CIVIL MISCELLANEOUS

Before R. S. Sarkaria, J.

RAGHUNATH RAI PRABHAKAR,—*Petitioner.*

versus

THE PUNJAB STATE AND ANOTHER,—*Respondents.*

Civil Writ No. 1696 of 1964

February 7, 1968

Punjab New Township (Street Lighting and Water-Supply)Fees Act (IX of 1950)—Ss. 4(1) and 7(1)—Increase of Water Cess under—Whether a tax and beyond the power of taxation of the Legislature—Such increase—Whether can be enforced retrospectively—Fees and tax—Distinction between—Public authority—Whether to prove with arithmetical exactitude the expenditure incurred in performing a service—High Court Rules and Orders, Volume V—Part II—Chapter 4(f)(b)—Rule 1—General principles of pleadings—Whether apply to writ proceedings.

Held, that admittedly the original imposition of water cess under Punjab New Township (Street Lighting and Water-Supply) Fees Act was for services rendered. There being a big gap in expenditure and income with respect to the performance of these services, a reasonable nexus between the service rendered and increase in the levy is established. That is sufficient for the validity of the increase in the fee. It cannot be said with any stretch of imagination that under the guise of levying a fee, the State Government is attempting to impose a tax. Nor can it be said to be a case of excessive delegation of the power of its taxation by the Legislature. The maximum rate of the fee has been fixed by section 4 of the Act, which lays down a polcy. It will be presumed that the Legislature, while laying down the maximum limit of these fees for street lighting and water supply, had, in its wisdom, anticipated increase in the cost of performing these essential services. Hence the increase in the water cess is not a tax.

Held, that it is clear from the Scheme of the Act and the Rules particularly the contents of Sections 1 and 5, and of Rule 6, that the Legislature had delegated the Government a power to increase the fees with retrospective effect. This power to levy or increase the fees for street lighting and water-supply vesting in the State Government springs from the statute itself.

Held, that whereas a tax is imposed for a public purpose for the *common* benefits conferred by the Government on all tax-payers, a fee is levied essentially for services rendered to or *special* benefits conferred on the payer, and, thus,

there is an element of *quid pro quo* between the person paying the fee and the public authority imposing it. All the revenues of the State, whether derived from taxes, duties or fees, are to from one consolidated fund. The fact that the money raised by the levy is not earmarked or specified for defraying the expenses that the Government has to incur in performing the services, is not conclusive. It is not necessary for the public authority to prove with arithmetical exactitude that the levy was commensurate with the expenditure incurred in performing the service. The authority cannot be called to render detailed accounts. It is sufficient if the respondent authority in its return indicates, with reasonable particularity, the co-relation between the impost and the expenditure incurred for performing the specific service.

Held, that the general principle of pleadings in suits, including the maximum '*secundum allegata et non probata*' applies to writ proceedings. This is clear from Rule I, of (part II), Chapter 4-F(b) of High Court Rules and Orders, Volume V, which requires the facts and grounds of relief to be stated in a writ petition under Article 226. The reason is that the respondent in these special proceedings must know, before hand, the specific points which he will be required to meet in Court. The whole object of the pleadings is to bring the parties to a focus, and to narrow down the controversy to definite issues. Like a plaintiff in a suit, a petitioner in writ proceedings should state in his petition in a concise form, all the material facts which constitute his ground of attack or cause of action.

Petition under Article 226 *of the Constitution of India praying that a writ of* certiorari *or any other appropriate writ order or direction be issued quashing item No.* 11 *of the notification of the State Government, dated* 2*nd November,* 1962 vide *which water rates for New Township, Sonepat, has been enhanced from Rs.* 2.50 *to Rs.* 4.25 P. *and quashing the retrospective application of the notification with effect from* 1*st October,* 1961 *and restraining the respondents from realizing water tax at the enhanced rate.*

S. C. Goyal, Advocate, for the Petitioner.

Anand Sawroop, Advocate-General (Haryana) with J. C. Verma, Advocate, for the Respondents.

