M/s Ballimal Nawal Kishore *versus* The Commissioner of Income-tax, Punjab, Jummu & Kashmir and Himachal Pradesh

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credit Rs. 60,000.00 in the current account of his father and Rs. 40,000.00 in the current account of his mother, which they already had with the firm. The father and mother were credited with certain sums as interest at the end of the year and the mother also withdraw a substantial amount from the sums standing to her credit. J. S. Ranawat and D. M. Bhandari, JJ., of the Rajasthan High Court held that in spite of the fact that there was only a cash balance of Rs. 603.00 with the firm, the debit of Rs. 1,00,000.00 in the account of the partner and the credit entries of Rs. 60,000.00 and Rs. 40,000.0 made in the accounts of his father and mother operated as valid gifts.

The principles deducible from the study of these decisions appear to be that the validity of a gift made by way of debit and credit entries in the account books of a firm of which the donor is a partner must depend entirely on whether in the circumstances this is a natural method of transfer, and it is certainly not necessary for the donor to withdraw sums in cash from the firm to be reinvested by the donee or donees in the firm. Once the *bona fides* of the gift or gifts is accepted, there remains little or no difficulty in accepting the validity in ordinary circumstances. The statement of facts in the present case shows that if the parties had wished, the cash could have been realised and given to the donees, but this was not necessary and the amounts of the gifts were credited in their already existing accounts, and sums had been withdrawn by some of the donees from the amounts standing to their credit in the year following the gifts. In the circumstances I am of the opinion that the question referred to us must be answered in favour of the assessee and in the affirmative. The assessee will receive his costs from the Commissioner. Counsel's fee Rs. 250.00.

Mahajan, J.

D. K. MAHAJAN, J.—I agree.

B.R.T.

LETTERS PATENT APPEAL

Before D. Falshaw, C.J., and D. K. Mahajan, J.

BALWANT SINGH,—*Appellant*

versus

SODHI LAL SINGH AND OTHERS,—*Respondents*

Letters Patent Appeal No. 281 of 1963

1966

January 18th.

Punjab Security of Land Tenures Act (X of 1953)—S. 14-A—Tenant admitting arrears of rent due from him to the landlord to be less than the amount demanded by the landlord—Assistant

Collector holding the amount admitted by the tenant to be the amount due—Tenant depositing the amount as landlord refused to accept it—Tenant—Whether liable to be ejected for failure to pay the amount within thirty days of the service of notice in Form "N"—Constitution of India (1950)—*Art.* 226—*Financial Commissioner taking a wrong view of the law—Petition for a writ of* certiorari—*Whether competent.*

Held, that the words in section 14-A(ii) of the Punjab Security of Land Tenures Act, 1953, "or give proof that he is not liable to pay the whole or part of the rent", and the similar words as appear in clause (3), in the demand notice, clearly mean that where the amount demanded by the landlord is in excess of the amount due, there is no obligation on the tenant to pay the amount which he admits to be due before the matter has been determined by the Assistant Collector, and in this case, after the matter was decided by the Assistant Collector in favour of the tenant and the amount to be due had been tendered in Court and not accepted by the landlord, the amount was deposited in the treasury on the next day on which it was open after the date of the determination of the amount due and so the tenant was not liable to ejectment on the ground that he failed to pay or deposit the rent due within thirty days of the service of the notice in Form "N" on him.

Held, that the Financial Commissioner cannot review his order on the ground that he had taken a wrong view of the law, and the proper remedy of the appellant was by way of a writ petition for certiorari to this Court, which can interfere in such matters where a patently wrong view has been taken, as in the present case.

Letters Patent appeal under Clause 10 *of the Letters Patent against the judgment, dated the* 31*st July,* 1963, *passed by the Hon'ble Mr. Justice Harbans Singh, in Civil Writ No.* 633 *of* 1963.

K. C. PURI, AND J. K. SHARMA, ADVOCATES, for the Appellant.

N. L. DHINGRA AND S. K. PIPAT, ADVOCATES, for the Respondents.

JUDGMENT.

FALSHAW, C.J.—Ths is an appeal filed by Balwant Singh, under clause 10 of the Letters Patent against the order of Harbans Singh, J., dismissing his petition filed under Articles 226 and 227 of the Constitution. Falshaw, C.J.

The facts are not in dispute. Sodhi Lal Singh, respondent applied to the Assistant Collector, Second Grade,

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Moga, under section 14-A(ii) of the Punjab Security of Land Tenures Act, 1953, for the recovery of Rs. 900.00 from Balwant Singh appellant as the tenant of certain land for the harvests of *kharif* 1959 and *rabi* 1960 and a notice of demand in the prescribed form 'N' was issued to Balwant Singh and served on him on the 6th of November, 1960. He disputed the correctness of the amount demanded and claimed that only a sum of Rs. 605 was due, the annual rent of the land, which was 88 *kanals* or 11 acres in extent, being Rs. 55 per acre. By his order, dated the 30th of December, 1960, the Assistant Collector held that the rent due was in fact Rs. 605 and in his order he recorded the fact that the amount was tendered to the landlord by the tenant. He directed the landlord to accept the amount tendered on issuing a receipt or alternatively the tenant was directed to deposit the amount in Court. It appears that the landlord did not accept the tender made on the 30th of December, 1960, and the amount was deposited in the treasury at Moga on the 2nd of January, 1961, the two intervening days—the 31st of December, 1960 and the 1st of January, 1961—being holidays.

