State of Punjab & Another

Vs

British India Corporation Ltd.

Civil Appeal No. 639 of 1961

(S. K. Das, A. K. Sarkar, K. C. Das Gupta JJ)

15.02.1963

JUDGMENT

DAS GUPTA J. -

These two appeals raise the question whether certain buildings belonging to the respondent the British India Corporation Ltd., in one appeal and the respondent Shri Gopal Paper Mills Ltd., in the other appeal, are liable to taxation under the Punjab Urban Immovable Property Tax Act 1940. The buildings in both these cases are situated in the rating area shown in the Schedule to the Act and would consequently be liable to taxation under s. 3 of the Act unless the exemption provided in s. 4 of the Act is available. The section provides that the tax shall not be levied in respect of the properties mentioned in cls. (a) to (g) thereof. Clause (g) mentions "such buildings and lands used for the purpose of a factory as may be prescribed. "Prescribed" has been defined as 'prescribed by the rules made under the Act.' Rule 18 of the Punjab Urban Immovable Property Tax Rules, that were framed by the Punjab Government in 1941, prescribed buildings and lands for the purpose of cl. (g) of s. 4.

The Assessing Authority rejected the claims for exemption made by the respondents and assessed the buildings for the purpose of taxation. The appeals to the Deputy Excise and Taxation Commissioner were unsuccessful. The respondents then moved the Punjab High Court under Art. 226 of the Constitution praying that the order of the Taxation Commissioner be quashed. In both the cases the High Court held that the petitioners were entitled to the exemption prayed for and quashed the orders of assessment. The question in these appeals therefore is whether the High Court was right in its view that the buildings of the respondents come within the class which has been prescribed for exemption by Rule 18 of the Punjab Urban Immovable Property Tax Rules, 1941. The relevant portion of this Rule, which has been altered from time to time, stood thus in 1956 when the assessment order was made : -

> "18. (1) Under the provisions of clause (g) of sub-section (1) of s. 4 of the Act, all buildings and lands used for the purpose of a factory, which are owned by the proprietors of such factory, shall be exempt from the tax, if a manufacturing process involving the use of power is being and has been carried on therein for a continuous period of six months, or in the case of a seasonal factory since the commencement of the working season.
>
> ....
>
> (4) The exemption provided by sub-rules (1) and (2) shall not extend to -

(i) godowns outside the factory compound;

(ii) godowns, shops, quarters or other buildings, whether situated within or without the factory compound, for which rent is charged either from employees of the factory or from other persons; and

(iii) bungalows or houses intended for or occupied by the managerial or superior staff whether situated within or without the factory compound."

There is a proviso to sub-rule (1) with which we are not concerned. We are also not concerned with sub-rules (2) and (3) of Rule 18.

The effect of this Rule therefore is that buildings belonging to the proprietors of the factory will get the benefit of exemption from taxation under s. 4 of the Act provided three conditions are satisfied : (1) the building must be used for the purpose of a factory; (2) the factory must be one where a manufacturing process involving the use of power is being and has been carried on for a continuous period of six months; and (3) a) no rent is being charged for the buildings; (b) it is not a godown outside the factory compound, or (c) it is not a bungalow or house intended for or occupied by the managerial or superior staff. In the present case there is no dispute that the second condition was satisfied, viz., that the factory was one in which manufacturing process involving the use of power was being and had been carried on for a continuous period of six months. Admittedly, also the building was not a godown outside the factory compound nor was it a bungalow or house intended for or occupied by the managerial or superior staff. The controversy is limited thus only to two questions. (1) Whether the building was used for the purpose of a factory and (2) whether rent was being charged for it.

Before we examine the facts of the two cases for solving the controversy we have to arrive at the correct interpretation of the words "used for the purpose of a factory" and the word "rent" in the Rule.

It is neither necessary nor desirable to attempt to define what amounts to "use for the purposes of a factory." That the legislature left this undefined is a good indication that the intention of the legislature was to have the question decided, in any case where controversy arises over it, on a consideration of the facts of the case. It appears to us to be reasonable to think, however, that two principles will be easy of application in the solution of the problem in the majority of cases. One is that where the building is used for a purpose which the factory law requires must be fulfilled in order that the factory may function, that will be user for the purpose of a factory. The other is that where the user of the building is such as is necessary for the efficiency of the machines or of the workmen engaged in the factory the building should be held to be used for the purpose of a factory.