ORDER

Sarkaria, J.—Civil Writ No. 1696 of 1964 and Civil Writ No. 2707 of 1964, arise out of common facts. This judgment will, therefore, dispose of both these writs. The facts giving rise to these writs are as follows :

Shri Ram Lal Kohli (in Civil Writ No. 2707 of 1964) owns a house in Model Town, Ambala City, which is assessable to water tax

and lighting fee under the Punjab New Township (Street Lighting and Water Supply) Fees Act, (Act No. IX of 1950), hereinafter referred to as 'the Act'). The petitioner is also the Secretary of the Ambala Model Town Association (hereinafter referred to as 'the Association') which looks after the general interests of the residents of Model Town. The residents of Model Town, Ambala, are the members of the Association. The petitioner has instituted this writ petition in his individual capacity as a tax-payer as well as in his capacity as Secretary of the Association on behalf of the residents of Model Town, Ambala. The Act was made applicable to Model Town, Ambala, after the establishment of this new township more than 10 years ago. Ever since such applicability of the Act, water tax was being charged at the rate of Rs. 3 per house till 16th November, 1962, when it was enhanced from Rs. 3 to Rs. 6.50 by a Notification No. 38(66)-B.R. III-4-62/16657; dated 2nd November, 1962, published in the Punjab State Gazette dated 16th November, 1962, with retrospective effect from 1st October, 1961. Intimation in this respect was addressed by the Deputy Commissioner, Ambala, to the President of the Association, asking them to publicise this fact and to call upon the residents to clear the arrears of water cess.

On receiving that intimation, a representation by the Association on behalf of the residents of the Model Town, was sent to the Deputy Commissioner and the Minister Incharge of Public Health Department, on 27th February, 1963. A reminder was also sent on 15th March, 1963. This elicited a reply, dated 25th March, 1963, from the Government, that the petitioner should make further correspondence on the matter with the Deputy Commissioner, Ambala. Thereupon, a letter, dated 3rd April, 1963, was sent to the Deputy Commissioner. Representatives of the residents also submitted a memorandum to the Deputy Commissioner on 29th April, 1963. The Deputy Commissioner sent a letter, dated 21st August, 1963, to the Association in which it was set out that the water cess had been increased to bridge up the gap between the income derived in the shape of the water cess and the expenditure incurred in the maintenance of the Scheme (including interest accrued on the loan taken from the Government of India). Thereafter, the petitioner addressed a communication, dated 18th October, 1963, to the Deputy Commissioner informing him that there was no such gap between income and expenditure, A similar communication was also addressed to the Chief Minister on 4th September, 1964. The latter advised the Association to contact the Secretary, P.W.D., B. & R. A deputation of the Association met the Secretary on 13th October, 1964, and also Shri Gurbanta Singh, Minister,

on 3rd March, 1964, As advised by the Minister, a representation was submitted on 11th March, 1964. A letter from the Minister was received by the petitioners on 30th March, 1964, informing them that their representation had been forwarded to the Secretary, Public Health Branch, for urgent action, and further correspondence should be addressed to him. Despite reminders dated 27th October, 1964 and 7th November, 1964, the Secretary did not communicate any decision of the Government to the Association. Instead, a letter was received by the President of the Association from the Deputy Commissioner on the 10th November, 1964, asking him to advise the residents of the Model Town to deposit the arrears of water cess at the enhanced rate, failing which coercive measures will be set a foot for the recovery of those arrears.

The petitioner alleged that the order of the State Government enhancing the rate of fee in respect of the water supply retrospectively was illegal for the following reasons:—

(a) The reasons for the increase given in Deputy Commissioner's letter at Annexure B were not justified. No rational nexus exists between the cause and the increase in the water tax rate.

(b) No notice regarding the increase was given to the residents and, as such, no reasonable opportunity of being heard was afforded. Thus the principles of natural justice had been violated.

(c) The supply of water to the consumers had not increased; in fact, it had diminished. The quantity supplied was not sufficient for their daily routine necessities.

(d) The increase was exorbitant and manifestly unjust.

