AND R. N. NARULA, ADVOCATES, for the Petitioner.

I. S. SAINI, ADVOCATE FOR ADVOCATE-GENERAL (HARYANA), for the Respondents.

JUDGMENT.

TULI, J.—This judgment will dispose of five writ petitions, Civil Writ No. 482 of 1967, *Messrs Auto Lamps Ltd.* v. *State of Haryana and others*, Civil Writ No. 1928 of 1967, *Messrs Rattanchand Harjasrai (Plastics) Private Ltd.*, v. *State of Haryana and another*, Civil Writ No. 1929 of 1967, *Messrs Krishna Flour and Oil Mills*, v. *State of Haryana and others*, Civil Writ No. 1930 of 1967, *Messrs Hitkari Brothers*, v. *State of Haryana and another*, and Civil Writ No. 1199 of 1968, *Messrs Eastern Electronics*, v. *State of Haryana and another*, which have been ordered to be heard together because a common question of law arises in all of them.

(2) I shall deal with the facts of Civil Writ No. 1199 of 1968, *Messrs Eastern Electronics*, v. *State of Haryana and another*, and decide the common point of law involved in all the five petitions.

(3) Messrs Eastern Electronics is a proprietary concern owned by Shri N. Balasundram. It has a factory at Faridabad which is engaged in manufacturing a variety of radios, radio parts and other electronic equipments. The manufacturing process is carried on with the aid of power and the number of employees has always been more than two hundred. In 1962 the State Government extended the Punjab Urban Immovable Property Tax Act, 1940 (hereinafter called the Act) to Faridabad N.I.T. and the petitioner-factory came to be assessed to property tax under the provisions of the Act and the rules framed thereunder. The Assessing Authority assessed the gross annual value of the petitioner-factory at Rs. 80,000 and the property tax assessed was Rs. 6,800 for which a demand notice was issued. The petitioner objected to the gross annual value determined by the Assessing Authority but did not press his objections on merits because under Rule 18 of the Punjab Urban Immovable Property Tax Rules, 1941 (hereinafter called the Rules), the lands and buildings used for the purpose of the factory were exempt from the levy of the property tax. The lands and buildings of the petitioner-factory were thus allowed exemption from year to year. On March 21, 1966 the State Government amended Rule 18 of the Rules so as to insert the words "the annual rental value of which does not exceed Rs. 900" between the words

"all buildings and lands" and "owned by the proprietor of a factory" According to this amendment the lands and buildings of the petitioner-factory became liable to the property tax and the Assessing Authority issued demand notice for the year 1966-67 for the payment of Rs. 6,800 on account of that tax. The petitioner raised objections under sections 8 and 9 of the Act and Shri T. N. Kapur, the Assessing Authority, passed an interim order making a demand on the annual value of Rs. 34,000 instead of Rs. 80,000 for the year 1966-67. The petitioner deposited that tax but later received a demand notice for the payment of Rs. 11,320 on account of property tax for 1966-67 (Rs. 4,520) and property tax for 1967-68 (Rs. 6,800). The sum of Rs. 4,520 demanded for the year 1966-67 was the difference between Rs. 6,800 and the amount already paid by the petitioner on the annual value of Rs. 34,000.

(4) The petitioner's case is that Shri T. N. Kapur had reduced the annual value from Rs. 80,000 to Rs. 34,000 and, therefore, his successor had no jurisdiction to review it so as to increase it again to Rs. 80,000. The case of the respondents is that when objections were filed by the petitioner, Shri T. N. Kapur passed an interim order, the effect of which was that the petitioner was asked to pay the property tax on Rs. 34,000 and for the remaining amount the recovery was stayed till the objections were determined. Shri T. N. Kapur came to the conclusion that he had no jurisdiction to review the annual value already fixed on September 12, 1962 which was to be effective till March 31, 1968. He, therefore, rejected the objections of the petitioner and determined the property tax payable for the years 1966-67 and 1967-68 at Rs. 6,800 each. The order assessing the property tax as Rs. 6,800 for the year 1966-67 was not passed by the successor of Shri T. N. Kapur but by Shri T. N. Kapur himself. The Assessing Authority, Faridabad Rating Area, respondent 2, himself reduced the gross annual value of the lands and buildings of the petitioner-factory from Rs. 80,000 to Rs. 35,600 by order, dated November 9, 1967. According to respondent 2 this valuation was to be effective with effect from April 1, 1968 and not for the period prior thereto. The petitioner then filed the present writ petition in this Court challenging the amendment in Rule 18 of the rules made by the State Government on March 21, 1966 and for the quashing of the demand notices.

