three buildings unmistakably was directed towards the same object, namely, the manufacture of Science Instruments. In the circumstances, the Insurance Court correctly held that appellant No. 2 was a factory under the Act.

The question of limitation covering cases of the present category has recently been decided by a Full Bench of this Court in *Messrs United Indian Timber Works* v. *Employee State Insurance and others* (4), in according to which the application preferred by the Regional Director of the Corporation under section 75(2) of the Act is well in time.

The learned counsel for the appellants has not been able to make out any substantial question of law which could justify interference in the orders passed by the Court below in the two applications. Both the appeals fail. The parties are left to bear their own costs.

R. S.

LETTERS PATENT APPEAL

Before S. S. Dulat and S. K. Kapur, JJ.

MESSRS DELHI CLOTH & GENERAL MILLS CO. LTD., AND ANOTHER,—
Petitioners.

versus

DELHI MUNICIPAL CORPORATION OF DELHI AND ANOTHER,—
Respondents.

L.P.A. 145-D of 1963.

March, 24, 1966.

Punjab Municipal Act (III of 1911) as extended to Delhi—S. 121—Schedule of licence fees prescribed—Items 20 and 22—Interpretation of—Letters Patent—Clause 10—Single Judge dismissing writ petition on the ground that matter be raised before the criminal Court wherein proceedings are pending—Whether appealable.

Held, that according to item 20 of the schedule of fees for obtaining licences prescribed under section 121 of the Punjab Municipal Act, 1911, as extended

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(4) I.L.R. (1966) 2 Punj. 291.

to Delhi, a licence fee of Rs. 44 is payable for the user of any place as a factory and a factory means 'any premises or building where a manufacturing process is carried on'. If in a building only a room or two are used for a manufacturing process, then that part of the building would be a 'factory' despite the fact that the whole building is not used for a manufacturing process, and it is for that reason that even a part of a building is included in the definition, but it cannot mean that when a whole building is used for the purpose of a factory, then each room in that building can become a separate factory merely because the manufacturing process in each room is separate.

Held, that item 22 of the said schedule requires a licence fee of Rs. 600 at the most for the user of any premises as an engine house or an electric motor house. This item refers to an 'electric motor house' meant for generating electric power and does not refer to ordinary 'electric motors' used for a manufacturing process. Such electric motors do not generate electricity and are merely machines run with the aid of electric power and Item 22 of the schedule was not designed to cover electric motors used for such a purpose.

Held, that an appeal under clause 10 of the Letters Patent is competent against an order of a Single Judge dismissing the writ petition on the ground that the matter may be raised before the criminal Court in which proceedings are pending. If the appellant is entitled to relief on the grounds taken by it, then the decision of this Court refusing relief finally decides the matter as far as this court is concerned, and viewed in that light the decision of the learned Single Judge would be a 'final order', as it finally puts an end to the appellant's claim as far as the High Court acting under article 226 of the Constitution is concerned.

Letters Patent Appeal under clause 10 *of the Letters Patent from the judgment dated the* 28*th October,* 1963, *of Mr. Justice S. B. Capoor, in Civil Writ No.* 523-*D of* 1960.

N. C. Chatterjee and S. L. Sethi, Advocates, for the Petitioners.

Bishambar Dayal, Advocate, for the Respondents.

JUDGMENT.

Dulat, J.—The Punjab Municipal Act, 1911, section 121, as extended to Delhi, required that any place within a municipality used for certain purposes such as "a soap house, oil boiling house, dyeing house or tannery or as any other manufactory, engine house, storehouse or place of business from which offensive or of unwholesome smells, gases, noises or smoke arise", would require a licence to be

