1961

July 28.

KANSHI RAM JAGAN NATH AND OTHERS

*v.*

THE STATE

(P. B. GAJENDRAGADKAR, K. SUBBA RAO, M. HIDAYATULLAH, J.C. SHAH and RAGHUBAR DAYAL, JJ.)

*Excise Duties—Law of erstwhile Indian State providing for royalty on bricks—Extension of Indian excise law to the State on merger with part B State—Effect on prior law—Levy of royalty, if repealed—Central Excises and Salt Act, 1944 (1 of 1944), ss. 2(d) 3(1)—Finance Act, 1950 (25 of 1950), ss. 11, 13 (2).*

The Council of Regency of the erstwhile State of Patiala issued an order dated February 6, 1919, imposing a royalty on bricks from all kiln-owners at the rate of Rs. 50 per one lakh. After the State of Patiala became merged with the Patiala and East Punjab States Union, a Part B State under the Constitution of India, the Finance Act, 1950, which came into force on April 1, 1950, became operative in that State. By virtue of s. 11 of that Act the Central Excises and Salt Act, 1944, was extended, inter alia, to Part B States, while under s. 13(2) it was provided that if immediately before April 1, 1950, there was in force in any State a law corresponding to but other than an Act referred to in s. 11 such law became repealed with effect from that date. The legality of the levy of royalty on bricks under the order dated February 19, 1949, after April 1, 1950, was challenged by the appellant on the grounds that the royalty was in the nature of an excise duty, and that the order levying it was a law corresponding to the Central Excises and Salt Act, 1944, and therefore became repealed by s. 13(2) of the Finance Act, 1950.

*Held*, that the Central Excises and Salt Act, 1944, which provided for the levy and collection of duties of excise on goods specified in the First Schedule to the Act did not by a negative provision expressly save other commodities, not included in the Schedule, from the operation of any existing local law. Consequently, the order dated February 19, 1949, passed by the erstwhile State of Patiala, was not a law corresponding to the Act of 1944 and was not, therefore, within the repeal created by s. 13(2) of the Finance Act, 1950.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 292 of 1958.

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Appeal from the judgment and decree dated October 23, 1956, of the PEPSU (now Punjab) High Court in Regular Second Appeal No. 29 of 1954.

*C. K. Daphtary, Solicitor-General of India, J. B. Dadachanji, Ravinder Narain* and *O. C. Mathur,* for the appellants.

*S. M. Sikri, Advocate-General for the State of Punjab, N. S. Bindra* and *P. D. Menon,* for the respondent.

1961. July 28. Judgment of the Court was delivered by

*Hidayatullah J.*

HIDAYATULLAH, J.—The only question in this appeal, with certificate under Art. 133(1)(c) of the Constitution, against the judgment and decree of the High Court of Patiala and East Punjab States Union, is whether the levy of royalty at Rs. 50 per one lakh bricks under a *Robkar* issued by the *Ijlas-i-Khas* (Council of Regency), Patiala State, on February 6, 1919, is valid.

The Appeal arises out of a suit filed by the present appellants in the Court of the Subordinate Judge, Faridkot, for declaration and injunction. The suit was dismissed by the trial Judge, but on appeal to the District Court, the decision was reversed. On further appeal to the High Court, the decision of the Additional District Judge was set aside, and that of the trial Judge restored.

In this appeal, the only point argued is whether the order of the *Ijlas-i-Khas* continues to be effective, after the enactment of the Finance Act, i1950. The suit was filed on May 13, 1952, for njunction against notices of demand issued to the appellants from the Tehsil Office, Faridkot, on or about April 20, 1951. The learned Solicitor-General concedes that the appellants' claim must be confined to the period after April 1, 1950, from

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which date the Finance Act, 1950, began to operate. He states that prior to that date the law could not be considered to be invalid because of Art. 277, which saved taxes, duties, cesses or fees which were being levied in any State prior to the commencement of the Constitution. He also concedes that the Finance Act, 1950, could not operate before April 1, 1950, and the question, therefore, is, what is the effect of the Finance Act, 1950, on the order impugned? It may also be pointed out that the authority of the Regency Council to issue the impugned order and the validity of that order, unless affected by any Indian law, are not called in question.

The Finance Act, 1950, was passed to give effect to the financial proposals for the year commencing on April 1, 1950. Section 11 of that Act extended, amongst others, the Central Excises and Salt Act, 1944, to the whole of India including Part B States, except the State of Jammu and Kashmir. By s. 13(2), it was provided, *inter alia,* as follows :

> "If immediately before the 1st day of April, 1950, there is in force in any State other than Jammu and Kashmir a law corresponding to, but other than an Act referred to in sub-section (1) or (2) of section 11, such law is hereby repealed with effect from the said date.....".

