In the light of the above discussion, we have no hesitation in dismissing this petition.

J. S. BEDI, J.—I agree.

R.N.M.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

THE MANSA ROADWAYS (PRIVATE) LIMITED, MANSA,—*Petitioner*

versus

THE STATE OF HARYANA AND OTHERS,—*Respondents*

Civil Writ No. 1885 of 1967

December 8, 1967.

Punjab Passengers and Goods Taxation Act (VI of 1952)—Ss. 3, 4 and 8—Punjab Passengers & Goods Taxation Rules (1952)—Rule 9—Route passing through more than one State—Passenger tax—How to be calculated and levied—Punjab Reorganisation Act (XXXI of 1966)—S. 88—Effect of on application of Act to State of Haryana.

Held, that according to section 3 of the Punjab Passengers and Goods Taxation Act, 1952, tax at the rate of 1/4th of the value of the fare was levied, charged and paid to the State Government. Where passengers were carried by a motor vehicle from any place outside the State to any place within the State or vice versa, the tax was payable in respect of the distance covered within the State. According to section 8 of the Act, no owner could ply his motor vehicle in the State unless he was in possession of a valid registration certificate. Under rule 9-B, no person could purchase any stamp for the payment of the passengers tax except from the Collector of the District in which the motor vehicle, in respect of which the stamps were to be bought, was registered. This was the state of the law with regard to the levy and realisation of the passengers tax, before the Punjab Reorganisation Act, 1966, came into force on November 1, 1966.

Held that by virtue of section 88 of the Punjab Reorganisation Act, 1966, the Punjab Passengers and Goods Taxation Act, 1952 became applicable to the

State of Haryana as well with effect from November, 1966. Under section 8 of the Act, no owner could ply his motor vehicle in the State of Haryana unless he got the same registered in that State. According to section 3, the State Government of Haryana could levy tax in respect of all passengers carried by the territory of the Haryana State. By virtue of section 3(3), when the passengers were carried from any place outside the State of Haryana to any place within the said State or vice versa, the passengers tax was payable in respect of the distance covered within the State. The petitioner—company had got itself registered in the Haryana State and since it did not file any return in respect of this tax, respondent No. 2 had validly issued the impugned notice calling upon it to attend his office at Ambala Cantt., for the purpose of the assessment of the tax.

Petition under Articles 226 *and* 227 *of the Constitution of India, praying that a writ in the nature of* certiorari, mandamus *or any other appropriate writ, order or direction be issued quashing the notice, dated August* 17, 1967 *of Respondent No.* 2, *Annexure 'A'.*

J. S. WASU, ADVOCATE, for the Petitioner.

ANAND SARUP, ADVOCATE-GENERAL (HARYANA), for the Respondents.

ORDER

PANDIT, J.—This order will dispose of three connected Civil Writ petitions Nos. 1885, 2108 and 2117 of 1967, in which a common question of law is involved. It was agreed by the counsel for the parties that the decision in one will cover the other two as well. I will, therefore, deal with the facts in civil writ No. 1885 of 1967 only.

This petition under Articles 226 and 227 of the Constitution has been filed by the Mansa Roadways, Private Ltd., Mansa, district Bhatinda (Punjab) for quashing the notice, dated 17th of August, 1967 issued by the Excise and Taxation Officer (Enforcement), Ambala Division (Haryana). The petitioner Company had been engaged in the business of carrying passengers in their buses for a number of years. It was providing passenger transport service on Mansa-Sirsa, Mansa-Kalianwali and Mansa-Ratia routes. All the three routes were approximately 42 miles in length in each case. The fares charged from the passengers were subject to a

levy and charges of tax at the rate of 1/4th of the value of the fare as laid down by section 3(1) of the Punjab Passengers and Goods Taxation Act, 1952 (hereinafter called the Act). Section 4 of the Act laid down the method of collection of tax and it provided that the tax would be collected by the owner of the motor vehicle and paid to the State Government in the prescribed manner. Rule 9 of the Punjab Passengers and Goods Taxation Rules, 1952 (hereinafter referred to as the Rules), however, prescribed the method of payment of the tax and according to it the payment of tax would be made by stamping the tickets or receipts with impressed, embossed, engraved or adhesive stamps issued by the State Government for the purposes of the Act and denoting that the tax due had been paid. Rule 9-B was added by the Punjab Government notification, dated 15th of February, 1961 whereby it was provided that the stamps could only be purchased from the Collector of that District in which the motor vehicle, in respect of which the stamps were to be purchased, was registered. The erstwhile State of Punjab was re-organised on the 1st of November, 1966 by means of the Punjab Re-organisation Act, 1966, whereby the State of Punjab was constituted into three parts, namely, Punjab, Haryana and the Union Territory of Chandigarh. As a result of the re-organisation, about 12 miles length of each of the three aforesaid routes, being plied by the petitioner-company, was included in the territory of the State of Haryana, while the balance of 30 miles remained in the State of Punjab. The ordinary place of business of the petitioner was Mansa which fell in Bhatinda District in the State of Punjab and, consequently, for the purpose of the Act, it had its vehicles registered in Bhatinda and was purchasing tax stamps at that place. According to the petitioner-company, the respondents 1—3, namely, the State of Haryana through Secretary to Government, Taxation Department, Chandigarh, the Excise and Taxation Officer (Assessing Authority), Ambala Cantt., and the Excise and Taxation Officer, Hissar, threatened that its vehicles would be stopped from plying in the State of Haryana and therefore under coercion the petitioner-company started taking out stamps from Hissar authorities from 12th of June, 1967 and later got its vehicles also registered there on 4th of August, 1967. Thereafter the impugned notice was served on the petitioner-company by respondent No. 2 calling upon it to appear before him for the purpose of assessment for the year 1966-67 and also for showing cause as to why penalty should not be imposed upon it under section 9(4) of the Act. That led to the filing of the present writ petition on 6th of September, 1967.