obtained from the committee, and sub-section (3) authorised the committee "to charge any fees according to a scale to be approved by the Deputy Commissioner for such licences." The Delhi Cloth and General Mills Company Limited established and were running certain manufacturing works within the municipality. Four of these were—(1) D.C.M. Chemical Works, (2) D.C.M. Vanaspati Manufacturing Works, (3) D.C.M. Tin Contained Works, and (4) D.C.M. Industrial Area Power House. They, therefore, applied for the grant of necessary licences. They were told that licence fee for the period, 1st October, 1952 to the 31st March, 1954, would be Rs. 4,250-10-0 according to the scale prescribed by the municipality. The Delhi Cloth and General Mills Company Limited pointed out that this was not a correct calculation in accordnace with the prescribed scale and some correspondence then passed between them and the municipality. With effect from the 1st April, 1958, the Delhi Municipal Corporation Act, 1957, came into force and that also provided for licences to be taken out for certain trades and the manufacture of certain articles for which, again, a scale was prescribed. The Corporation claimed that for the period 1st October, 1956 to the 31st March, 1960, the licence fee payable by the company would be Rs. 23,480/66. The company's stand was that according to the prescribed scale only about one thousand rupees were due from them for the period, 1st October, 1956 to the 31st March, 1960, and another small sum of Rs. 132 was payable as renewal fee for 1960-61. This amount was tendered by the company to the Municipal Corporation, Delhi, but it was not accepted. Because of this difference of opinion between the company and the Corporation no licence was actually issued in favour of the company and the upshot was that the Corporation started criminal proceedings against the company under section 417/461 of the Delhi Municipal Corporation Act, 1957. The Delhi Cloth and General Mills Company Limited thereupon brought a writ petition to this court under article 226 of the Constitution questioning the legality of the demand made by the Corporation and praying that the demand be declared illegal and further that the criminal proceeding be quashed.

The difference of opinion appears to have arisen in this way, The municipality had, with the approval of the competent authority, prescribed a scale of lience fees under section 121(3) of the Muni-

payable, there being no dispute about the matter. Item 20 of the schedule mentioned 'iron workshops, button factories and other factories not classified elsewhere' with a licence fee of Rs. 44 and a renewal fee of Rs. 36. D.C.M. Chemical Works fell under this item. The company claimed that for the whole factory one licence fee of Rs. 44 was payable. The Corporation, however, claimed that a separate licence fee of Rs. 44 was payable in respect of each chemical manufactured, as a separate plant had been installed for the manufacture of each separate chemical. Thus for 'Caustic soda and chlorium plant' the Corporation claimed a fee of Rs. 44 and for the 'superphosphate plant' another Rs. 44 and for 'sulphric acid plant' a separate fee of Rs. 44 and so on. The Corporation's claim rested on the fact that separate chemicals were being manufactured with the aid of separate plants set up in separate buildings or separate rooms in the building. Mr. Chatterjee appearing for the company told us that this company would not have seriously protested even against this claim of the Corporation, as the total sum involved was not large, although in principle the corporation's claim, according to learned counsel, was unsustainable. The real controversy arose about another matter. Item 22 of the schedule mentioned 'engine and electric motor houses' and the fee prescribed was Rs. 14 or every unit of one Horse Power or part thereof with a minimum of Rs. 12 and maximum of Rs. 600. The company was running a power house called 'D.C.M. Industrial Area Power House' and they were willing to pay the licence fee of Rs. 600. The Corporation, however, claimed that this fee of Rs. 600 was payable not only in respect of the electric power house but also in respect of each electric motor installed in the Chemical Works. Thus a licence fee of Rs. 600 was claimed in respect of the electric motor installed for manufacturing caustic soda and another Rs. 600 for the electric motor installed in the Vanaspati Manufacturing Works, and another Rs. 125 for the electric motor installed for the manufacture of superphosphate and another Rs. 108 for the electric motor meant for sulphuric acid plant and so on, making a total of about Rs. 1,800, apart from Rs. 600 claimed in respect of the power house. This claim the company resisted and in the writ petition brought to this court objection was taken against the levy of such fee on two grounds—(1) that the Corporation's claim, rested on a misreading of the schedule of fees prescribed by the Municipality, and (2) that if the schedule actually meant what the Corporation claimed, then the levy ceased to be a 'licence fee' and became a 'tax' which could

not be imposed by the Municipality under section 121 of the Municipal Act. The first objection thus concerned the proper interpretation of the schedule of fees while the second objection went beyond that matter and raised a constitutional issue. The writ petition was heard by Capoor, J., who, without going into the merits of the dispute, came to the conclusion that a writ ought not to issue in this case and he reached that conclusion mainly on the ground that criminal prosecution was pending against the petitioning company and the objections raised against the Corporation's claim could be raised before the criminal court and the matter thus decided in a court of law. The learned Judge found that quashing a criminal proceeding through a writ of this kind was improper as there was no extraordinary feature involved in the case. It is against that decision of the learned Judge that the present appeal under clause 10 of the Letters Patent has been brought on behalf of the Delhi Cloth and General Mills Company Limited.