(e) The increase with retrospective effect was against law and not within the power of the State.

The petitioner, therefore, prayed that the order enhancing the water rate with retrospective effect be quashed and the respondent restrained from realising the tax at the enhanced rate.

Civil Writ No. 1696 of 1964 is by Raghunath Rai Prabhakar, President of the Sonepat Model Town Welfare Society. His grievance is, that the Punjab Government,—*vide* Notification No. 38(66) BR III-4-62/16657, dated 2nd November, 1962, published in the State Government Gazette, dated 16th November, 1962, enhancing the water tax from Rs. 2.50 to Rs. 4.25, with retrospective effect from 1st October, 1961. The residents of Model Town, Sonepat, held a public

meeting on 12th April, 1964, and passed a resolution protesting against the enhancement of the water tax, a copy of which was forwarded to the Deputy Commissioner, Rohtak. It is alleged that the water supply had not increased; instead, it had decreased and was now totally inadequate to meet the requirements of the residents of the town. This order of the Punjab Government enhancing the water tax with retrospective operation is being challenged on the same grounds on which the increase is being impugned in Civil Writ No. 2707 of 1964.

The facts about the increase and the making of representations by the residents of those towns, and the replies, if any, furnished by the authorities, are not disputed by the respondent State. It is, however, averred in the written statement of the respondent (in Civil Writ No. 2707 of 1964) that though according to section 4(1) of the Act, the purchasers in the Model Town, Ambala, were liable to pay a water cess not exceeding Rs. 6.50 per mensem per house, yet those persons were being charged Rs. 3 per mensem per house, on the basis of temporary water supply arrangements as originally provided, which were no more existing. Since 1952, this township has been provided with permanent water supply arrangements. The original water cess of Rs. 3 per mensem per house did not include the repayment charges for the capital cost, depreciation charges, interest on loan, etc., for providing permanent water supply arrangements. As the Government was undergoing a huge loss in the form of depreciation charges, repayment charges for the capital cost, interest on loan, etc., it was decided to levy the rate of Rs. 6.50 per mensem per house with effect from 1st October, 1961, under sections 4(1) and 7(1) of the Act, to make good the loss,—*vide* Notification No. 38(66)-BRIII-4-62/16657, dated 2nd November, 1962. It was also pleaded that 96,000 gallons of water were being supplied from two tube-wells to about 500 houses in the township, which worked out to 190 gallons per house per day. Taking 6 persons as the the average number of inhabitants of each house, the per capita supply of water works out to more than 30 gallons per day, which is more than the norms. The full rate permissible under the Act had been levied to cover the loss being suffered by Government with regard to maintenance charges, depreciation, loan repayment charges, and interest of capital cost.

In Sonepat case, also, the State furnished its written statement. Similar pleas were taken. It was averred that the cess of Rs. 2.50 per house per month, which was being levied in the Sonepat Township on temporary basis with effect from 1st October, 1951, did not

include repayment charges for the capital, depreciation charges, interest on loan, etc. As the Government was undergoing a huge loss in the form of depreciation, interest on capital, etc., it was decided by Government to increase the water cess suitably under sections 4(1) and 7(1) of the Act so as to cover the loss. The rate was fixed in the case of Sonepat Township at Rs. 4.25 per month per house *vide* Notification, dated 2nd November, 1962, with retrospective effect from 1st October, 1961. It was also stated that there was no shortage of water supply in the Township and the order of the Government was quite legal and proper.

The contentions of the learned counsel for the petitioners in both the cases are common. Firstly, it is urged that the increased levy is beyond the delegated powers of the State Government inasmuch as it amounts to a tax and not a fee for the following reasons:—

(1) The impost is not being deposited into a separate head of account or fund exclusively for financing the Water Supply Scheme, but is being deposited in the Consolidated Fund of the State to augment its general revenues.

(2) The respondents have not furnished any statement of accounts, supported by facts and figures, to show that the increase in the water cess imposed was really necessary to bridge any gap between the expenditure and income with regard to the Water Supply.

