Balwant Singh *versus* Sodhi Lal Singh and others

Falshaw, C.J.

not do so. The learned Judge expressed the opinion that in such circumstances the Assistant Collector had no jurisdiction to extend the time fixed in the notice. None of these cases bears any resemblance to the present case on matters of facts.

As regards the view of the learned Single Judge that the proper remedy of the appellant, if the view taken by the learned Commissioner and the learned Financial Commissioner was wrong, was by way of a review petition to the learned Financial Commissioner, I do not find myself in agreement. In fact I am of the opinion that the learned Financial Commissioner could not review his order on the ground that he had taken a wrong view of the law, and the proper remedy of the appellant was by way of a writ petition for certiorari to this Court, which can interfere in such matters where a patently wrong view has been taken, as in the present case. The result is that I would accept the appeal with costs and quash the orders of the Financial Commissioner and the Commissioner.

Mahajan, J.

D. K. MAHAJAN, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

M/S MEHAR SINGH PARTAP SINGH,—*Petitioner*

versus

THE ASSESSING AUTHORITY AND ANOTHER,—*Respondents*

Civil Writ No. 859 of 1964

1966

January 18th.

Punjab Urban Immovable Property Tax Act (XVII of 1940)—S. 4(1)(g)—Punjab Urban Immovable Property Tax Rules (1941)—Rule 18—Factory doing cotton ginning—Whether carries on manufacturing process and is exempt from payment of tax.

Held, that the definition of a "factory" given in the Factories Act is more or less the same as given in Rule 18 of the Punjab Urban

Immovable Property Tax Rules, 1961, with this difference that under Rule 18, a period of six months has been fixed for the carrying on of the manufacturing process involving the use of power. The expression "manufacturing process" has not been defined in the Rules, but it has been defined in the Factories Act as it occurs in the definition of the word "factory". The petitioner-firm is running this factory, in which the business of cotton ginning is being carried on, since a number of years and it is registered under the Factories Act. For all purposes they are governed by the provisions of the Factories Act and it does not stand to reason as to why the definition of the expression "manufacturing process" as given in that Act be not applied in their case. The petitioner's cotton ginning factory is, therefore, exempt from the payment of tax under section 4(1)(g) of the Punjab Urban Immovable Property Tax Act, 1940, read with Rule 18 of the Punjab Urban Immovable Property Tax Rules, 1961.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ in the nature of Certiorari, Mandamus, *Prohibition or any order which may be deemed fit and proper in the circumstances of the case be issued quashing the order of respondents No. 1 and 2, dated 14th June, 1963 and 17th February, 1964, respectively.*

BHAGIRATH DASS, ADVOCATE, for the Petitioner.

M. R. SHARMA, ADVOCATE, for the Respondents.

ORDER.

Pandit, J.

PANDIT, J.—This petition under Articles 226 and 227 of the Constitution has been filed by Messrs Mehar Singh-Partap Singh, a partnership concern, of Amritsar, challenge ing the orders, dated 14th June, 1963 and 17th February, 1964 passed by the Assistant Excise & Taxation Commissioner, respondent No. 2, and the Assessing Authority, respondent No. 1, respectively, under the Punjab Urban Immovable Property Tax Act, 1940 (hereinafter referred to as the Act).

The petitioner-firm is running a factory under the name and style of Mehar Singh-Partap Singh Cotton-Ginning, Rice and Oil Mills in Amritsar, since 1923. The factory, according to the petitioner, is engaged in the ginning of cotton, shelling of rice and extraction of oils. This factory is registered under the Factories Act, 1948.

M/s Mehar Singh Partap Singh
versus
The Assessing Authority and another

Pandit, J.

The workmen, who were ordinarily employed in this concern, ranged between 25 and 45, but it was registered for the maximum number of 50 workmen. This factory was exempt from the payment of property tax under section 4 (1)(g) of the Act read with Rule 18 of the Punjab Urban Immovable Property Tax Rules, 1941 (hereinafter called the Rules) up to the year ending 31st March, 1961. There after, the gross rental value of the factory was assessed at Rs. 18,000 under different heads. The case for exemption from payment of tax was considered every year and this property was exempted by respondent No. 1, for the years 1961-62 and 1962-63 in the first instance. The petitioner filed a revision petition against the assessment made by respondent No. 1, but the Assistant Excise and Taxation Commissioner, respondent No. 2, by his order, dated 14th June, 1963 remanded the case with the direction that exemption only in respect of the portion of the factory used for manufacturing purposes be allowed. The portion, which was being used for the purpose of cotton-ginning was not to be allowed exemption, as this Court had held in *Messrs Raghbir Chand-Som Chand* v. *Excise and Taxation Officer, Bhatinda and others* (1) that the process of cotton-ginning was not a "manufacturing process". In pursuance of the decision of respondent No. 2, respondent No. 1 by his order, dated 17th February, 1964, calculated the gross rental value of the ginning portion of the factory at Rs. 6,900 and disallowed this amount from the gross rental value of Rs. 18,000. The only exemption thus allowed was to the extent of Rs. 11,100, being the gross rental value of the various portions of the factory other than the one; which was used for the ginning of cotton. Respondent No. 1 then recovered from the petitioner, the tax for the years 1961-62 to 1963-64 and the total amount recovered was Rs. 2,328.75 nP. That led to the filing of the present writ petition on 11th May, 1964.

