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accordance with the Act, the Rules and the existing zoning plan. The argument in essence is, that the petrol pump in question is an "amenity" being a "public utility service" or in any event a "public building", and, therefore, well within the purpose of the "open spaces" as mentioned in the zoning plan. It has further been argued that the definition of the word "amenity" is not exhaustive and, therefore, we should look at the overall purpose of the petrol pump in question in determining whether or not it is an amenity within the statutory meaning. Reference has been made to the judgment in *Wellard's case* for assistance in construing the expressions "public utility service" and "public building". This decision deals with a criminal matter and is concerned with what is a "public place" as used in an English statute, and would thus be hardly of any valuable guidance in the case in hand. A precedent, as is well-settled, is an authority on its own facts and for the legal proposition or principle of law enunciated therein; in order, therefore, to understand and apply the true *ratio decideni* of a decided case it is always necessary to see its facts and the precise point which had to be decided. The generality of expressions found in a judgment can scarcely be intended to be the exposition of the whole law and they must always be governed and qualified by the particular facts of the case in which they are found. A precedent may not safely be quoted as binding authority for what may be argued to be merely a logical extension of the ratio *decidendi*. Thus considered, the English decision would seem to lend little, if any, assistance in the instant case.

Now, it is quite true that the statutory definition of the word "amenity" is not exhaustive and, therefore, it may be legitimate to travel outside the specific items or purposes mentioned in section 2(b). But, at the same time, I am unable to hold,

as suggested, that in determining what is an amenity within the statutory intent, the Courts have an absolutely open field to operate, completely uncontrolled and uninfluenced by the legislative scheme, purpose and object. The contention that some of the expressions defined in the Act and the Rules overlap may or may not be quite correct, but even assuming in favour of a possible overlapping in some instances, we have to see if in the case in hand any such overlapping was intended by the law-giver; to discover this legislative intent one has to bear in mind the legislative scheme and purpose. A "public building" has been separately classified in clause (xv) (d) of Rule 2, but the definition of this word which is contained in clause (xxxviii) reproduced earlier appears to be fairly exhaustive. The concluding words "for any similar public purpose" would seem to attract the rule of *ejusdum generis*. Thus construed, I find it somewhat difficult to include a petrol pump-cum-service station to be within its meaning, however, wide it may otherwise be. On the other hand, it appears to me more in consonance with the statutory scheme to include the petrol pump-cum-service station in question to fall within either commercial building" or "ware-house" and "industrial building". "Ware-house" and "Industrial building", as already noticed, has not been exhaustively defined, but it expressly includes a workshop or a motor garage; and a garage, it may be recalled, means any building or a portion thereof even when intended to be used for shelter, storage or repair of a wheeled vehicle. The contention, therefore, that the petrol pump in question falls within the definition of "public building" can safely be rejected.

As to whether it is a "public utility service" undoubtedly poses a problem which, generally

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speaking, may *prima facie* perhaps, not appear easy of solution, but looked at from a broader point of view, everything which is of some utility to the people or to a substantial class of population, may be considered to be included in this expression. But again, the approach to this question, has to be in the background of the statutory scheme and intendment. The question would, therefore, again arise; is it more akin to "public building" or to "commercial building" and "ware-house" and "industrial building", for, that would constitute a sufficiently safe and sound basis on which a probe into the problem may proceed for discovering the legislative intent. In this connection, it may also be recalled that section 7 of the Act authorises the State Government to levy necessary fees or taxes in respect of any site or building on the transferee or occupier thereof for the purpose of providing, maintaining or continuing any amenity at Chandigarh. This appears to me to be somewhat suggestive of the fact that a commercial undertaking by a private party was very likely not intended to be included in the amenities as defined by the statute. The amenities mentioned there are apparently those which are provided by the State Government as a welfare State to the people. As at present advised, therefore, I am more inclined to take the view that the expression "public utility service," as included in the definition of the word "amenity" in the Act, construed in the background of the statutory scheme and according to the rule of *ejusdum generis,* excludes from its purview the present "petrol pump and service station." It is unnecessary for our present purpose to exhaustively define it in the case in hand and I need not say anything more.

There is also one other aspect which may in passing be noticed here. The Chandigarh (Sale of

Sites) Rules, 1952 define "obnoxious trade" in Rule 2(c). According to it, "obnoxious trade" shall be deemed to be carried on if the building is used for any of the following purposes:—

"(a) * * * * * * *

(b) * * * * * * *

(c) * * * * * * *

(d) as any other manufactory, engine-house, store-house or place of business from which offensive or unwholesome smells, gases, noises or smoke arise:

(e) as a yard or depot for trade in unslaked lime * * * * * * or other dangerously inflammable material;

(f) as a store-house for any explosive, or for petroleum or any inflammable oil or spirit."