(3) The levy was exorbitant and there was no reasonable co-relation between the fee enhanced and the services rendered to the residents of the townships concerned.

In support of this contention, reliance has been placed on several rulings reported as *The Commissioner, Hindu Religious Endowments, Madras* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (1), *Sri Jagannath Ramanuj Das and another* v. *State of Orissa and another* (2), *The Hingir-Rampur Coal Co., Ltd. and others* v. *The State of Orissa and others* (3), *Sudhindra Thirtha Swamiar and others* v. *The Commissioner for Hindu Religious and*

(1) A.I.R. 1954 S.C. 282.
(2) A.I.R. 1954 S.C. 400.
(3) A.I.R. 1961 S.C. 459.

Charitable Endowments, Mysore, and another (4), *Durga Das Bhattacharya and others* v. *Municipal Board, Banaras* (5), and a judgment of a Division Bench of this Court in *The Delhi Cloth and General Mills Co., Ltd., and others* v. *The Chief Commissioner, Delhi and another* (6).

The *vires* of the Act, however, is not being challenged before me. Thus, the question that falls to be considered is, whether the new imposition, though labelled as a fee, amounts to a tax. The classical definition of 'tax', which has been approved by the Supreme Court in several decisions, is the one given by Latham, C.J., in *Mathews* v. *Chicori Marketing Board* (7), "A tax", observed Latham, C.J., "is a compulsory exaction of money by public authority for public purposes enforceable by law, *and is not payment for services rendered*". The crucial words in this definition, which distinguish a tax from a fee, are those that have been underlined. It follows as a corollary from this definition that whereas a tax is imposed for a public purpose for the *common* benefits conferred by the Government on all tax-payers, a fee is levied essentially for services rendered to or *special* benefits conferred on the payer, and, thus, there is an element of *quid pro quo* between the person paying the fee and the public authority imposing it. To quote the words of Gajendragadkar, J. (as he then was) in *The Hingir-Rampur Coal Co., Ltd., and others* v. *The State of Orissa and others* (3), "if specific services are rendered to a specific area or to a specific class of persons or trade or business in any local area, and as a condition precedent for the said services or in return for them cess is levied against the said area or the said class of persons or trade or business the cess is distinguishable from a tax and is described as a 'fee'."

Admittedly, in the present cases, the original imposition both in the case of Model Town, Ambala, and Model Town, Sonepat, was for services rendered, viz., supply of water to the residents of these townships. The only question is, whether the *increase* of these water rates from Rs. 3.00 to Rs. 6.05 per month per house in the case of Model Town, Ambala, and from Rs. 2.50 to Rs. 4.25 per month per house in the case of Model Town, Sonepat, had any reasonable

(4) A.I.R. 1963 S.C. 966.
(5) A.I.R. 1962 All. 277 (F.B.).
(6) I.L.R. (1964) 2 Punj. 681.
(7) 60 C.L.R. 263.

co-relation to the increase, *or* the deficit of the previous years, in the cost of maintaining the water supply.

It is true that the respondents have not alleged in their returns that the money raised from these water rates has been set apart and appropriated specifically for the purpose of the service for which it has been imposed, and is not merged in the general revenues of the State. In the first place, there is no averment in either of the writ petitions or in any affidavit on behalf of the petitioners that the money raised by these fees is not being earmarked specifically for financing the Water Supply Scheme, and is being used to augment the general revenues of the State for the benefit of the general public. Secondly, it has not been alleged anywhere in the petitions that the increase in the fees is so exorbitant and so disproportionate to the services rendered that it amounts to a tax, though the petitioners from Model Town, Ambala (Civil Writ 2707 of 1964) have, in a somewhat general way, alleged in para 6(a) that no rational nexus exists between the cost and the increase in the water rates".

