ing. Without deciding as to whether the concession in question was binding or not on the plaintiff-appellant, I permitted the learned counsel to show as to how the finding of the trial Court regarding the non-ancestral nature of the property is incorrect. The learned counsel challenged the correctness of the finding of the trial Court regarding the non-ancestral nature of the property on the ground that the property in question has been inherited by Dharman from his ancestors as an occupancy tenant, although ownership rights were acquired by him for the first time. It may be stated here that it has been held by this Court that where an occupancy tenant acquires ownership rights in the land possessed by him, then the property in question is considered as his self-acquired property. In this connection, see *Sawan Singh and others* v. *Amar Nath* (1) and *Sangat Singh and another* v. *Ishar Singh and others* (2). Since the land in dispute is held to be non-ancestral, there is no bar even under the customary law for effecting the alienation of such a property.

(4) For the reasons recorded above, this appeal fails and is dismissed. There is, however, no order as to costs.

B. S. G.

CIVIL MISCELLANEOUS

Before H. R. Sodhi, J.

M/s. SARASWATI INDUSTRIAL SYNDICATE LTD.,—*Petitioner*

versus

THE DEPUTY COMMISSIONER ETC.,—*Respondents*

Civil Writ No. 2549 of 1970

September 22, 1970

The Punjab Municipal Act (III of 1911)—Sections 65 and 85—Appeal against imposition of a Tax—Deposit of the impugned tax—Whether a condition precedent to the entertainment of the appeal.

Held, that a plain reading of sub-section (2) of section 85 of Punjab Municipal Act, 1911 makes it abundantly clear that the appeal against imposition of any tax cannot be refused to be entertained unless some tax other than

(1) 1963 P.L.R. 82.
(2) A.I.R. 1927 Lah. 536(1).

the subject matter of appeal remained unpaid till filing of the appeal. A deposit of the impugned tax is thus not a condition precedent to the institution of appeal and it is only when the appellant is a defaulter in respect of other taxes payable to the Municipal Committee that he is not permitted under the Act to challenge a fresh liability for a tax. The scheme of the Act appears to be that an inhabitant of a municipality who may have to pay several taxes but commits default in payment of all or any of them will not be allowed an unfettered right of appeal against a fresh tax when he is already a defaulter in the matter of taxes. The use of the word "other" preceding the expression "municipal taxes" in sub-section (2) is not without a meaning. It has obviously been used in contradistinction to the tax assessed. (Para 5)

Petition under Articles 226 *and* 227 *of the Constitution of India praying that an appropriate writ, order or direction be issued quashing the order of the Deputy Commissioner, Ambala, dated* 22*nd May,* 1970 *and directing him to hear the appeal on merits and restraining the Administrator, Municipality, Yamunanagar from recovering the amount of Rs.* 11,251.31 *for the year* 1970-71 *on the basis of the valuation arrived at in the year* 1969-70 *till after the Deputy Commissioner, Ambala, hears and decides the appeal for the year* 1969-70.

HIRA LAL SIBAL AND S. C. SIBAL, ADVOCATES, for the petitioner.

ROOP CHAND CHAUDHARY, ADVOCATE, for the respondents.

JUDGMENT

SODHI, J.—(1) This writ petition filed by M/s. Saraswati Industrial Syndicate Ltd., Yamunanagar, hereinafter referred to as the Company, challenges the validity of an order passed by Deputy Commissioner, Ambala, on 22nd May, 1970, whereby he refused to hear the appeal of the Company against imposition of house-tax on the ground that the amount of tax had not been deposited.

(2) The petitioner company owns good bit of property within the municipal limits of Yamunanagar where it is carrying on its business. House-tax was proposed to be levied by the Municipal Committee under the Punjab Municipal Act, 1911, as amended up-to-date and hereinafter called the Act. After preparation of the provisional assessment list, a public notice as envisaged in section 65(1) of the Act was published on 3rd November, 1969, for inviting objections to the proposed reassessment for the year 1969-70. Objections were preferred by the Company with regard to fixation of annual rental value by the Municipal Committee in regard to the properties of both of its

concerns namely, the Saraswati Sugar Mills and Indian Sugar and General Engineering Corporation. The Municipal Committee had assessed the rental value for the properties of the Sugar Mills at Rs. 2,96,650 and for those of the Indian Sugar and General Engineering Corporation at Rs. 54,720. After hearing the objections which were partly allowed, assessment was finally settled with necessary modifications on 20th January, 1970. It is not known as to when the final list was actually published but the petitioner Company filed an appeal on 18th February, 1970, to the Deputy Commissioner under section 84 of the Act. There is no dispute that the appeal was within limitation. An application for stay of recovery of the impugned tax was made to the Deputy Commissioner on 19th February, 1970, and he allowed the same on 20th February, 1970. The Municipal Committee after about a month applied for vacation of the stay order, notice of which application was issued to the Company on 19th March, 1970. Parties appeared before the Deputy Commissioner on 20th March, 1970, and the stay as granted earlier was vacated. The Company then deposited the entire tax on 24th March, 1970, and the appeal was heard on 22nd May, 1970, when the impugned order was made.