This would seem to me to be an additional circumstance lending some further support to the view that "amenities" may not include a commercial undertaking which carries on an obnoxious trade; I am confining this exclusion only to the "obnoxious trade" so as to exclude instances of sewerage or drainage which may also at times give rise to offensive or unwholesome smells, etc.

The learned counsel for the respondents has also laid considerable stress on the contention that the Chief Administrator has full power to vary the zoning plan and also to go against it if he considers fit, with the result that this Court should in its discretion decline interference on the writ side because it would be open to the Chief Administrator any moment to change the zoning plan and

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to convert the open space in question into a site for a commercial building. Reference has in this connection been made to Rule 117. This rule it may be recalled occurs in Part V of the Rules headed "Administrative Control". It lays down that the Chief Administrator shall refuse to sanction the erection or re-erection of any building in contravention of the rules with a proviso that he shall have the authority to modify or waive, upon terms and conditions as thought fit, any requirements of any of the rules, with a further proviso that applications for such waivers are made to him in writing and accompany the application to erect or re-erect under Rule 7. Sub-rule (2) provides that if the Chief Administrator refuses to sanction the erection or re-erection of any building for any other reason which may be considered just and sufficient as affecting such building, then he must communicate the same to the applicant. Under Rule 118, after the expiry of a certain period, if the Chief Administrator has neglected or omitted to pass orders on the application for erection or re-erection, then sanction is to be presumed. Of course, this provision excludes from its operation land belonging to or vesting in the Government. Rule 117 appears to be of little or no assistance to the respondents' contention because so far as the legislative intent is discernible from the legislative scheme, the rule does not seem to confer on the Chief Administrator an absolute, arbitrary and uncontrolled power depending solely on his personal or private opinion. He has to exercise, it seems, a quasi-judicial function against which the aggrieved party might fairly claim a right of redress from the higher Tribunals. The absolute power immune from scrutiny in the Chief Administrator to pass on application under Rule 7 orders prejudicially affecting rights of third parties may be still more difficult to sustain.

It is unprofitable to deal with this question in greater detail in the instant case, for, if and when the Chief Administrator chooses to pass an order under Rule 117 and its validity is questioned, the power of this Court to interfere would more appropriately be gone into. Suffice it to say, that in the case in hand at this stage, I am unable, on the bald contention raised on behalf of the respondents, to hold that by virtue of Rule 117 the Chief Administrator has an absolute power, immune from scrutiny by this Court, to convert an "open space" as laid down in the zoning plan into a plot for a "commercial building" or for a "ware-house" and "industrial building" in which obnoxious trade may be carried out. The further contention that it is open to the Chief Administrator at any moment to vary the zoning plan has also not impressed me, but again it is hardly fair or just at this stage on the circumstances disclosed to decline relief to the petitioners on this tenuous ground based on bare submission, unsupported by authority or sound principle. If and when the zoning plan is actually changed and the matter comes to this Court, it would perhaps call for a closer and a deeper scrutiny and a more detailed discussion. In the present case when the zoning plan has admittedly not been varied, it is not easy to hold that the Chief Administrator can ignore it on the assumption that he is entitled to vary it whenever and howsoever he chooses.

After considering all the circumstances of the case in the light of the statutory provisions, in my opinion, the respondents have acted outside the statute in permitting the conversion of the space in question into a site for erecting a petrol pump-cum-service station, which has prejudicially affected the petitioners' rights.

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I should like before finally closing the Judgment to observe that constitutional set-up in this Republic does not favour vesting of absolute and uncontrolled power in the administrative agency or indeed in any single governmental agency; and every Government authority in this Republic is governed and controlled by the Rule of law. As history tells us, of all human appetites the craving for power grows most with what it feeds on, so that while a person initially starts by seeking power from unselfish or impresonal motives, because he wishes to serve the State and the people, or is entrusted with power for such purposes, he may cling to it for interested personal and selfish motives. because having once tasted it, he can no longer do without it; the corrupting effects of power are so subtly blinding that the substitution of a selfish motive for a selfless one escapes his notice. Realising and being conscious of the baneful effects of absolute and uncontrolled power on its own survival, Democracy of our patten seeks to hedge in the exercise of power with limitations and restrictions and subjects it to judicial scrutiny by independent and impartial judiciary. Democracy of our conception must not be divorced from the Rule of law and must not be allowed to be tempered with bureaucratic or authoritarian indifference to the citizens' legal rights. The social heart of the doctrine of the Rule of law appears to me clearly to lie in the recognition by those in power that they are not free from the restraint of ethical convictions embodied in law; and this truly represents the principle on which power in our Republic is both wielded and tolerated. Government under the Rule of law demands proper legal limits on the exercise of power. The central legal point of democracy and Rule of Law, which is essentially a mode of life, and not merely, a matter of constitutional clauses

or declarations, is that the State officials, and ideally the State organs themselves must, in the absence of a clear constitutionally lawful inhibition, be answerable for acts which prejudicially affect the interests of the citizens in the Courts like all other persons and bodies. The confidence of the citizens in modern democratic government, it may be stated, is increased by liberal rather than by restricted judicial review of administrative process, assuring correction of basic injustice and unfairness, since the administrator, who knows that he must ultimately be answerable for his actions to an independent judicial body will be a more responsible public official.