It is contended that by the extension of the Central Excises and Salt Act, 1944, there was repeal of any law imposing excise duty on the manufacture of any class of goods. Attention is, therefore, drawn to the provisions of the *Robkar,* where the royalty is charged as follows :

> "*Mchsul* (Royalty) at the rate of Rs. 50 per lac bricks be charged from all the kiln-owners irrespective of the fact whether they

construct brick-kilns on the land belonging to Government or not. In case they construct brick-kilns on the land belonging to Government, cost (of the land) or damages thereof be charged (from them) in addition to the *Mehsul* (Royalty).....". •

The provisions of s. 13(2) of the Finance Act, 1950, clearly show that only a law corresponding to the Central Excises and Salt Act, 1944, was intended to be repealed. If the law did not correspond to the Indian statute, it would be saved by virtue of Art. 277. We have thus to determine in this case whether the *Robkar* of the *Ijlas-i-Khas*, imposing a royalty on bricks can be said to be a law corresponding to the Central Excises and Salt Act, 1944, which was extended on April 1, 1950.

The argument of Mr. Daphtary proceeds on the assumption that the royalty is in the nature of an excise duty, and the *Robkar* is thus a law corresponding to the Indian statute. That, however, does not determine the question, because the words of sub-s. (2) of s. 13 of the Finance Act, 1950, are that the law repealed must be a law corresponding to the Indian statute. The argument in support of the contention that this is such a law is that the Central Excises and Salt Act, 1944, is, as its long title and preamble show, a consolidating and amending law relating to Central duties of excise on goods manufactured or produced in certain parts of India and to salt. It is urged that the Act is in the nature of a code, which not only provides for the levy of excise duty on the commodities specifically mentioned therein but by implication, exonerates other articles from the levy of excise duty, and that, therefore, the Indian statute is comprehensive enough to include not only such commodities as are mentioned in it but also other commodities on which there is no levy. It is conceded, however, that there is no negative provision

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under which other goods manufactured in India are expressly saved from the operation of any other law.

Section 3(1) of the Central Excises and Salt Act, 1944, lays down the charge of excise duty, and provides :

> "There shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in India.....at the rates, set forth in the First Schedule."

"Excisable goods" is defined by s. 2(d), and means "goods specified in the First Schedule as being subject to a duty of excise and includes salt". These two provisions read together limit the operation of the excise law to enumerated commodities and salt, and the ambit of the law is thus confined. The words "to consolidate and amend the law" have reference really to the Acts, which were repealed by s. 39. Prior to the enactment of this consolidating Act, there were no less than 17 Acts dealing with different commodities, and in 1944, all those laws were repealed, and a consolidated Act was passed to cover all those Acts and to include certain new commodities. The effect of consolidation was not to codify the law in such a way as to repeal other acts, which were not specifically mentioned in the Schedule dealing with repeals. No negative provision to save other commodities from the operation of any existing local law was either expressly included or even contemplated in the Act. The result, therefore, is quite clear that the *Robkar*, under which the royalty was imposed, cannot be said to be a law corresponding to the Central Excises and Salt Act, 1944, and is, therefore, not within the repeal created by s. 13(2) of the Finance Act, 1950.

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In our judgment, the decision of the High Court is correct, and the appeal is dismissed with costs.

*Appeal dismissed.*

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August 2.

## ROSHAN LAL MEHRA

*v.*

## ISHWAR DAS

(B. P. SINHA, C.J., S.K. DAS, A. K. SARKAR, N. RAJAGOPALA AYYANGAR and J.R. MUDHOLKAR, JJ.)

*Standard rent, (fixation of—Newly Constructed and old buildings—Classification, if violative of fundamental right and principles of natural justice—Constitution of India, Art. 14—Delhi and Ajmer—Marwara Rent Control Act, 1947 (Act XIX of 1947), ss. 7, 7A, Sch. IV.*

The appellants applied to the Rent Controller for fixation of fair and standard rent of certain shops and other premises alleging that the rent charged by the landlords was exorbitant. The questions arising for determination were (1) whether the Delhi and Ajmer—Marwara Rent Control Act, 1947 in so far as it provided for the fixation of standard rent in respect of premises the construction of which was completed after March 24, 1947 by the Rent Controller violated the fundamental right guaranteed under Art. 14 of the Constitution; and (2) whether the procedure to be followed by the Rent Controller violated the principles of natural justice.

*Held*, that s. 7A and the relevant provisions of Sch. IV of the Act laying down the procedure for fixing standard rent by the Rent Controller are not unconstitutional and do not violate Art. 14 of the Constitution. The classification between premises the construction of which was completed before March 24, 1947 when the Act came into force and those which were completed thereafter, is reasonable, and the criteria for the fixation of standard rent for both old and new buildings under the Act were not substantially different.

The procedure laid down under those provisions does not violate the principles of natural justice. The power given to the Rent Controller is not arbitrary and he has to exercise it on a judicial consideration of all the circumstances of the case.