(5) The return to the writ petition has been filed by the Assembly Authority in which it has been emphasised that the State Government had the power to amend Rule 18 under section 24 of

the Act and the annual value determined on September 12, 1962 was to be effective till March 31, 1968 and could not be revised while assessing the property tax for the years 1966-67 and 1967-68. The gross annual value determined by order, dated November 9, 1967 was to be effective from April 1, 1968. It is also asserted that under section 4(1)(g) of the Act the exemption to the lands and buildings of a factory is not absolute but is conditional inasmuch as the State Government has to prescribe by rules the lands and buildings to which exemption is to be granted.

(6) The learned counsel for the petitioner has submitted that under section 4(1)(g) of the Act the exemption granted to the lands and buildings used for the purpose of a factory is absolute and cannot be whittled down by the State Government by rules. I regret my inability to agree to this submission. Section 4(1) of the Act is as under :—

"4(1) The tax shall not be leviable in respect of the following properties, namely :—

(a) * * * * * *

(b) * * * * * *

(c) buildings and lands the annual value of which does not exceed three hundred rupees in the (rating area of Simla) and two hundred and forty rupees in other areas :

(d) * * * * * *

(e) * * * * * *

(f) * * * * * *

(g) such buildings and lands used for the purpose of a factory as may be prescribed."

From the language of this section it is clear that the exemption is only in respect of such buildings and lands which are used for the purpose of a factory and which are prescribed. "Prescribed" means, according to section 2(d) of the Act, prescribed by rules made under this Act. The power to make rules is conferred on the State Government by section 24 of the Act and in exercise of those powers the State Government framed the Punjab Urban Immovable Property Tax Rules, 1941. Rule 18, before it was amended on March 21, 1966, read as under:—

"18. (1). Under the provisions of clause (g) of sub-section (1) of section 4 of the Act, all buildings and lands owned by

the proprietor of a factory and used by him for the purpose thereof shall be exempt from the levy of tax—

(a) if ten or more workers are working, or were working on any day of the preceding twelve months, and if a manufacturing process involving the use of power is being and has been carried on therein for a continuous period of six months, or in the case of a seasonal factory since the commencement of the working season; or

(b) if twenty or more workers are working, or were working on any day of the preceding twelve months, and if a manufacturing process is being and has been carried on therein without the aid of power.

(2) If in a seasonal factory no work is being carried on in the off-season, the exemption shall nevertheless be allowed provided that the factory worked throughout the previous working season and the land and buildings are not being put to any other profitable use.

(3) The exemption provided by the foregoing sub-rules shall cease to apply, and the land and buildings included in the factory shall forthwith become liable to assessment (the valuation list being amended suitably under section 9, if necessary), if a factory remains closed for production for a continuous period of six months, or in the case of a seasonal factory, for a continuous period during the working season equal to half the length of that season.

(4) The exemption provided by sub-rules (1) and (2) shall not extend to—

(i) godowns outside the factory compound;

(ii) godowns, shops, quarters or other buildings, whether situated within or without the factory compound, for which rent is charged either from employees of the factory or from other persons; and

(iii) bungalows or houses intended for or occupied by the managerial or superior staff whether situated within or without the factory compound."

From this rule it is clear that the exemption from the levy of tax had not been given to every factory but only to those factories in which ten or more workers had been working on any day of the preceding twelve months and a manufacturing process was carried on therein with the aid of power for a continuous period of six months and to the factories in which twenty or more workers worked on any day of the preceding twelve months and if a manufacturing process was being carried on therein without the aid of power. If in a factory the manufacturing process was carried on without the aid of power and the workers had been less than twenty, the exemption was not applicable. Similarly, a factory, in which less than ten workers worked during the period of preceding twelve months and the manufacturing process involving the use of power was carried on, was also not exempt from the levy of tax. Again the exemption from tax was to stand withdrawn if the factory remained closed for production for a period of six months, etc., as stated in sub-rule (3) of Rule 18 (supra). It is thus clear that the exemption had not been granted by Rule 18 to all the factories but only to such factories which came within the ambit of Rule 18 and to such lands and buildings of those factories as were not covered by sub-rule (4) of Rule 18. The properties mentioned in Rule 18(4) are not exempt from the payment of the tax. I am, therefore, of the opinion that the State Government has the power to prescribe what buildings and lands of a factory are to be given the exemption under section 4(1)(g) of the Act by making new rules or amending the existing rules. The power to make rules includes the power to amend, vary or rescind the same and it has not been shown by the learned counsel for the petitioner why the State Government was not competent to amend Rule 18 so as to confine the exemption to a few factories only and withdraw the exemption which had been given to other factories. I, therefore, do not find any force in this submission of the learned counsel which is hereby repelled.