(3) Hence the present petition to this Court whereby in the exercise of its extraordinary jurisdiction under Articles 226 and 227 of the Constitution, the order of the Deputy Commissioner refusing to hear the appeal is sought to be quashed by issue of an appropriate writ or direction.

(4) Mr. H. L. Sibal, learned counsel for the petitioner, has attacked validity of the impugned order on several grounds but it is conceded by him that it is unnecessary to deal with them if this Court on an interpretation of section 85 takes the view that there is no requirement of law that the tax sought to be challenged in appeal under the Act should first be deposited before an appeal is entertained. The relevant provision as contained in section 85 reads as under :—

> "85. (1) No appeal shall lie in respect of a tax on any land or building unless it is preferred within one month after the publication of the notice prescribed by section 66 or section 68, or after the date of any final order under section 69, as the case may be, and no appeal shall lie in respect of any other tax unless it is preferred within one month from the time when the demand for the tax is made :

Provided that an appeal may be admitted after the expiration of the period prescribed therefor by this section if the appellant satisfies the officer before whom the appeal is preferred that he had sufficient cause for not presenting the appeal within that period.

"(2) No appeal shall be entertained unless the appellant has paid all other municipal taxes due from him to the committee up to the date of such appeal."

(5) It is nobody's case that any other tax due from the petitioner to the Municipal Committee had not been paid when the appeal in question was preferred before the Deputy Commissioner, respondent 1. As a matter of fact, the house-tax for the year 1969-70, the liability for which was being contested, had also been deposited on 24th March, 1970, during the pendency of the appeal when the stay order was vacated. A plain reading of sub-section (2) makes it abundantly clear that the appeal against imposition of any tax cannot be refused to be entertained unless some tax other than the subject matter of appeal remained unpaid till filing of the appeal. A deposit of the impugned tax is thus not a condition precedent to the institution of appeal and it is only when the appellant is a defaulter in respect of other taxes payable to the Municipal Committee that he is not permitted under the Act to challenge a fresh liability for a tax. The power of taxation by a Municipal Committee extends to a variety of subjects, including lands, building, animals, vehicles, professions or callings, and many other matters. The scheme of the Act appears to be that an inhabitant of a municipality who may have to pay several taxes, but commits default in payment of all or any of them will not be allowed an unfettered right of appeal against a fresh tax when he is already a defaulter in the matter of taxes. The use of the word "other" preceding the expression "municipal taxes" in sub-section (2) is not without a meaning. It has obviously been used in contradistinction to the tax assessed. If the legislature intended that the amount of tax assessed should have been deposited, it would have clearly said so as we find in many other statutes. For instance, in proviso to section 20 of the Punjab General Sales Tax Act, 1948, it has been enacted that "no appeal shall be entertained by such authority unless he is satisfied that the amount of tax assessed and the penalty, if any, imposed on

the dealer has been paid". Different language employed in sub-section (2) of section 85 of the Act cannot be without a purpose which, appears to be that municipal dues should not accumulate in the hands of an inhabitant of the municipality and he can seek his remedy by way of an appeal, against any new or fresh tax, unhindered by any pre-conditions, if he is not a defaulter. To my mind, this is the only interpretation which is consistent with the policy of the Act and in public interest. It is a fiscal matter dealing with financial implications and an interpretation beneficial to the citizen should always be placed, more so when the same is consistent with the ordinary meaning of the words used. Any other interpretation, in my opinion, will lead to manifest absurdity and give to the word "other" a varied and modified other than its ordinary meaning which could not be intended by the legislature. The Deputy Commissioner was, therefore, in error and failed to exercise his jurisdiction by refusing to hear the appeal of the Company on the ground that the tax had not been deposited.

(6) There is another approach to the matter as well. Tax was not deposited because of the stay order issued by the same Deputy Commissioner Respondent. As soon as the order was vacated, on the application of the Municipal Committee, the petitioner paid the amount of the tax. In this case, it is not necessary to pronounce upon the inherent power of an authority hearing appeals under section 84 to stay the operation of the order or resolution appealed against when we find that the statute itself is silent on this point. I cannot, however, refrain from observing that no citizen should be made to suffer on account of a wrong order passed by a quasi-judicial authority which later realises the mistake and withdraws the benefit of that order. The amount of tax was not paid because of the stay order and when the same had been paid on the vacation of the order it was the duty of the Deputy Commissioner to have disposed of the appeal on merits in accordance with law, no matter that the stay allowed by him was not within his competence.

(7) In the result, the writ petition is allowed, order of respondent 1 as made on 22nd May, 1970, quashed, and it is directed that he should hear the appeal on merits in accordance with law. There is no order as to costs.

N. K. S.