The general principle of pleadings in suits, including the maxim '*secundum allegata et non probata*' applies to writ proceedings. This is clear from Rule 1, of (Part II), Chapter 4-F(b) of High Court Rules and Orders, Volume V, which requires the facts and grounds of relief to be stated in a writ petition under Article 226. The reason is that the respondent in these special proceedisgs must know, before hand, the specific points which he would be required to meet in Court. The whole object of the pleadings is to bring the parties to a focus, and to narrow down the controversy to definite issues. Like a plaintiff in a suit, a petitioner in writ proceedings should state in his petition in a concise form, all the material facts which constitute his ground of attack or cause of action. Since the petitioners failed to take up this plea specifically in their petitions, there was no necessity for the respondents to aver in their returns that the money raised from these fees is being set apart and appropriated specifically for the supply of water to the residents of the townships.

Secondly, this is not a sure test in all cases. Article 266 of the Constitution requires that all the revenues of the State, whether derived from taxes, duties or fees, are to form one consolidated fund. Thus, in *Khacheru Singh* v. *S. D. O., Khurja* (8), it was held that the

(8) A.I.R. 1960 All. 462.

Court fees realised under Article 146(3) and Article 229(3) are fees, even though they form part of the general revenues. To the same effect is the *ratio* of *Gopi Parshad* v. *State of Punjab* (9). Even in *The Commissioner, Hindu Religious Endowments, Madras* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (1), which is the leading authority on the subject, it was observed by Mukherjea, J. (as he then was) that the fact that the money raised by the levy is not earmarked or specified for defraying the expenses that the Government has to incur in performing the services, is not conclusive. In that case, it was found that there was a total absence of any co-relation between the expenses incurred by the Government and the amount raised by contribution. That was why section 76(1) of the Madras Hindu Religious and Charitable Endowments Act, 1951, was struck down as *ultra vires*.

In the cases before me, as observed already, it cannot be said that there was total absence of any co-relation between the expenses incurred by the Government in performing the service and the amount raised by the imposition.

Before I part with the first contention of the petitioners, I would observe that the Division Bench judgment of this Court in *The Delhi Cloth and General Mills Co., Ltd. and others* v. *The Chief Commissioner, Delhi, and another* (6), does not advane the cases of the petitioners. In that case, the question for determination before the Court was, whether the scale of fees prescribed by the Delhi Administration with regard to registration of documents was a tax or a fee. It was not only found as a fact that the fee collected was not being appropriated for the maintenance of Registration Department, but *also* that there was no reasonable co-relation between the fee levied and the cost of the maintenance of the Registration Department. The facts, as already observed, in the present cases are different. It has not been pleaded that the money raised by the impost was not being utilised for defraying the expenses of supply of water to the townships, nor has it been shown that the increase is unreasonably excessive. I would, therefore, reject this contention.

As regards the argument that the respondents have not furnished a statement of accounts, with facts and figures, as to how the increase in the fees was necessary to bridge the gap between

(9) A.I.R. 1957 Punj. 45.

income and expenditure in relation to the water supply, I may observe here that in such a case, it is not necessary for the public authority to prove with arithmetical exactitude that the levy was commensurate with the expenditure incurred in performing the service. The authority cannot be called to render detailed accounts. It is sufficient if the respondent authority in its return, indicates, with reasonable particularity, the co-relation between the impost and the expenditure incurred for performing the specific service.

In a foregoing part of this judgment, I have reproduced the particulars averred by the respondents in their returns, which necessitated the increase in the water rates. There is no reason, why the facts sworn to by the respondents,—that the previous water rates were not sufficient to meet the expenditure incurred by them with regard to interest on loans, capital cost, depreciation charges, etc., in maintaining the water supply to the townships,—be not believed.

The Court can also take judicial notice of the fact that during the last several years, wages and prices of essential commodities have been spiralling, chasing each other in a vicious circle. Viewed in this light, the averments of the respondents in their affidavits, that there has been a big gap in expenditure and income with respect to the performance of this service, cannot be lightly brushed aside. In other words, a reasonable nexus between the service rendered and the increase in the levy has been established. That was sufficient for the validity of the increase in the fee. It cannot be said with any stretch of imagination that under the guise of levying a fee, the State Government is attempting to impose a tax. Nor can it be said to be a case of excessive delegation of the power of its taxation by the Legislature. The maximum rate of the fee has been fixed by section 4 of the Act, which lays down a policy. It will be presumed that the Legislature, while laying down the maximum limit of these fees for street lighting and water supply, had, in its wisdom, anticipated increase in the cost of performing these essential services.