For the foregoing reasons, this writ petition is allowed and the rule made absolute. In regard to costs, the usual rule is that a successful party is entitled to his costs. It is true that the present writ petition was directed to be heard by a Division Bench on account of the importance of the question raised, but the respondents have taken a plea of undue haste which was wholly ill-advised and unjustified on the facts and circumstances of this case, and have further persisted in it during the arguments, with the result that the usual rule must inevitably be adopted and the respondents directed to pay the petitioners' costs.

Jindra Lal, J.—I agree entirely.

Jindra Lal, J.

K.S.K.

CIVIL MISCELLANEOUS

Before Inder Dev Dua and Hans Raj Khanna, JJ.

MESSRS. KOTKAPURA BUS SERVICE PRIVATE LTD., —*Petitioner.*

Versus

THE EXCISE & TAXATION OFFICER, JULLUNDUR DIVISION AND OTHERS,—*Respondents.*

Civil Writ No. 1159 of 1963

1964

Jan., 27th.

Punjab Passengers and Goods Taxation Act (XVI of 1952)—S. 6 (4)—No time limit fixed for levy of tax under—Whether makes it ultra vires—Constitution of India (1950)

—Article 226—Alternative remedy—Whether a bar to the issue of writ—Interpretation of statutes—Courts—Whether can review legislative policy.

Held, that the tax levied by the prescribed authority under the provisions of sub-section (4) of section 6 of the Punjab Passengers and Goods Taxation Act, 1952, must be in accordance with the statutory provisions and in this respect the power conferred on the prescribed authority is thus fully controlled and circumscribed by the provisions of the statute. There is no constitutional mandate which makes it obligatory on the legislature to fix any time limit within which incorrect levy, charge or payment of tax can be corrected. Mere failure to fix any time limit in sub-section (4) of section 6 of the Act for proceedings to levy the amount due cannot be considered to be so harrassingly unreasonable as to affect its constitutional validity.

Held, that the existence of an alternative remedy is not *per se* a bar to the issue of a writ by the High Court which is a matter depending on its discretion to be judicially exercised on the facts and circumstances of each case.

Held, that revenue is the basic requirement of a government both for the purposes of maintaining good social order and for providing the necessary amenities to the citizens. It is a matter of legislative policy with which the Courts are not concerned and indeed to review legislative policy in such matters would virtually be an unconstitutional intrusion into the legislative sphere. Courts are concerned only with the power to enact statutes and not with their wisdom.

Petition under Article 226 and 227 of the Constitution of India, praying that a Writ in the nature of Certiorari, Prohibition, Mandamus or any other appropriate Writ, Order or Direction be issued quashing the assessment order passed by respondent No. 1, whereby a liability to pay additional tax to the extent of Rs. 27,700, has been imposed on the petitioner company.

H. R. SODHI, ADVOCATE, for Petitioner.

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL, for Respondents.

ORDER

DUA, J.—These three writ petitions (Civil Writs Nos. 1159, 1160 and 1161 of 1963) have been heard together and as a matter of fact, arguments have been addressed only in C.W. No. 1159 of 1963, it being conceded that the others would stand or fall with it. Dua, J.

Messrs Kotkapura Bus Service Private Ltd., a company registered in 1950 under the Indian Companies Act, carries on passenger transport business with its head office at Kot Kapura. It had five stage carriage permits granted to it from time to time by the Regional Transport Authority, Patiala, and in the matter of operation of the passenger services, control is exercised over the company by the Regional Transport Authority, the State Transport Authority and the State Government under the powers conferred by the Indian Motor Vehicles Act. It is pointed out that the petitioner's permits were liable to be cancelled for breach of any of the conditions specified in those permits as also by those laid down in the Motor Vehicles Act. One of such conditions, it is emphasised, is that the petitioner-company will not charge higher fares than fixed by notification under section 43 of the above Act.