The 5th Chapter of the factories Act contains numerous provisions for the welfare of workmen employed in the factory. Section 42 requires that adequate and suitable facilities for washing shall be provided and maintained for the use of the workers in every factory. It empowers the State Government to prescribe standards of the facilities to be provided. Section 43 empowers the State Government to make rules in respect of any factory or class or description of factories requiring the provision "of suitable places for keeping clothing not worn during working hours and for the drying of wet clothing." Section 46 empowers the State Government to make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.

Section 47 requires that in every factory employing more than one hundred and fifty workers "adequate and suitable shelters or rest rooms and a suitable lunch room, with provision of drinking water, where workers can eat meals brought by them shall be provided and maintained for the use of the workers." Section 48 requires the provision and maintenance of a "suitable room or rooms for the use of children under the age of six years of such women" employed in the factory if more than fifty women are employed ordinarily. Section 92 makes the contravention of any of the provisions of the Factory Act or of any Rule made thereunder or any order in writing given thereunder punishable with imprisonment or fine.

It is obvious therefore that in order that a factory may function in accordance with law buildings or parts of buildings have to be provided by the owner for the use of the workmen for the purposes mentioned in the several sections mentioned above. Such use of these buildings must therefore be held to be "use for the purpose of a factory."

Advances in scientific knowledge as to how the industrial efficiency can be improved have made it clear that even other facilities and amenities, other than those required by the factory legislation, conduce in a great measure to a rise in the efficiency of the industrial worker and that some of these are indeed necessary to the maintenance of a proper standard of efficiency. Many enlightened employers of labour, taking a long view of things have therefore invested considerable sums of money for the provision of such facilities and amenities even though not required by law and have raised buildings for that purpose. In our opinion, the use of buildings for the provision of such facilities and amenities which are necessary to the maintenance of a proper standard of efficiency of the factory workers must also be held to be "use for the purpose of a factory." The learned Advocate-General, who appeared for the State of Punjab, readily agreed that when a building is provided for the use of the machinery in order that the machinery may function efficiently or that it may not deteriorate, the building is being used "for the purpose of a factory". He is reluctant however to apply a similar rule to a building used for the purposes of maintaining the efficiency of the men who work the machinery. We are unable to see any reasonable ground for this differentiation. Just as the use of a building for a purpose which maintains the efficiency of the machines is a user for the purpose of a factory, so also, we are convinced, is the user of a building for the purpose of providing something which is necessary for maintaining the efficiency of the workers.

A large number of cases were cited at the Bar to show how the English courts have understood the words "industrial purpose" or "purpose other than the manufacturing process or handicraft carried on in the factory" in connection with the Rating and Valuation (Apportionment) Act, and the Factory Act 1901. No useful purpose will be served by discussing all these cases as the schemes of those Acts are largely different from out Act. We shall refer only, however, to the decision in London Co-operative Society Ltd., v. Southern Essex Assessment Committee [(1942) 1 K.B. 53.], to indicate the tendency of the English courts in more recent times to attach importance to what is necessary for the welfare and efficiency of the workers in deciding the question.

There was a place of refreshments for persons employed in a laundry which was qualified as a factory and workshop and therefore was an "industrial hereditament". The question was whether this refreshment place was "solely used for some purpose other than the manufacturing process or handicraft, carried on in the laundry". The Kings Bench answered this question in the negative. Viscount Caldecote, C.J. said that applying the up-to-date considerations in the equipment and layout of a factory, the Canteen was not a place which was "solely used for some purpose other than the manufacturing process or handicraft carried on in the laundry." His Lordship observed that these

considerations might assist in the determination of the character of parts of a factory like - a lavatory, or a room where surgical first aid is provided or a cloak-room, or a number of other parts of the hereditament. Tucker J. agreed with this conclusion and observed :-

> "The element which, to my mind, is decisive is that the facts stated show that the canteen was necessary and essential for the welfare and efficiency of the workers engaged in the admittedly industrial part of the undertaking."