Mr. Bishambar Dayal, appearing for the Corporation, raised a preliminary objection on the ground that nothing has been decided by the learned Single Judge concerning the merits of the dispute and his decision declining to issue a writ in the circumstances of the case can hardly be called a 'judgment' or a 'final order' and no appeal is, therefore, competent. It is, however, clear that if the appellant company is entitled to relief on the grounds taken by it, then the decision of this court refusing relief finally decides the matter as far as this court is concerned, and viewed in that light the decision of the learned Single Judge would be a 'final order', as it finally puts an end to the appellant's claim as far as this court acting under article 226 of the Constitution is concerned. It is, in the circumstances, not possible to agree that the order appealed against is not a 'final order'.

The next objection by Mr. Bishambar Dayal is that the learned Single Judge has at the most exercised his discretion in a matter which was abviously within his discretion and the exercise of such discretion does not call for any interference. This would depend upon whether the learned Single Judge was right in assuming that an equally efficacious alternative remedy was available to the appellant-company. It is admitted that criminal prosecution is pending but what has been overlooked is that the criminal prosecution is on account of the user of certain places for certain purposes without a proper licence. The appellant-company admits that certain places have been used by it for certain prohibited purposes without a proper licence. It is, therefore, difficult to see what defence against this particular charge the company can make in the criminal court. Its

claim, of course, is that the licence fee claimed by the Corporation is not legally due, but, even if that claim were to succeed, it would hardly be a defence to the criminal charge which merely alleges that the appellant-company has been using certain places for certain purposes without a licence. I am, in the circumstances, far from convinced that the contention or the claim, which the appellant-company is making in this court at present, can be successfully urged in the criminal court in defence of the charge, and it may well turn out that such a claim is entirely irrelevant in the criminal court. Further, it is clear that one of the contentions raised on behalf of the appellant-company is that constitutionally the Municipality, and, later on, the Corporation were incompetent to levy a fee which, in fact, is a tax. The decision of such a question would involve the interpretation of the Constitution and if such a plea were to be raised in the criminal court, that court would be incompetent to decide it and would have to refer the matter to this Court. So far as I can see, therefore, the alternative remedy suggested in this case seems neither open nor very appropriate, and, that being so, the learned Single Judge was not, in my opinion, justified in declining to go into the merits of the appellant's claims.

The question then is whether the appellant's claim is legally well founded. The controversy, first, is about the meaning of the schedule of licence fees. It is clear that a licence fee of Rs. 44 is payable for the user of any place as a factory and a factory, it is common ground, means 'any premises or building where a manufacturing process is carried on'. D.C.M., Chemical Works is thus clearly a 'factory'. Mr. Chatterjee contends that for the purposes of a licence and, therefore, licence fee, the entire works is to be considered as one factory for which one licence is required and one licence fee of Rs. 44 payable. Mr. Bishambar Dayal for the Corporation says that every building in that factory, in which a separate manufacturing process is carried on, would be a factory and even a separate room used for a separate manufacturing process would be a factory and since separate chemicals are being manufactured in separate places or in separate rooms, there are not one but several factories existing. This, in my opinion, is an unreasonable interpretation, for, if accepted, it would mean that if a factory were to consist of thirty or forty separate rooms in which, as is usual in modern industry, separate manufacturing processes are carried on, separate licences would be required and separate licence fees chargeable. The schedule of fees, as

framed under section 121(3) of the Punjab Municipal Act, was never, in my opinion, intended to operate in that way. It is quite true that if in a building only a room or two are used for a manufacturing process, then that part of the building would be a 'factory' despite the fact that the whole building is not used for a manufacturing process, and it is for that reason that even a part of a building is included in the definition, but it cannot, in my opinion, mean that when a whole building is used for the purpose of a factory, then each room in that building can become a separate factory merely because the manufacturing process in each room is separate. If the facts of the present case are looked at squarely, it seems to me totally unreasonable to say that there exists not one chemical works or, in other words, one factory but several chemical works because several chemicals are being manufactured. I say this because the unit is, in reality, one and a licence is required for the user of this particular place as a chemical works. In my opinion, therefore, only one licence fee is chargeable within the meaning of the schedule of fees.