Learned counsel for the petitioner submitted that the respondents had no jurisdiction to levy and charge passengers tax in respect of the motor vehicles of his client, because those vehicles already stood registered with the authorities under the Act at Bhatinda where the petitioner-company was purchasing tax stamps as well. Section 88 of the Punjab Re-organisation Act, 1966, according to the learned counsel, made it quite clear that the State of Haryana could not require the petitioner to have its vehicles registered at Hissar and to purchase the tax stamps there. According to that provision, the formation of new States would not affect the levy and charge under the Act till such time as the competent legislature or authority otherwise provided. The appropriate Government had not made any law relevant for the purpose under section 89 of the Punjab Re-organisation Act. Rule 9-B, argued the counsel, made it incumbent on the petitioner-company to purchase tax stamps at Bhatinda.

Before the Punjab Re-organisation Act, 1966, came into force, the passengers tax was being levied by the State of Punjab under section 3 of the Act, the relevant part of which runs thus :—

"3(1) There shall be levied, charged and paid to the State Government a tax on all fares and freights in respect of all passengers carried and goods transported by motor vehicles at the rate of one-fourth of the value of the fare or freight, as the case may be, the amount of tax being calculated to the nearest multiple of five naye paise by ignoring two naye paise or less and counting more than two naye paise as five naye paise.

* * * *

(2) * * * *

(3) Where passengers are carried or goods transported by a motor vehicle from any place outside the State to any place within the State, or from any place within the State to any place outside the State, the tax shall be payable in respect of the distance covered within the State at the rate laid down in sub-section (1) and shall be calculated on such amount as bears the same proportion to the total fare or freight as the distance covered in the State bears to the total distance of the journey.

Provided * * * *".

According to this provision, tax at the rate of 1/4th of the value of the fare was levied, charged and paid to the State Government. Where passengers were carried by a motor vehicle from any place outside the State to any place within the State or vice versa, the tax was payable in respect of the distance covered within the State. According to section 8 of the Act, no owner could ply his motor vehicle in the State unless he was in possession of a valid registration certificate. Under rule 9-B, no person could purchase any stamps for the payment of the passengers tax except from the Collector of the District in which the motor vehicle, in respect of which the stamps were to be bought, was registered. This was the state of the law with regard to the levy and realisation of the passengers tax, before the Punjab Re-organisation Act, 1966, came into force on 1st November, 1966.

Part II of that Act dealt with the re-organisation of the State of Punjab into the States of Punjab, Haryana and the Union Territory of Chandigarh. Some area of the erstwhile Punjab State was also transferred to the Union Territory of Himachal Pradesh. Section 88 of that Act provided—

> "88. The provisions of Part II shall not be deemed to have affected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial reference in any such law to the State of Punjab shall, until otherwise provided by a competent Legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day."

According to that section, the various laws prevalent in the erstwhile Punjab State immediately before 1st November, 1966 were to apply to the newly-formed States of Punjab and Haryana. The Re-organisation Act would not in any way affect those laws. They would continue to apply to the territories of the States of Haryana and Punjab, which originally formed part of the bigger State of Punjab. The territorial reference to the State of Punjab in those laws would be taken to mean the entire territory included in the State of Punjab before the Punjab Re-organisation Act came into force. This provision had to be introduced, because immediately on re-organisation, the newly-formed State of Haryana had no laws of its own and its legislature would have taken some time before

