

above, this appeal fails and is dismissed, but in the circumstances of the case, the parties are left to bear their own costs throughout.

Sadhu Singh
v.
District Board
Gurdaspur
and another

Mahajan, J.

Regular Second Appeal No. 1558 of 1960.

So far as the argument as to the *vires* of section 3 of the Act is concerned, we have already dealt with the same. With regard to the remaining question in this appeal, namely, that the building has not been constructed within the meaning of the notification, it may be stated that both the Courts below have found that the building was constructed within the meaning of the notification, and, therefore, have decreed the landlord's suit. It is not disputed that the entire building has been rebuilt barring two walls. These walls the landlord could not pull down, they being party-walls. Therefore, on the admitted and proved facts of the case, it must be held that the entire building was constructed as claimed by the landlord. Therefore, the decision of the Court below must be upheld and the tenant's appeal must fail and it is accordingly dismissed, but in the circumstances of the case there will be no order as to costs.

The result is that all the three appeals are dismissed.

MEHAR SINGH, J.—I agree.

Mehar Singh, J.

R.S.

APPELLATE CIVIL

Before Harbans Singh, J.

MUNICIPAL COMMITTEE, RUPAR,—Appellant.

versus

CHAMAN LAL,—Respondent.

Regular Second Appeal No. 1024 of 1956

Punjab Municipal Act (III of 1911)—Section 61(1)(b)—Notification for imposition of professional tax—Schedule of trades, professions, callings and employments—“Superior

1961

August, 23rd

servants of a private company of firm"—Interpretation of—Clerks whether included in the category of "superior servants".

Held, that the words 'superior servant' in the first category of the schedule of trades, professions, callings and employments are used in contradistinction to the menial servants of a private company. Looking through the entire schedule it appears that the intention of the municipal committee and the Government was to tax every body provided his income exceeded Rs. 600, and it would be giving a very narrow interpretation to the words "superior servant" if it is held, that these words exclude clerks. The clerks are included in the category of superior servants as distinct from menial servants.

Regular Second Appeal from the decree of the Court of Shri D. P. Sodhi, Senior Sub-Judge, with enhanced appellate powers, Ambala, dated the 24th day of July, 1956, affirming with costs that of Shri Tilak Raj, Sub-Judge, 1st Class, Rupar, dated the 30th June, 1955, granting the plaintiff a declaratory decree to the effect that the professional tax imposed by the defendant Committee, on the plaintiff was illegal and ultra vires and further issuing a perpetual injunction restraining the defendant Committee, from recovering the same from the plaintiff and allowing costs to the plaintiff.

K. C. NAYYAR, ADVOCATE, for the Appellant.

S. L. PURI, ADVOCATE, for the Respondent.

JUDGMENT

Harbans Singh
J.

HARBANS SINGH, J.—Municipal Committee Rupar passed a resolution imposing tax on every person carrying on a "trade, profession, calling or employment" in the area of the municipal committee, and the Punjab Government by a notification, dated 15th of October, 1948, Exhibit D. 5, notified the imposition of the above-mentioned tax. A schedule was attached to that giving a list of trades, professions, callings and employments which were to be taxed and a sliding scale was fixed for those whose income exceeded Rs. 600 per annum. Chaman Lal respondent, who was working as a clerk in the local branch of the Punjab National Bank, Limited, was served with a notice