Taking up the other question regarding a fee of six hundred rupees for every electric motor, the position seems to me even clearer. Item 22 of the schedule requires a licence fee of Rs. 600 at the most for the user of any premises as an engine house or an electric motor house. The appellant-company is running a power house or, in other words, an electric motor house and a fee of six hundred rupees is on that account admittedly payable. The Corporation, however, claims a similar fee for the use of electric motors installed in several rooms of the Chemical Works and the Vanaspati factory. The error, I think, lies in confusing an 'electric motor house' with an ordinary 'electric motor', for, as I understand it, item 22 of the schedule refers to an 'electric motor house' meant for generating electric power and does not refer to ordinary 'electric motors' used for a manufacturing processes. Such electric motors do not generate electricity and are merely machines run with the aid of electric power and Item 22 of the schedule was not designed to cover electric motors used for such a purpose. Reliance was placed by Mr. Bishambar Dayal on an explanation added to the schedule which says—

> "An engine or electric motor house licence shall have to be obtained in addition to the licence required for running trade in question."

This, however, properly understood, only means that if there is an electric motor house generating electricity, a separate licence fee

calculated in accordance with the Horse Power of such a generator will be payable, apart from the fee payable for running the trade in which electric power may be used. It does not mean that apart from an engine house or an electric motor house, a similar licence fee of six hundred rupees is chargeable in respect of a factory where electric motors may be used. There is, therefore, no warrant for the Corporation's claim that this fee of six hundred rupees or any other similar fee calculated on the basis of Horse Power is payable in respect of the electric motors used in the factories of the appellant-company. It is of some significance in this connection that the Delhi Municipal Corporation Act, which is in force since the 1st of April, 1958, does not authorise the charging of any such fee. Mr. Bishambar Dayal contended in this connection that, under the Delhi Municipal Corporation Act, fees, which were in force under the Punjab Municipal Act, were to continue, but that overlooks the fact that only such fees were to continue as were not inconsistent with the provisions of the Corporation Act and if the Corporation Act does not authorise the levy of such fee on electric motors, then that levy would be inconsistent with the new Act and, therefore, no longer in force.

On a proper interpretation of the schedule fees, therefore, it appears to me that the appellants' claim is well founded. This is really sufficient to decide the present case. If, however, the Corporation's reading of the schedule of fees were acceptable, a more fundamental question would arise which has been taken on behalf of the appellant-company, for their claim is that if the licence fee really chargeable under the schedule is so large as demanded by the Corporation and a large part of it is assessable on the basis of the Horse Power of the various electric motors installed in their factories, then this levy cannot be called a 'licence fee' but would be a 'tax' for augmenting the revenues of the Corporation. It is unnecessary to go into that question in the present case except perhaps to mention that the contention on behalf of the appellants is not without foundation, for a Full Bench of this Court in *The State of Punjab* v. *The Model Woollen and Silk Mills, Verka and another* (1), did arrive at a similar conclusion on grounds closely resembling those taken on behalf of the appellant-company. As I have said, extra licence fee claimed by the Corporation does not appear to me justified by the terms of the schedule of fees nor by the provisions of the Delhi Municipal

(1) I.L.R. (1962) 1 Punj. 655 = 1962 P.L.R. 179.

Corporation Act and I am on the question of interpretation alone prepared to say that the appellants are not liable to pay either a separate fee of Rs. 44 for each manufacturing process in the Chemical Works or any separate licence fee on the electric motors used in their factories, except, of course, in the case of the power house.

Mr. Chatterjee does not ask us to quash the criminal proceedings pending against the appellant-company, and there is really no occasion for us to do so. That matter can be, and must necessarily be, dealt with by the criminal court where the prosecution is pending.

For these reasons, I would allow this appeal and, accepting the writ petition, direct that the extra licence fee indicated above must not be charged and a writ should issue accordingly. Considering the circumstances, the parties should, in my opinion, be left to their own costs and I would so order.

S. K. Kapur, J.—I agree.

B.R.T.

APPELLATE CIVIL

Before Daya Krishan Mahajan, J.

TARA CHAND,—*Appellant.*

versus

VISHAN DASS AND ANOTHER,—*Respondents.*

E.S.A. No. 1364 of 1962.

March 25, 1966

Code of Civil Procedure (V of 1908)—S. 73 and O. 21 R. 72—Property of judgment-debtor ordered to be sold in execution of a decree—Decree-holder of the judgment-debtor in another decree applying for rateable distribution—Whether competent to purchase the property in execution sale.

Held, that according to section 73 of the Code of Civil Procedure, the appellant had made an application for execution of his decree to the Court and in that application had prayed for rateable distribution. Therefore the property was also being sold in the execution of his decree and his case strictly fell under Order 21 Rule 72. He could not, therefore, bid at the auction-sale and purchase the property without obtaining leave of the Court.