The petitioner-company is also stated to hold a registration certificate under section 9 of the Punjab Passengers and Goods Taxation Act, 1952 (hereinafter called the Act). The tax imposed under this Act is realized by two methods which are contained in Rule 9 of the Punjab Passengers and Goods Taxation Rules, 1952 (hereinafter called the Rules). The petitioner has, according to the averments in the petition, been paying tax

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heretofore in the shape of adhesive stamps purchased in advance from the local treasury as provided in Rule 9(i). The State Government has by virtue of notification issued under section 43, Motor Vehicles Act, fixed the maximum and minimum fares chargeable from passengers and it is again emphasised that one of the conditions of the permit is that the petitioner cannot charge more than the fare fixed. For the assessment period 1959-60, the petitioner-company paid a sum of Rs. 48,795.65 nP., as passenger tax by affixing adhesive stamps on the tickets issued to the passengers, such stamps having been purchased by paying the amount in advance. The petitioner, it is asserted, maintained regular accounts. The petitioner's principal grievance in this petition is expressed in paragraph 5 of the petition which is in these words:—

> "That a notice in form P.T.T. 10 of the Rules was issued by the Assessing Authority, Jullundur Division, and served on the Accountant of the petitioner-company though issue of such a notice was illegal and *mala fide*. One Shri Behari Lal, a driver of the petitioner-company had been dismissed and he manoeuvred in the office of the Assessing Authority to get such a notice issued. The issue of this notice and re-opening of the assessment is not warranted by any provision of the Act or the Rules made thereunder. The Assessing Authority not only issued notice for the period 1959-60 but also for the periods 1960-61 and 1961-62 though passenger tax for all these periods had been regularly paid in the form of the adhesive stamps. Rule 21

of the Rules is not intended for cases where the tax is paid in advance by way of adhesive stamps, and nor is any action by way of a notice in form P.T.T. 10 attracted in such cases."

The Assessing Authority, the grievance proceeds, has acted arbitrarily, vindictively and *mala fide* in imposing an additional tax to the tune of Rs. 27,700 which assessment has been described to be "more in the nature of a penalty"; the findings of the Assessing Authority have also been described to be based on no "objective data or material on the record". It is this assessment which is being assailed in the present writ proceedings, and the ground of challenge appears to be concentrated on the challenge to the *vires* of the Act generally, though the merits of the assessment have also been criticised and assailed in the writ petition. In paragraph 13 of the petition, the company is stated to have preferred an appeal to the prescribed appellate authority before whom a prayer for stay of recovery of the amount was made but the same was rejected and the petitioner was directed to deposit the amount by instalments failing which the appeal was to stand dismissed. A further revision against this order to the Excise and Taxation Commissioner was also rejected on 26th June, 1963. For these reasons, the petitioner-company is stated to have no other equally efficacious, beneficial and conveniently available alternative remedy. On this ground, it is prayed that a writ in the nature of *certiorari* be issued quashing the impugned assessment order and a further prayer for a writ in the nature of prohibition is made for restraining the respondents from realizing the amount claimed for the period 1959-60. The other two similar writ petitions relate to the other two years.

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The petition is resisted on behalf of the respondents on various grounds and it has been emphasised that the Assessing Authority was competent to issue a notice in Form P.T.T 10 and to frame assessment as required under section 6(4) of the Act read with Rule 29 of the Rules. It is further pleaded that Rule 21 is inapplicable to the case in hand. The petitioner, according to the reply, was afforded full opportunity to represent his point of view. The statement given by the Accountant of the petitioner-company, according to the return, is a clear proof of such opportunity and it has been asserted that no proper accounts were maintained by the company in respect of special permits obtained on account of marriage contracts undertaken and otherwise, and that the petitioner had in this manner evaded tax by omitting to issue tickets and affixing adhesive stamps thereon. The personal diary maintained by the Director of the company, as discussed in the assessment order, is also relied upon as clear evidence of evasion of tax by the petitioner-company. Reference has in this connection also been made to a decision given by this Court in C.W. No. 993 of 1961 in justification of the impugned order.

The petitioner's learned counsel has addressed elaborate arguments trying to re-open the merits of the assessment. He has in addition strongly urged that the petitioner has been depositing the tax payable in accordance with the provisions of Rule 9(i) and that Rule 29 is inapplicable to such a case. The impugned order has on the basis of this submission been described to be wholly unauthorised and without jurisdiction and, therefore, liable to be quashed. The constitutional validity of section 6(4) of the Act has also been challenged on the ground that it fixes no time-limit within which the power to proceed to levy

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the amount of tax due thereunder can be exercised, being too widely worded, the section, according to the submission, confers power of reopening or revising assessments unlimited in point of time and, therefore, liable to be struck down as invalid and unconstitutional.