enacting fresh laws or for adopting those that were already prevailing in the erstwhile State of Punjab. The competent legislature or other competent authority could, however, provide to the contrary or make changes and amendments in those laws. According to section 89 of the Punjab Re-organisation Act, the respective Governments of Punjab and Haryana could, within two years from 1st November, 1966, make such adaptations and modifications of the law, whether by way of repeal or amendment, as might be necessary or expedient. By virtue of section 88, therefore, the provisions of the Punjab Passengers and Goods Taxation Act, 1952, would commence applying to the State of Haryana as well with effect from 1st November, 1966. Under Section 8 of the Act, no owner could ply his motor vehicle in the State of Haryana unless he got the same registered in that State. According to section 3, the State Government of Haryana could levy tax in respect of all passengers carried by the vehicles in the territory of the Haryana State. By virtue of section 3(3), when the passengers were carried from any place outside the State of Haryana to any place within the said State or vice versa, the passengers tax was payable in respect of the distance covered within the State. The petitioner-company had got itself registered in the Haryana State and since it did not file any return in respect of this tax, respondent No. 2 had validly issued the impugned notice calling upon it to attend his office at Ambala Cantt., for the purpose of the assessment of the tax.

It was contended by the learned counsel for the petitioner that according to section 88 of the Punjab Re-organisation Act, the situation, as it prevailed before the Act came into force, was to continue till the Haryana legislature passed any law providing for the levy of the passengers tax. To quote his expression, the learned counsel submitted that the *status quo* as it prevailed on 31st October, 1966 was to continue. In other words, according to him, those vehicles which were registered in Punjab and used to ply from there to any place in the Haryana State were to pay the passengers tax to the Punjab State. Similarly, the vehicles which were registered in the Haryana State and were carrying the passengers from there to any place in the Punjab State had to pay the passengers tax to the Haryana State. In my view, there is no merit in this contention and the correct interpretation, of section 88, is the one which I have already mentioned above. In any case, the petitioner-company does not suffer, because it has to pay the same amount of

passengers tax. On the construction put by the learned counsel for the petitioner that tax in its entirety is payable to the Punjab State, while according to me, it has to be paid to the two States, Haryana and Punjab, in proportion to the distance covered by the passengers in the respective two States.

Learned Counsel for the petitioner further submitted that the Haryana State had, on 21st July, 1967, promulgated Ordinance No. 5 of 1967, making amendment in the Punjab Passengers and Goods Taxation Act, 1952 and providing for two matters—(1), enhancing the rate of passengers tax from 1/4th to 35 percentum of the fare, and (2) substituting sub-section 3(3) for the following :—

> "(3) Where passengers are carried or goods transported by a motor vehicle operating on a joint route the tax shall be payable in respect of the distance covered within the State at the rate laid down in sub-section (1) and shall be calculated on such amount as bears the same proportion to the total fare or freight as the distance covered in the State bears to the total distance of journey.
>
> *Explanation.*—For the purpose of this sub-section "joint route" means a route which lies partly in the State of Haryana and partly in other State or Union Territory".

According to him, this clearly showed that the State Government knew that without the above-mentioned substitution, they could not recover the passengers tax from the persons placed in the same situation as the petitioner-company and that lent support to his interpretation of section 88 of the Punjab Re-organisation Act. There is no substance in this contention. The primary object of this Ordinance was to raise the rate of passengers tax. That also pre-supposes that the State Government knew that it could validly recover the passengers tax and was actually doing so at the rate of 25 per cent of the fare as mentioned in the Act. If while increasing the tax they have also substituted sub-section (3), practically using the same language, except that the word 'joint route' has been introduced therein, that would not, in any way, in my opinion, affect the interpretation of section 88 of the Punjab Re-organisation Act, 1966. It is also significant to mention that the meaning of the substituted sub-section (3) read with the explanation thereto, is the same as that of the old sub-section.

It may further be mentioned that the petitioner had not exhausted all the remedies available to him under the Act before coming to this Court. Admittedly, it had got itself registered in the Haryana State and, consequently, could not urge that respondent No. 2 had no jurisdiction to send the impugned notice to it. The petitioner should have gone to him in answer to the notice and if the decision of that authority went against it, an appeal could have been filed and then a revision, if need be, before the appropriate authorities under the Act. This, in my view, is an additional ground for not interfering with the impugned notice.

In view of what I have said above, the petition fails and is dismissed. In the circumstances of this case, however, there will be no order as to costs.

B. R. T.

REVISIONAL CIVIL

Before Tek Chand, J.

KAHAN CHAND,—*Petitioner*

versus

FAQIR CHAND,—*Respondent.*

Civil Revision No. 108 of 1967.

January 5, 1968

Code of Civil Procedure (Act V of 1908)—Ss. 24, 150 and Order 39 Rule 2—Temporary injunction granted whereafter suit transferred to another court—Transferee court—Whether can take action under order 39 rule 2(3).

Held, that under section 24 of the Code of Civil Procedure 1908, a general power of transfer is conferred upon the High Court or the District Court which may be exercised either on the application of any party or by the court of its own motion. The transfer may be of any suit, appeal or other proceeding. Section 150 of the Code leaves no room for doubt that the transferee court shall have