Learned counsel for the petitioner submitted that respondent No. 2 had erred in law in holding that the portion of the factory, which was being used for the purpose of cotton-ginning, was not to be allowed exemption from the payment of property tax under section 4(1) (g) of the Act read with Rule 18 of the Rules. The Bench decision of this Court in *Messrs Raghbir Chand-Som*

(1) I.L.R. (1960)1 Punj. 852=1960 P.L.R. 175.

M/s Mehar Singh Partap Singh *versus* The Assessing Authority and another

Pandit, J.

Chand v. *Excise and Taxation Officer, Bhatinda, and others* (1) on which reliance was placed by him, was clearly distinguishable and at any rate could not be utilized for the purpose of interpreting the provisions of the Act and the Rules made thereunder . That was a case under the East Punjab General Sales Tax Act, 1948, and not under the Punjab Urban Immovable Property Tax Act.

Section 4(1)(g) of the Act reads as under—

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

* * *

* * *

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

Under Section 24 of the Act, Rules have been framed which are called the Punjab Urban Immovable Property Tax Rules, 1941. The relevant part of Rule 18 says—

"*R. 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 them 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

* * *

* * *

(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."

It is common ground that the factory run by the petitioner-firm was registered under the Factories Act and more than 10 workers were working in this concern. It is also agreed that the cotton is being ginned here by the use of power and this process has been carried on therein for a continuous period of six months, The only point on which there is dispute between the petitioner and the respondents is whether by ginning the cotton, the concern can be said to be carrying on a "manufacturing process" within the meaning of this Rule. Neither the word "factory" nor the expression "manufacturing process" has been defined in the Act or in the Rules. Both these terms are, however, defined in the Factories Act, 1948, as under:—

"*S.* 2 (m) 'factory' means any premises including the precincts thereof—

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on; or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on—

but does not include a mine subject to the operation of the Mines Act, 1952, or a railway running shed."

M/s Mehar Singh Partap Singh
versus
The Assessing Authority and another

Pandit, J.

S. 2. (k) 'manufacturing process' means any process for—

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning; breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal; or

(ii) pumping-oil, water or sewage; or

(iii) generating, transforming or transmitting power; or

(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding;

(v) constructing, reconstructing, repairing refitting, finishing or breaking up ships or vessels."

It is conceded by the learned counsel for the respondents that if the definition of the expression "manufacturing process" as given in the Factories Act were to be applied, then the petitioner's factory was liable to be exempted from the payment of the property tax. His contention, however, was that if the intention of the Legislature was to apply the definitions of these expressions given in the Factories Act, then they could have easily used the words "as defined in the Factories Act, 1948" instead of "as may be prescribed" in Section 4(1)(g) of the Act. He further submitted that the Bench decision in *Messrs. Raghbir Chand-Somchand's case* fully covered this case, wherein it had been held that the ginning process despite the employment of machinery for separating the seeds could not be deemed "manufacture" within the provisions of Section 2(ff) of the East Punjab General Sales Tax Act.

A reading of the definition of a "factory" given in the Factories Act will show that it is more or less the same as given in Rule 18, with this difference that under Rule 18, a period of six months has been fixed for the carrying on of