Shri Doabia has on behalf of the respondents raised a preliminary objection on the ground that the statute having provided adequate remedies by way of appeals and revisions, the petitioner should be directed to seek redress from the departmental hierarchy in accordance with the statutory machinery and should not be permitted to by-pass them. The fact that the appellate authority has not granted exemption from the payment of tax is, according to the counsel, no ground for permitting the petitioner to invoke the extraordinary writ jurisdiction; the appellate Tribunal has acted fully in accordance with law in declining exemption, after considering the petitioner's prayer on the merits. Reliance has in this connection been placed on a Bench decision of this Court in *Messrs Jiwan Singh and Sons* v. *The Excise and Taxation Officer* (1). It has further been urged that the order of the appellate authority in declining to hear the appeal without payment of tax but giving relief to pay the tax by instalments is within its competence and jurisdiction and that mere assertion by the petitioner, that he is unable to pay even these instalments would not justify this Court in going into the merits of that order, for, there is no error of law apparent on the face of the record which can be said to have resulted in manifest injustice. The statutory scheme providing machinery for redress of grievances of the assessees must, according to the learned counsel, be kept in view and the aggrieved

(1) 1960 P.L.R. 562.

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assessees should ordinarily be directed to adopt the course laid down by the statute for seeking redress.

The respondents' counsel has also submitted that the question of jurisdiction of the Assessing Authority was not raised before the department and, therefore, should not be permitted to be raised in these proceedings.

Our attention has on the merits been drawn to the language of Rule 29 which is urged to be wide enough to include the case of a party paying tax according to the mode prescribed by Rule 9(i). Stress has been laid on the omission of the challenge to the validity of section 6(4) from the writ petition. Finally reliance has been placed on a Bench decision of this Court in *The Associated Traders and Engineers* v. *The State of Punjab* (2), where the challenge to the vires of the impugned act was repelled excepting section 10. Reference at the bar has also been made to *Messrs Sainik Motors, etc.* v. *State of Rajasthan* (3), where the Rajasthan Passengers and Goods Taxation Act has been held to be *intra vires*.

After considering the arguments addressed at the bar, in my opinion, the present is not a fit case in which this Court should go into the controversy on the merits on the writ side. The appeal under the statute is an equally adequate and effacacious alternative remedy which must be pursued by the petitioner. The question of alternative remedy has been dealt with by the Supreme Court more than once. In *K. S. Rashid and Son* v. *Income-tax Investigation Commission* (4), a Bench of five

(2) 1955 P.L.R. 304.
(3) A.I.R. 1961 S.C. 1480.
(4) A.I.R. 1954 S.C. 702.

Judges observed that the remedy provided for in Article 226 is a discretionary remedy and the High Court has always the discretion to refuse to grant a writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. In that case the petitioners had already availed themselves of the remedy provided for in section 8(5) of the Taxation of Income (Investigation Commission) Act and a reference made to the High Court in terms of that provision was awaiting decision; the Supreme Court, in view of this circumstance, considered it proper not to allow the petitioners to invoke the discretionary jurisdiction under Article 226. *In Calcutta Discount Co. Ltd.* v. *Income-tax Officer* (5), a Bench of five Judges had again to consider this question and the majority view was expressed in these words:—

> "Mr. Sastri mentioned more than once the fact that the company would have sufficient opportunity to raise this question, viz., whether the Income-tax Officer had reason to believe that under-assessment had resulted from non-disclosure of material facts, before the Income-tax Officer himself in the assessment proceedings and if unsuccessful there before the appellate officer or the appellate tribunal or in High Court under section 66(2) of the Indian Income-tax Act. The existence of such alternative remedy is not however always a sufficient reason for refusing a party quick relief by a writ or order prohibiting an authority acting without jurisdiction from continuing such action.

(5) A.I.R. 1961 S.C. 372.

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> In the present case the company contends that the conditions precedent for the assumption of jurisdiction under section 34 were not satisfied and came to the Court at the earliest opportunity. There is nothing in its conduct which would justify the refusal of proper relief under Article 226. When the Constitution confers on the High Courts the power to give relief it becomes the duty of the Courts to give such relief in fit cases and the Courts would be failing to perform their duty if relief is refused without adequate reasons. In the present case we can find no reason for which relief should be refused."

A few days later, a Bench of three judges of the Supreme Court in *C.A. Abraham* v. *Income-tax Officer* (6), observed as follows:—

> "In our view the petition filed by the appellant should not have been entertained. The Income Tax Act provides a complete machinery for assessment of tax and imposition of penalty and for obtaining relief in respect of any improper orders passed by the Income-tax authorities, and the appellant could not be permitted to abandon resort to that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Tribunal."