For applying the two principles mentioned above to the facts of these two appeals, we have to ascertain to what use the property in question has been put. In the first appeal (in which the British India Corporation Ltd. is the respondent) we are concerned with four units : (1) A set of rooms used for indoor games by the mill employees; (2) One big hall used as the Gurkha Guards Club; (3) A set of rooms used as Officers' Club, and (4) A set of rooms used as residential quarters by workers of the mills.

In our opinion, the allotment of these buildings for the use of the workmen was made for a purpose which was necessary to the efficiency of the workmen.

The property assessed in the other appeal (in which Shri Gopal Paper Mills Ltd., is the respondent) consists of 200 quarters which have been allotted to workers of the factory for their occupation. The provision of such quarters is clearly necessary to the welfare and efficiency of the workmen and it must be held that in this case also the buildings were being used for the purpose of a factory.

The next question is : what is the meaning of "rent" in cl. (ii) of Rule 18(4). In its wider sense rent means any payment made for the use of land or buildings and thus includes the payment by a licensee in respect of the use and occupation of any land or building. In its narrower sense it means payment made by tenant to landlord for property demised to him. Did the rule-making authority when providing that the exemption provided by sub-rules 1 and 2 of Rule 18 shall not extend to quarters and other buildings for which "rent" is charged, used the word in its wider sense or in its narrower sense ? In seeking an answer to this question it is legitimate to examine the use of the word "rent" in the Act for which these rules were made. At the time the rules were first made in 1941 the Act used the word "rent" only in two sections. First, in s. 5, where in providing how the annual value of land or building shall be ascertained the legislature said that it shall be ascertained "by estimating the gross annual rent at which such land or buildings.................................. ....might reasonably be expected to let from year to year". It is absolutely clear that here the word "rent" is used in its strict and narrower sense of payment by tenant to landlord for demised property. The other section where the word "rent" occurs is s. 14, where in providing for recovery of tax in arrears the legislature said : "............ it shall be lawful for the prescribed authority to serve upon any person paying rent.................. to the person from whom the arrears are due, a notice stating the amount of such arrears of tax and requiring all future payments of rent by the person paying the rent to be made direct to the prescribed authority............and also providing that such notice shall operate to transfer to the prescribed authority the right to recover, receive and give a discharge for such rent". While the section itself leaves it doubtful whether the word "rent" has been used in the narrower or the wider sense, the marginal note describes the subject-matter of the section thus : "Recovery of tax from tenants." If this note is taken into consideration it becomes clear that in this section also the word "rent" was used in its narrower sense to mean payment made by tenant to landlord for demised property.

When in 1941 the rule-making authority set about framing the Rules, it had before it this clear use

of the word "rent" in its narrower sense in s. 5 and the marginal note in s. 14 which was some indication that there also the word "rent" was used in the narrower sense. In the absence of anything to indicate the contrary, it would be reasonable to think that the rule-making authority would not depart from the meaning in which it had reason to believe that the legislature had used the word, and that it used the word in cl. (ii) of Rule 18(4) in the same narrower sense of payment by tenant to landlord for demised property.

Our conclusion therefore is that the word "rent" in cl. (ii) of Rule 18(4) means payment to a landlord by a tenant for the demised property and does not include payments made by licensees.

In coming to this conclusion we have not over-looked the fact that there is scope for an argument that in cls. (d) and (e) of s. 4 of the Act as they stand after the amendments in 1954 and 1957, respectively, the word "rent" has been used in the wider sense. Assuming that this is so, such use of the word in 1954 and 1957 cannot be taken into account for the purpose of interpretation, as the Rule under consideration was framed long before these dates.

Coming now to the facts of the two cases before us, we find that admittedly, in both the cases the property that has been assessed was allowed to be used by the employees on leave and license. Whatever payment was received from them was not therefore "rent" within the meaning of cl. (ii).

Our conclusion therefore is that no tax is leviable under the Punjab Urban Immovable property Tax Act, 1940, in respect of the buildings in these two appeals. The High Court therefore rightly quashed the orders of assessment. The appeals are accordingly dismissed with costs.

Appeals dismissed.

</html