The question, whether or not a particular cess levied under the authority of a statute amounts to a fee or tax, would be a question of fact depending upon the circumstances of each case. In *Durga Dass Bhattacharya's case*, which has been cited by the learned counsel for the petitioners, the Banaras Municipal Board framed bye-laws in exercise of the power conferred upon it under sections

298(II), List J, H(c) and (d) and 294 of the U.P. Municipalities Act, 1916, imposing the obligation of taking out licences on the proprietors and drivers of rickshaws and fixing the fees payable for the licences. It was found as a fact in that case that out of Rs. 1,25,000 collected as licence fee, Rs. 88,000 were spent by the Municipal Board over the paving of bye-lanes and lighting of streets and lanes. It was in these peculiar circumstances that it was held by the Full Bench (by majority) that the fee fixed was *ultra vires* the Board, as the amount spent over the paving of the bye-lanes and street and lane lighting could not be considered to have been spent in rendering services to the licensees. The expenditure under those two items had been incurred by the Board in the discharge of their statutory duty under section 7 of the U.P. Municipalities Act. Thus, on facts, that case was quite distinguishable. However, it was conceded in that case that the licence fee could not be fixed with any exactitude. But it should not be so unreasonable that the income derived from the licences should be *wholly* disproportionate to the services rendered to the licensees or the trade under the regulation of which the licences are issued. In the instant cases, it cannot be said that the increase was entirely disproportionate to the service rendered, viz., water supply to the residents of these townships. Once it is proved that there is a reasonable co-relation between the impost and the service rendered, the Court will not strike it down, holding it to be a tax beyond the competence of the imposing authority, merely because an arithmetically demonstrable equation between the levy and the expenditure incurred in the performance of that special service has not been proved.

The next point canvassed on behalf of the petitioners is, that the impugned orders imposing the levy are invalid, because under the law Government had no power to give retrospective effect to them. In support of this contention, reliance has been placed on *Income-tax Officer* v. *M. C. Ponnoose and others* (10), and *India Sugars and Refineries Ltd., Hospet* v. *State of Mysore and others* (11). It has ben held in *Kerala case,* that unless the power to act retrospectively had been expressly conferred by the Legislature on the executive Government exercising subordinate and delegated legislative powers, it cannot act retrospectively. I entirely agree with the principle enunciated in that case.

(10) A.I.R. 1966 Kerala 5.
(11) A.I.R. 1960 Mysore 326.

In the instant cases, however, there are express provisions of the statute that confer on the executive Government, the power to act retrospectively. The material part of section 1 of the Act reads as follows:—

"(2) It shall extend to such new townships of the Punjab as the State Government may by notification direct.

(3) It shall come into force whether prospectively or retrospectively in such townships to which it is extended from the dates to be notified by the State Government."

In this connection, I may refer to section 5 of the Act, which, *inter alia,* regulates the mode of payment of fee relating to any period before the coming into force of the Act. Its material part reads:

"5. *Mode of payment.*—(1) The fee shall be paid by the purchaser on or before the 5th of the month to which it relates *or if it relates to any period before the coming into force of this Act,* within three months of the notice of demand and in not more than three instalments and shall be deposited in the Treasury or in such other Scheduled Bank as may be specified by the controlling authority from time to time."

An attested copy of the Notification, dated 25th March, 1954, published in the *Punjab Government Gazette,* dated 2nd April, 1954, has been produced before me, which reads as follows :

"In exercise of the powers conferred by sub-sections (2) and (3) of Section 1 of the Punjab New Townships (Street Lighting and Water Supply) Fees Act, No. IX of 1950, the Governor of Punjab is pleased to extend the aforementioned Act, so far as water supply is concerned, to the New Township of Ambala, retrospectively from the 1st October, 1952.