The landlord appealed to the Collector, who by his order dated the 14th of April, 1961, upheld the order of the Assistant Collector. The landlord then went in revision to the Commissioner, who by his order dated the 4th of July, 1962, took the view that the tenant was liable to ejectment because he had not paid the amount admittedly due from him within thirty days of the receipt by him of the notice in form 'N' (the 6th of November, 1960) and he accordingly recommended to the Financial Commissioner that the orders of the Collector and the Assistant Collector should be set aside. His recommendation was accepted by the learned Financial Commissioner by his order dated the 11th of October, 1962.

On the writ petition of Balwant Singh, the learned Single Judge refused to interfere on the grounds that certain observations by a learned Financial Commissioner in the case reported as *Kalu Ram* v. *Ujagar Singh and others* (1), to the effect that where there is a dispute between a landlord and a tenant regarding the amount of

(1) 1960 L.L.T. 65.

rent due, the tenant can pay the amount arrived at by the Assistant Collector within thirty days from the determination of the rent by him, were merely obiter and that in any case the proper remedy for the tenant was to approach the Financial Commissioner for the review of his order.

In my opinion there can be no doubt that a wrong view of the law has been taken by the learned Commissioner and the learned Financial Commissioner in this case. Section 14-A(ii) of the Act reads:—

> "A landowner desiring to recover arrears of rent from a tenant shall apply in writing to the Assistant Collector, Second Grade, having jurisdiction, who shall thereupon send a notice, in the form prescribed, to the tenant either to deposit the rent or value thereof, if payable in kind, or give proof of having paid it or of the fact that he is not liable to pay the whole or part of the rent, or of the fact that the landlord refused to receive the same or to give a receipt, within the period specified in the notice. Where, after summary determination, as provided for in subsection (2) of section 10 of this Act, the Assistant Collector finds that the tenant has not paid or deposited the rent, he shall eject the tenant summarily and put the landowner in possession of the land concerned".

The relevant portion of the demand notice in form 'N' reads—

> "You are now required, within a month of the receipt of this notice, to—
>
> (1) deposit the rent or the value thereof (if rent payable in kind) in this Court; or
>
> (2) give proof of having paid the rent; or
>
> (3) give proof of not being liable to pay the whole or part of this demand; or
>
> (4) give proof of the landlord's refusal to receive the rent or give a receipt for it."

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Admittedly the matter was only determined by the Assistant Collector on the 30th of December, 1960, but it is nowhere suggested that the tenant has not entered his objection to the amount of the demand within thirty days of the receipt by him of the landlord's notice. The words in section 14-A(ii) "or give proof that he is not liable to pay the whole or part of the rent", and the similar words as appear in (3) in the demand notice, clearly mean that where the amount demanded by the landlord is in excess of the amount due, there is no obligation on the tenant to pay the amount which he admits to be due before the matter has been determined by the Assistant Collector, and in this case, after the matter was decided by the Assistant Collector in favour of the tenant and the amount to be due had been tendered in Court, and not accepted by the landlord, the amount was deposited in the treasury on the next day on which it was open after the date of the determination of the amount due.

The cases cited on behalf of the respondent do not help him in any way. The first of these is the decision of Tek Chand, J., in *Dhanna* v. *Sri Parkash and others* (2), in which the facts were that the landlord had applied to the Assistant Collector who by his order dated the 9th of January, 1961, had determined the amount of rent due as Rs. 350.02 nP., and had ordered the tenant to pay the amount within one month of the date of his order on pain of ejectment. The tenant did not make the deposit within time, and when his appeal was dismissed by the Collector on the 13th of June, 1961, a period of ten days was allowed for him to deposit the amount. The learned Judge merely held that the Collector had no power to extend the time fixed by the Assistant Collector for depositing the rent. In more or less similar circumstances the same view was taken by Grover, J., in *Atma Singh and another* v. *Financial Commissioner, Punjab, and others* (3). The last case relied upon was the decision of S. B. Capoor, J., in *Amar Nath* v. *Hans Raj* (4). In that case the amount of rent demanded by the landlord, Rs. 1,000 was upheld by the Assistant Collector, who nevertheless allowed the tenant one month's time to deposit the amount but he did

(2) I.L.R. (1962)2 Punj. 895=1962 P.L.R. 855.
(3) (1965)44 LL.T. 18.
(4) 1966 P.L.J. 1.

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not do so. The learned Judge expressed the opinion that in such circumstances the Assistant Collector had no jurisdiction to extend the time fixed in the notice. None of these cases bears any resemblance to the present case on matters of facts.

As regards the view of the learned Single Judge that the proper remedy of the appellant, if the view taken by the learned Commissioner and the learned Financial Commissioner was wrong, was by way of a review petition to the learned Financial Commissioner, I do not find myself in agreement. In fact I am of the opinion that the learned Financial Commissioner could not review his order on the ground that he had taken a wrong view of the law, and the proper remedy of the appellant was by way of a writ petition for certiorari to this Court, which can interfere in such matters where a patently wrong view has been taken, as in the present case. The result is that I would accept the appeal with costs and quash the orders of the Financial Commissioner and the Commissioner.

Mahajan, J.

D. K. MAHAJAN, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

M/S MEHAR SINGH PARTAP SINGH,—*Petitioner*

versus

THE ASSESSING AUTHORITY AND ANOTHER,—*Respondents*

Civil Writ No. 859 of 1964

1966

January 18th.

Punjab Urban Immovable Property Tax Act (XVII of 1940)—S. 4(1)(g)—Punjab Urban Immovable Property Tax Rules (1941)—Rule 18—Factory doing cotton ginning—Whether carries on manufacturing process and is exempt from payment of tax.

Held, that the definition of a "factory" given in the Factories Act is more or less the same as given in Rule 18 of the Punjab Urban