the manufacturing process involving the use of power. The expression "manufacturing process", as already mentioned above, has not been defined in the Rules. This expression, however, has been defined in the Factories Act, because the same occurs in the definition of the word "factory". There is thus no reason why this definition should not be looked at for interpreting this expression in Rule 18 as well. The petitioner-firm is running this factory since a number of years and it is registered under the Factories Act. For all purposes they are governed by the provisions of the Factories Act and it does not stand to reason as to why the definition of the expression "manufacturing process" as given in that Act be not applied in their case. The Supreme Court in the *State of Punjab and another* v. *The British India Corporation Limited* (2), had also applied the provisions of the Factories Act for determining the meaning of the words "for the purpose of a factory" occurring in Section 4(1)(g) of the Act. Similarly, in Civil Writ No. 312 of 1964 (*Messrs National Rice and Dal Mills, Rajpura* v. *The State of Punjab*) a Division Bench of this Court consisting of S. B. Capoor and Dua, JJ., on 2nd November, 1965 also applied the provisions of the Factories Act for finding the meaning of the expression "manufacturing process" occurring in Rule 18. It may be mentioned that this proposition seemed to be so well-established that the learned counsel appearing for the State in that decision conceded that the definition of this term as given in clause (k) of Section 2 of the Factories Act could properly be resorted to for the interpretation of this term in Rule 18.

As regards the Bench decision *in Messrs Raghbir Chand-Somchand's case*, it may be stated that it is distinguishable on facts. There the learned Judges were not concerned with the expression "manufacturing process" as mentioned in Rule 18. In that case the controversy was whether the purchase of unginned cotton for ginning the same and then selling it was covered by the definition of the term "purchase" as given in Section 2(ff) of the East Punjab General Sales Tax Act. That definition ran as under—

> "the acquisition of goods other than sugarcane, foodgrains, and pulses for use in the manufacture

(2) 1963 P.L.R. 727.

M/s Mehar Singh Partap Singh
versus
The Assessing Authority and another

Pandit, J.

of goods for sale for cash or deferred payment or other valuable consideration otherwise than under a mortgage, hypothecation, charge or pledge;

* * *

* * * "

While dealing with this matter, Tek Chand, J., observed as under—

> "Mere bestowal of labour on an article, even if it is applied through machinery, will not make an article a manufactured good, unless the treatment has progressed so far, that a transaction ensues, and the article becomes commercially known as another and a different article from the original raw product. Cotton in the seed *'kapas'* and 'lint cotton' retains its character and identity after the cotton seeds are removed by ginning and, therefore, the ginning process despite the employment of machinery for separating the seeds cannot be deemed 'manufacture' within the provisions of Section 2(ff) of the Act. Cotton after it has passed through gin, has not suffered a species of transformation whereby a new article can be said to have emerged with a distinctive character or use different from that originally possessed by *kapas*."

As would be apparent from the observations given above, the word "manufacture" in that case had been used in a different context, with which we are not concerned in the instant case. This authority, therefore, is of no assistance to the respondents.

As regards the argument of the learned counsel for the respondents that the Legislature wanted to exclude the definition of the word "factory" as given in the Factories Act for the interpretation of this word in the Punjab Urban Immovable Property Tax Act, there is no substance in the same, because in Rule 18, as noticed above the definition of the word "factory" is also the same as given in the Factories Act. But wherever the authorities wanted to make a departure from the definition given in the Factories Act, they have stated so in Rule 18. Sub-Clause (4) of this very Rule, as noted above, is a clear

instance in this respect where certain portions, though forming a part of the "factory" according to the Factories Act, have been excluded for the purpose of giving exemption under sub-clause (1) of this Rule.

The result, therefore, is that this writ petition succeeds and the impugned orders are quashed, but with no order as to costs.

B. R. T.

APPELLATE CIVIL

Before Hans Raj Khanna, J.

SHYAM SUNDER,—*Appellant*

versus

KHAN CHAND,—*Respondent*

S.A.O. 176-D of 1965

1966

January 19th.

Delhi Rent Control Act (LIX of 1958)—S. 14(1)—Object of—Tenant acquiring vacant possession of another residential house on account of the previous one being insufficient—Whether liable to eviction from earlier premises—"Acquire"—Meaning of—Whether means acquisition of ownership or any sort of acquisition.

Held, that if the premises already in his occupation were not sufficient for the requirements of the family of the tenant and he was, on that account, impelled to take on lease other premises, he should have vacated the earlier premises. The underlying object of enacting clause (h) of the Proviso to sub-section (1) of section 14 of the Act was that the tenant should not have more than one premises for his residence in these days of housing shortage. In case the tenant has taken on rent any premises for his residence and he thereafter acquires the vacant possession of another premises also for his residence, the tenant in such an eventuality would have to quit the earlier tenanted premises. He cannot refuse to vacate the same on the ground that the new premises, the possession of which he has acquired for residence, are not sufficient for his requirement. It is not necessary to show that the new place acquired by the tenant is suitable for his needs.

Held, that in cases where the tenant becomes liable to ejectment because of any act or omission or default on his part, he cannot