(2) The rate of fee for temporary water supply in the aforementioned New Township shall be Rs. 3 per house per mensem till further order.

M. S. RANDHAWA,

Secretary to Government, Punjab,

Rehabilitation Department."

Attested copy of similar Notification, dated 17th March, 1951, published in *Punjab Government Gazette*, dated 30th March, 1951, has been produced. That Notification has also been issued under sub-sections (2) and (3) of Section 1 of the Act, extending the Act, *inter alia*, to the New Township of Sonepat, with retrospective effect from 1st April, 1950.

It will be seen from the above-quoted provisions of sections 1 and 5 of the Act that the Legislature had, under this Act, expressly given power to the State Government to enforce this Act retrospectively, and, in fact, the Government had given retrospective effect to the Act in the case of Model Town, Ambala, with effect from 1952, and in the case of Model Town, Sonepat, from 1950. Section 10 of the Act further gives powers to the State Government to make rules consistent with this Act, for the carrying out of all or any of its purposes. Thus, if the State Government had the power to give retrospective effect to this Act, *a fortiori* it had the power under this Act to increase the water rates to a figure not exceeding the maximum fixed by section 4, with retrospective effect, either directly by an order passed under this Act, or by framing Rules under section 10 of the Act.

Government has framed Rules under this Act known as 'The Punjab New Townships (Street Lighting and Water Supply) Fees Rules, 1950'. Rule 1(b) says that these rules shall come into force at once in such townships to which the Punjab New Townships (Street Lighting and Water Supply) Fees Act, 1950, is extended. Thus, in the case of Model Town, Sonepat, these Rules would come into force from 1950, while in the case of Model Town, Ambala, these Rules would come into force with effect from 1952. Rule 2 enjoins on the Controlling Authority to maintain a complete register of houses and the purchasers. Rule 3 enjoins on every person, whose name is borne on the register, to intimate every change of ownership to the Controlling Authority. Rule 4 empowers a purchaser to appoint his agent for the purpose of payment of fees. Rule 5 requires the issuance of a receipt to the purchaser or his agent for every deposit or remittance of the fee. Rule 6, which is important, reads as follows :—

> "6. *Notice of demand when fee becomes payable retrospectively.*—When this fee shall become payable in respect of a particular house in a township with retrospective effect, the purchaser shall be required to deposit the fee

in not more than three instalments, as may be specified in the notice of demand."

Rule 7 makes it clear that no notice to pay monthly fee shall be given to any purchaser, who shall himself be required to deposit the same regularly. Rule 8 states the consequences, which result if the fee is not paid for 3 months. Rule 9 relates to the recovery of fee as arrears of land revenue. Rule 10 gives the Controlling Authority power to remit the amount of interest on any reasonable ground. Rule 11(a) provides for an appeal against the Controlling Authority to the Financial Commissioner, Rehabilitation, while Rule 11(b) provides for second appeal to the State Government. Rule 12 says that the appeal shall be summary.

It will be seen from the Scheme of the Act and the Rules, particularly the contents of Sections 1 and 5, and of Rule 6, that the Legislature had delegated a power vesting in the Government to increase the fees with retrospective effect. This power to levy or increase the fees for street lighting and water supply vesting in the State Government springs from the statute itself. The State Government has, therefore, validly levied the fees with retrospective effect. I, therefore, overrule the second contention of the petitioners, also.

In the result, both the petitions fail and are hereby dismissed with costs. Counsel's fee Rs. 50 in each case.

K.S.K.

CIVIL MISCELLANEOUS—

Before *Tek Chand; J.*

MAHAL SINGH AND ANOTHER,—*Petitioners.*

versus

FINANCIAL COMMISSIONER, PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 1006 of 1964

February 7, 1968.

Punjab Land Revenue Act (XVII of 1887)—Ss. 34 to 38—Mutation Proceedings—Scope of— Revenue Officers—Whether can determine amount of maintenance or impose condition of payment thereof.