In the peculiar situation created by High Court in entertaining the petition and granting leave to

(6) A.I.R. 1961 S.C. 609.

appeal in that case, however, the Supreme Court went into the merits and did not feel justified at that stage in dismissing the appeal *in limine*. Hidayatullah and Shah JJ., who were parties to this Judgment were, it may be pointed out, also members of the Bench hearing the *Calcutta Discount Company's case*. In *A. V. Venkate-Swaran* v. *R. S. Wadhwani* (7) the matter was again considered by the Supreme Court. After noticing the argument that the writ petition in that case should have been dismissed *in limine* by the High Court because the aggrieved party had not exhausted all the statutory remedies open to him for having his grievance redressed, Rajagopala Ayyangar, J., spoke thus:—

> "We see considerable force in the argument of the learned Solicitor-General. We must, however, point out that the rule that the party who applies for the issue of a high prerogative writ should, before he approaches the Court, have exhausted other remedies open to him under the law, is not one which bars the jurisdiction of the High Court to entertain the petition or to deal with it, but is rather a rule which Courts have laid down for the exercise of their discretion. The law on this matter has been enunciated in several decisions of this Court but it is sufficient to refer to two cases."

Those two cases are *Union of India* v. *T. R. Varma* (8), and *State of U.P.* v. *Mohammad Nooh* (9), from which relevant passages were reproduced. The learned Judge then proceeded to observe that

(7) A.I.R. 1961 S.C. 1506.
(8) A.I.R. 1957 S.C. 882.
(9) A.I.R. 1958 S.C. 86.

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the existence of other legal remedies was not *per se* a bar to the issue of a writ of *certiorari* and there was no obligation imposed on the Court to relegate the aggrieved party to the other legal remedies available, and finally expressed the Court's opinion thus:—

> "We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court."

That the matter pertains to the sphere of discretion has again been repeated by the Supreme Court in *Collector of Monghyr* v. *Keshav Prasad* (10). The position, as it emerges from the various decisions of the Supreme Court, is that the existence of an alternative remedy is not *per se* a bar to the issue of a writ by this Court which is a matter depending on its discretion to be judicially exercised on the facts and circumstances of each case.

In the case in hand, the petitioner's learned counsel had actually approached the appellate Tribunal and asked for exemption which has been denied for reasons which are not shown to be

(10) A.I.R. 1962 S.C. 1694.

tainted with any infirmity which would attract this Court's writ jurisdiction. The appellate order has been upheld by the revising authority as well. These orders seem to be fully within the competence of the authorities and are not shown to have resulted in grave injustice.

The petitioner's learned counsel has also challenged the vires of section 6(4) of the Act on the ground that this section confers on the prescribed authority completely uncontrolled and unregulated power to re-open past assessments. This according to the learned counsel, invalidates the provision. Sub-section (4) of section 6 is in the following terms:—

"6. * * * * * *
* * * * * *

(4) If the prescribed authority is satisfied that the tax has not been correctly levied, charged and paid, he may after giving the owner a reasonable opportunity of being heard, proceed to levy the amount of tax due and recover the same."

It is clear that the tax to be levied by the prescribed authority under this provision must be in accordance with the statutory provision and in this respect the power conferred is thus fully controlled and circumscribed by the provisions of the statute. The only grievance which the petitioner has pointed out is that this provision does not fix any limit as to time within which the correction in the levy of tax can be made. In support of the challenge, no binding precedent or sound principle of law has been brought to our notice by the learned counsel. There is no constitutional mandate to which our attention

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has been drawn which makes it obligatory on the Legislature to fix a time-limit within which incorrect levy, charge or payment of tax can be corrected. Here again it must be born in mind that revenue is the basic requirement of our Republic both for the purposes of maintaining good social order and for providing the necessary amenities to the citizens. The scheme of the Act and the Rules shows that it is the owner of transport vehicle concerned who has to collect the tax in question and to pay it to the State Government in the prescribed manner. The State has thus primarily to depend on the honesty of such assessees for the collection of the tax. In this background, in my opinion, mere failure of fixing any time-limit in sub-section (4) of section 6 for proceeding to levy the amount of tax due cannot be considered to be so harassingly unreasonable as to affect its constitutional validity, assuming challenge on such a ground to be permissible of which, as at present advised, I am far from convinced. It is a matter of legislative policy with which this Court is not concerned and indeed to review legislative policy in such matters would virtually be an unconstitutional intrusion into the legislative sphere. Courts, as is axiomatic, are concerned only with the power to enact statutes and not with their wisdom. And then, statutory provision otherwise within the competence of the Legislature must not be lightly struck down as unconstitutional except on clear and cogent grounds, for it implies a judicial determination that the law-makers have acted in disregard of their own limitations.

The contention that this wide power is an unreasonable interference with the fundamental rights of the petitioner has ony to be stated to be rejected, because what the impugned provision

aims at is to control fraud on revenue and this can by no means be construed to be an unreasonable encroachment on the petitioner's fundamental right.