(7) The learned counsel then submitted that the State Government has no right to base the exemption on an annual value of the property, as has been done by the amendment made on March 21, 1966. Rule 18(1), after amendment reads as under:—

> "18. (1) Under the provisions of clause (g) of sub-section (1) of section 4 of the Act, all buildings and lands, the annual rental value of which does not exceed Rs. 900, owned by the proprietor of a factory and used by him for the purpose thereof shall be exempt from the levy of tax * * * *."

From the provisions of the Act it is evident that the tax is levied on the basis of the annual value of the buildings and lands liable to tax (section 3) and the annual value is ascertained on the basis of "the

gross annual rent at which such land or building together with its appurtenances and any furniture that may be let for use or enjoyment with such building might reasonably be expected to let from year to year, ————" (section 5). Since the tax is levied on the annual value, the exemption can also be granted on the basis of the same. In fact the Legislature has made its intention clear by providing in clause (c) of sub-section (1) of section 4 the exemption to buildings and lands the annual value of which does not exceed three hundred rupees in the rating area of Simla and two hundred and forty rupees in other areas, that the exemption under the Act can be given on the basis of the annual value. The learned counsel, however, submits that the annual value for purposes of exemption can be fixed only by the Legislature and not by the State Government while making rules. I must frankly admit that I see no logic in this submission. Clause (g) of sub-section (1) of section 4 does not in any way indicate that the power given to the State Government is limited in any way. In fact it has been left to the State Government whether or not to grant exemption to any lands and buildings used for the purpose of a factory and if the State Government comes to the conclusion that the lands and buildings of none of the factories should be exempted, it can reasonably so provide. Unless the State Government makes rules with respect to clause (g) of sub-section (1) of section 4 of the Act, no factory can claim exemption for its buildings and lands. I, therefore, repel this submission of the learned counsel as well.

(8) The next point argued by the learned counsel for the petitioner is that sub-section (2) of section 4 gives the power to the State Government to exempt, in whole or in part, from the payment of the tax any person or class of persons or any property or description of property for such period as it may think fit, and may renew such exemption as often as it may consider to be necessary and if the grant of exemption under clause (g) of sub-section (1) of section 4 is within the discretion of the State Govenment, the provisions of this clause become redundant because under sub-section (2) of section 4 the State Government can exempt any lands and buildings of a factory from the payment of tax. This is not necessarily so. I pointed out to the learned counsel that clause (g) of sub-section (1) of section 4 deals with a special class of property while sub-section (2) of section 4 gives a general power to the State Government to exempt any person or property from the payment of tax for any period it considers necessary. That does not mean that under clause (g) of sub-section (1) of section 4, the Legislature intended to give exemption to every factory irrespective of the provisions of Rule 18 before or after its amendment on March 21, 1966.

I have pointed out above the fallacy in the argument, that is, even under Rule 18 before its amendment the lands and buildings of every factory were not exempt. The exemption only related to such factories and their lands and buildings as were within the ambit of that rule. In my opinion, it is not only permissible to the State Government but it is logical to grant exemption to lands and buildings on the basis of their annual rental value. There is thus no force in the arguments of the learned counsel and I am not in a position to hold that the State Government could not prescribe the annual rental value of the lands and buildings of a factory for the purpose of granting exemption.

(9) The learned counsel then submitted that Rule 18, as amended, goes counter to Rule 21 of the rules which reads as under :—

> "21. The State Government may relax the provisions of rules made under the Act in such manner, as may appear to it to be just and equitable:
>
> Provided that where any such rule is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by the rule."

All that this rule means is that the assessment of tax will be made in the manner which is most favourable to the assessee and if under one rule he is entitled to an exemption while under another he is not, he will be allowed the exemption. No such case arises in the present petitions. The rules have to be administered as they exist and it cannot be said that because under the unamended Rule 18 the petitioner was entitled to exemption, that exemption could not be taken away by the amendment of the rule because after amendment the rule is less favourable to the petitioner than the amended rule. This rule, therefore, in my opinion, has no application and the argument of the learned counsel seems to be misconceived.