to pay Rs. 15 as tax for the year 1952-53. Apparently, his income exceeded Rs. 800 but did not exceed Rs. 1,000. On his failure to make the payment, warrants were got issued for the recovery of the same. He brought the suit, out of which the present appeal has arisen, challenging the authority of the municipal committee to impose such a tax. There were two points on which the suit was fought in the trial Court; first that under clause (b) of sub-section (1) of section 61 of the Punjab Municipal Act tax could be imposed only on "persons practising any profession or art or carrying on any trade or calling in the municipality". It was urged that employment in a private company did not fall in any of these categories. By the explanation added to this clause (b) "persons who were in the service of the Government or persons holding an office under the State Government or the Central Government or a local or other public authority" were deemed to be practising a profession within the meaning of this clause. It was urged that this explanation dealt specifically with persons in the employment of Government or a local body and impliedly excluded others who were employed in private companies or firms. The second point urged was that, in any case, Chaman Lal plaintiff did not fall in any one of the categories mentioned in the schedule of trade, profession, calling and employment. The only category in which he could fall was "the superior servants of a private company or firm". Both the Courts below hold that employment in a private company did not fall within the purview of "practising any profession or art or carrying on any trade or calling" as provided in clause (b). It was further held that Chaman Lal being a mere clerk could not be said to be a superior servant of a private company and further that the Punjab National Bank was not a private company but a public limited company. In view of the above the suit of the plaintiff seeking the declaration was decreed. The municipal committee has come up in appeal.

So far as the first question is concerned, the same is concluded by a judgment of a Division

Municipal Com
mittee Rupa
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J.

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mittee Rupar
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J.

Bench of this Court reported in *Walaiti Ram v. The Municipal Committee, Rupar* (1), An identical matter was referred by me to a Division Bench and it was held that servants of private companies came within the scope of the taxing provisions contained in section 61 of the Punjab Municipal Act.

The only point that remains for consideration, therefore, is whether the plaintiff-respondent falls within the category of a superior servant of a private company or a firm. One thing is obvious that the expression "private company" as used is distinguished from a company or corporation in the public sector belonging to the Government. The words used are not 'private limited company'. It is only in the Indian Companies Act that a distinction is made between 'a private limited company' and 'a public limited company' but the words 'private company' when used otherwise mean a company managed by private individuals and not by the Government. In the ordinary parlance a clerk drawing less than Rs. 100 a month cannot be said to be a superior servant of a private company, but when the entire schedule is persued we find that in the last category 'private or menial servant of a private company or firm' is also included amongst the persons who are liable to pay the tax. In view of this, it appears that the words 'superior servant' in the first category are used in contradistinction to the menial servants of a private company. Looking through the entire schedule it appears that the intention of the municipal committee and of the Government was to tax everybody provided his income exceeded Rs. 600, and it would be giving a very narrow interpretation to the words 'superior servant' if it is held, as has been done by the Courts below, that these words exclude clerks. I am, therefore, of the view that the clerks are included in the category of superior servants as distinct from menial servants or, as they are called, class IV servants when they are employed by the Government or the local bodies.

In view of the above, therefore, I accept this appeal, set aside the orders of the Courts below and dismiss the suit of the plaintiff. In view, however, of the fact that the point was not free from difficulty, the parties are left to bear their own costs throughout.

Municipal Com-
mittee Rurar
v.
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Harbans Singh
J.

K.S.K.

APPELLATE CIVIL

Before Gurdev Singh, J.

NATHU AND OTHERS,—Appellants.

versus

UMRA AND ANOTHER,—Respondents.

Regular Second Appeal No. 407 of 1961.

Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act (VIII of 1953)—Section 3—Vesting of rights, title and interest of the landlord in the tenant—When takes place—Whether on “the appointed day” or on payment of compensation—Some of the tenants not paying compensation—Effect of.

1961

August, 24th

Held, that in view of the provisions of sections 3,4,5 and 6 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, the vesting of the rights, title and interest of the landlord in the tenants takes place not as a result of payment of compensation or on the day on which such payment is made but by operation of law contained in clause (a) of section 3 of the Act on the appointed day, as defined in section 2 of the Act. If the entire compensation is paid by some of the tenants only, they alone do not acquire the rights, title and interest of the landlord but all the tenants as on the appointed day acquire these rights and the tenants who have paid the compensation have merely the right to realize the proportionate share of the compensation from the other tenants who have not paid the same.

Second Appeal, from the decree of the Court of Shri Raj Indar Singh, District Judge, Barnala, dated the 15th