The contention that the assessment order is *prima facie* contrary to law and, therefore, deserves to be quashed has also not appealed to me. The argument raised is that Rule 29 is not attracted in the present case, and , therefore, the assessment is unauthorised. This Rule is in the following terms:—

> "29. Assessment or re-assessment of tax and rectification of clerical or arithmetical mistakes.—If, in consequence of definite information which has come into his possession, the appropriate Assessing Authority discovers that an owner has been under-assessed or has escaped assessment for any year, or tax less than the amount of tax due has been levied in the form of stamps through inadvertence, error or misconstruction or otherwise, the Assessing Authority may, at any time, within a period of three years following the close of the financial year to which it pertains, send a notice to the owner in form P.T.T. 10/P.T.T. 12 and after hearing him and making such enquiry as he considers necessary, may proceed to assess or re-assess as the case may be, and recover the tax payable by him."

The language of this rule covers all cases of under-assessment or escaped assessment, with the result that *prima facie* this provision would appear to be applicable to the case in hand.

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Nothing cogent has been urged to persuade me to exclude the applicability of this rule from the petitioner's case. The contention that the petitioner's case is only covered by Rule 21 and not by Rule 29 is untenable. The former rule deals with assessment and occurs in Chapter VI; its language and context seems to suggest that it is meant for a purpose entirely different from the one for which Rule 29 has been framed. This contention thus also fails.

We have then been invited to go into the merits of the actual assessment and it has been urged that there is no basis for the amount determined by the Assessing Authority. This matter, in view of the foregoing discussion, should be gone into and adjudicated upon under the statutory machinery prescribed, and it is not possible to allow the petitioner to by-pass the appellate and revisional tribunals and the machinery provided by the statute; no special ground having been made out for adopting this course. Such points should properly be agitated before the departmental authorities; *Messrs Nabha Rice and Oil Mills* v. *The State of Punjab and others* (11).

Lastly, it has been submitted that we should, in the peculiar circumstances of this case; direct the appellate Tribunal to hear the appeal without insisting on payment of the amount assessed. In my view, it is not open to us to give any such direction on the facts and circumstances of this case because, as already observed, orders passed by the appellate and revisional authorities have not been shown to be tainted with any such serious infirmity which would justify our interference with them on the writ side. It may also be mentioned that at one stage the learned counsel expressed ignorance about the fate of the appeal :

(11) I.L.R. 1963 (2) Punj. 170 : 1963 P.L.R. 515 at 526.

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whether it had been dismissed on account of non-deposit of tax or it was still pending. In case the appeal has been disposed of, obviously in the present proceedings, we cannot quash the final order passed by the appellate Tribunal. In case it is still pending, it would certainly be open to the petitioner to comply with the orders of the appellate Tribunal and seek redress for his grievance from that quarter.

For the foregoing reasons, this petition fails and is hereby dismissed but without any order as to costs. The other Writ Petitions too, fail and are similarly dismissed.

Khanna, J.

H. R. KHANNA, J.—I agree.

K.S.K.

REVISIONAL CIVIL

Before S. S. Dulat and Prem Chand Pandit, JJ.

NAURANG LAL,—*Petitioner.*

versus

SURESH KUMAR,—*Respondent.*

1964

Jan., 28th.

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13(2) (ii)—Eviction on ground of sub-letting—Sub-letting—Whether must exist at the time application is made.

Held, that section 13 of the East Punjab Urban Rent Restriction Act, 1949, renders a tenant liable to eviction if it is shown "that the tenant has after the commencement of this Act without the written consent of the landlord sublet" the entire building let to him or a portion thereof. It is clear that as far as the point of time is concerned, the only reference is to the "commencement of the Act" and once it is shown that there has been subletting even of a portion of

the building by the tenant subsequent to the enactment of the Act the tenant becomes liable to be evicted. It is not necessary that the sub-letting must be in subsistence at the time the application for eviction is made against the tenant.

Case referred by Hon'ble Mr. Justice Harbans Singh, on 8th January, 1963 to a Division Bench for decision of the important question of law involved in the case. The case was finally decided by the Division Bench consisting of the Hon'ble Mr. Justice S. S. Dulat and the Hon'ble Mr. Justice P. C. Pandit on 28th January, 1964.

Petition under Section 15 (5) of Act 3 of 1949 as amended by Act No. 29 of 1956 for revision of the order of Shri S. C. Mittal, Appellate Authority (District Judge), Hissar, dated 18th December, 1961, affirming that of Shri Jagdish Chander, Rent Controller, Hissar, dated the 13th November, 1960, passing an order of ejectment with costs in favour of the applicant against the respondent.

PREM CHAND JAIN AND J. V. GUPTA, ADVOCATES. for the Petitioner.