(10) However, I find force in the last submission of the learned counsel that after Rule 18 was amended on March 21, 1966 and the lands and buildings of the petitioner's factory became subject to the levy of the property tax, the annual value of the property had to be determined afresh and the annual value determined on September 12, 1962 could not be acted upon as on that date the lands and buildings of the factory of the petitioner were totally exempt from the levy of tax under Rule 18. The petitioner did raise objection to the annual value fixed by the Assessing Authority in 1962 but did not press

those objections on merits as he was advised that he was entitled to the exemption under Rule 18 and the assessment of the annual value made did not affect him in any way. He, therefore, allowed the annual value as assessed to stand. Since the lands and buildings of the petitioner-factory were exempt from the levy of the tax under Rule 18 in 1962, no assessment should have been made and the petitioner is quite right in stating that he did not bother whatever the valuation was fixed because he was not liable to any tax whatsoever. In my opinion, the respondent, Assessing Authority, should have assessed the annual value of the lands and buildings of the petitioner's factory after the rule was amended on March 21, 1966 and should then have issued the notices of demand of property tax for the years 1966-67 and 1967-68. The Assessing Authority could not act on the valuation fixed in 1962. It is clear from the order passed by respondent 2 on November 9, 1967 that the annual value fixed in 1962 was highly excessive and merely because the petitioner did not take any steps for the correction of that valuation in the belief, which was correct, that he was not liable to any tax whatsoever and need not bother about the assessment, it cannot be conceded that the tax could be levied on the basis of that assessment. In fact the learned counsel for the respondents does not dispute that the Assessing Authority could not issue notices of demand on the basis of the annual value determined in 1962 and should have determined the annual value after the lands and buildings of the petitioner's factory became liable under the Act.

(11) For the reasons given above, this writ petition is accepted to the extent that the demand notices issued to the petitioner-factory for the years 1966-67 and 1967-68 on the basis of the annual value determined in 1962 are hereby quashed. The Assessing Authority shall be at liberty to determine the annual value of the lands and buildings of the petitioner's factory as on April 1, 1966, when the amended rule became applicable and the petitioner-factory became liable to assessment. The property tax for the years 1966-67 and 1967-68 shall be levied and recovered from the petitioner-company on the annual value so determined. In the circumstances, I leave the the parties to bear their own costs.

(12) In the other four writ petitions also the notices of demand have been issued on the basis of the valuation determined in 1962. I quash those demand notices and direct the Assessing Authority to determine afresh the annual value of the lands and buildings of the

factories of the petitioner in each case according to the directions given in the case of Eastern Electronics (Civil Writ No. 1199 of 1968). These petitions are also accepted to that extent and the parties are left to bear their own costs.

K.S.K.

INCOME-TAX REFERENCE

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

RAM SARAN DASS,—*Petitioner.*

versus

THE COMMISSIONER OF INCOME-TAX, PATIALA,—*Respondent*

Income Tax Reference No. 3 of 1965

March 24, 1969

Income-tax Act (XI of 1922)—*Sections* 5(7-C) *and* 28(3)—*Oral hearing demanded and given to an assessee by an Income-tax Officer—Such Officer not giving any decision—Proceedings transferred to another Income-tax Officer—Oral hearing neither demanded nor given to the assessee by the succeeding Officer—Order passed—Such order—Whether bad in law.*

Held, that section 5(7-C) of Indian Income-tax Act, 1922, does not necessarily come into operation after the entire opportunity referred to in section 28(3) has already been granted. The point of time when section 5(7-C) comes into operation has no relation to the stage at which the proceedings are transferred from the previous Income-tax Officer to the new one. Sub-section (7-C) of section 5 comes into operation as soon as an income-tax authority ceases to exercise jurisdiction and is succeeded by another authority who has and exercises jurisdiction irrespective of whether the assessee had or had not fully availed of the entire opportunity provided to him under section 28(3). If all that remained to be done by the preceding officer was to write an order and everything which such officer was expected to keep in view at the time he ceases to exercise jurisdiction is available in full to the succeeding officer, there is no bar to the latter merely writing out an order after applying his own mind to the whole of that material unless the assessee exercises his right under the first proviso to sub-section (7-C) of section 5, and asks for either the whole case being re-opened or merely for being re-heard before the passing of the final order. But if one of the things which were to influence the decision of the assessing authority was the effect of an oral hearing already granted to an