B. S. GUPTA AND G. P. JAIN, ADVOCATES, for the Respondent.

JUDGMENT

Dulat, J. DULAT, J.—Suresh Kumar had let a shop in Hissar to Naurang Lal. On the 14th December, 1959 he made an application to the Rent Controller for the tenant's eviction, alleging that the tenant had sublet a portion of the building. The Rent Controller was satisfied that the tenant had sublet a portion of the shop to two different parties on two occasions and he, therefore, ordered the tenant's eviction. This finding was affirmed on appeal by the Appellate Authority. The tenant, Naurang Lal, then filed a revision petition in this Court which was heard by Harbans Singh, J. It was pointed out that the subletting found in the case related to two periods which had ended before the eviction petition was filed and that at the time of the petition, therefore, subletting did not subsist and it was on that ground urged that section 13, sub-section (2) of the East Punjab Urban Rent Restriction Act, on which reliance

had been placed by the landlord, was inapplicable. The findings of fact were that the tenant had sublet a portion of the building to one party during June, 1957, and then again during January and February, 1958, and to another party for a period of about seven months from March to September, 1958, while the application for eviction, as I have mentioned, was made on the 14th December, 1959. It was on these facts argued that the liability of a tenant to be evicted, because he has sublet the building or a portion of it, arises only if the subletting is still in existence when the application for his eviction is made, and reliance was placed on the language of the relevant clause in subsection (2) of section 13 of the Act which runs thus—

> "13. (2) (ii) that the tenant has after the commencement of this Act without the written consent of the landlord—
>
> (a) transferred his right under the lease or sublet the entire building or rented land or any portion thereof".

Harbans Singh, J., was apparently not impressed with this argument, but he found that there was a decision of this Court, *Lekh Ram* v. *F. Chander Bhan-Rajinder Parkash* (1), which supported the submission. The learned Judge, therefore, thought it necessary to refer the tenant's petition to a larger Bench for a more authoritative determination and the petition has, therefore, come before us.

The question is short. Section 13 of the East Punjab Urban Rent Restriction Act renders a tenant liable to eviction if it is shown "that the

(1) I.L.R. 1962 (1) Punj. 641 : 1962 P.L.R. 197.

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tenant has after the commencement of this Act without the written consent of the landlord sublet" a portion of the building let to him. It is clear that as far as the point of time is concerned, the only reference is to the "commencement of the Act", and once it is shown that there has been subletting even of a portion of the building by the tenant subsequent to the enactment of the Act the tenant becomes liable to be evicted. In *Lekh Ram* v. *Chander Bhan-Rajinder Parkash,* (1), however, Falshaw, J., sitting alone, took the view that the implication of this particular provision is that a subletting, which is to form the ground of ejectment, must be one which subsists at the time of the filing of the petition. This implication was read into the Act by the learned Judge on two grounds:—

(1) that the Act was intended for the protection of tenants and it was unreasonable to think that any kind of subletting, however short its period and however old with reference to the eviction petition it may have been, could be a ground for ejectment; and

(2) that the landlord would normally become aware of a subletting in the case of urban property and if he chooses to remain quiet for some time, he is by law to be considered as having waived his right.

When this case was argued before Harbans Singh, J., he was doubtful of the weight of this reasoning and my impression is the same. I say this because the language of the statute seems perfectly clear, and it is unwise and perhaps dangerous to read into it something which is not put there by the

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Legislature. The fact, that the East Punjab Urban Rent Restriction Act is meant as a protection to tenants, does not by itself throw any light on the meaning of any particular provision of the Act, and that meaning has necessarily to be gathered from the language of the provision. Nor is the argument on the ground of waiver of much assistance, for waiver is a fact which must depend on the evidence in a particular case. As I read section 13 of the East Punjab Urban Rent Restriction Act, it seems clear that once a tenant without the landlord's written consent sublets any portion of the building let to him, he is in law liable to be evicted. I am not saying, of course, that in such a contingency the tenant may not be able to show that the landlord had in some manner, whether by waiver or otherwise, forfeited his right to evict him. All I am saying is that the tenant's liability to eviction arises, once the fact of subletting is proved, and there is nothing in the Act to support the suggestion that the subletting must be in subsistence at the time the landlord applies for the tenant's eviction. I am, therefore, unable to agree with the view adopted in *Lakh Ram's case*. The petition before us is not being supported on any other ground and it must, in the circumstances, fail and I would dismiss it with costs.

Pandit, J.

PREM CHAND PANDIT, J.—I agree.

Order of the Court

We grant the tenant (Petitioner) one month time, to vacate the shop.

B.R.T.

REVISIONAL CIVIL

Before S. S. Dulat and Prem Chand Pandit, JJ.

CHUHAR MAL,—*Petitioner.*

Versus

BALAK RAM AND ANOTHER,—*Respondents.*

1964

Jan., 28th.

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13(3) (a) (iii)—Requirement of the landlord to rebuild