

counsel for acting wrongly under an erroneous impression of their rights and privileges.

For the reasons given above we allow this appeal to the extent that the sentence of fine passed on both the appellants is set aside, and the unqualified apology given by them to this Court and the High Court is accepted. We also desire to issue a strong admonition and warning to the two counsel for their conduct. There will be no order as to costs in these proceedings throughout.

Appeal allowed.

LAXMANAPPA HANUMANTAPPA JAMKHANDI

v.

THE UNION OF INDIA AND ANOTHER.

[MEHR CHAND MAHAJAN C.J., S. R. DAS, GHULAM HASAN, BHAGWATI and VENKATARAMA AYYAR JJ.]

Constitution of India, Arts. 31(1), 32, 265—Deprivation of property—Otherwise than by imposition or collection of tax—Right conferred by Art. 265—Whether can be enforced by Art. 32.

Held, that as there is a special provision in Art. 265 of the Constitution that no tax shall be levied or collected except by authority of law, clause (1) of Art. 31 must be regarded as concerned with deprivation of property otherwise than by the imposition or collection of tax and as the right conferred by Art. 265 is not a fundamental right conferred by Part III of the Constitution, it cannot be enforced under Art. 32.

Ramjilal v. Income-tax Officer, Mohindergarh ([1951] S.C.R. 127) followed.

Suraj Mal Mohta and Co. v. A. V. Visvanatha Sastri (A.I.R. 1954 S.C. 545) referred to.

ORIGINAL JURISDICTION : Petition No. 492 of 1954.

Petition under article 32 of the Constitution for the enforcement of Fundamental Rights.

B. Sen, I. N. Shroff and B. P. Singh for the petitioner.

M. C. Setalvad, Attorney-General for India, and C. K. Daphtary, Solicitor-General for India (G N. Joshi.

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P. A. Mehta and *P. G. Gokhale*, with them) for the respondents.

1954. October 21. The Judgment of the Court was delivered by

MEHR CHAND MAHAJAN C.J.—This is a petition under article 32 of the Constitution of India for the enforcement of fundamental rights under articles 31(1) and 19(1)(f) of the Constitution and for the issue of writs in the nature of *mandamus* and/or *certiorari* and for suitable directions restraining the respondents from interfering with the petitioner's properties in violation of his fundamental rights.

The petition arises in these circumstances. The petitioner, along with his brothers, used to carry on the business of toddy and liquor vendors. In addition to this, one of the brothers used to run a bus service and dealt in cotton and money-lending also. All the brothers owned extensive properties, both agricultural and non-agricultural. Though prior to the assessment year 1926-27 all the brothers were assessed to income-tax as a Hindu undivided family, since then up to the year 1946 they were assessed separately on account of a partition alleged to have been made between them. In December, 1946, the Income-tax Officer commenced proceedings against them under section 34 on the ground that the case of partition set up by them was not correct and as a matter of fact there had been no partition between them and they were carrying on business jointly. As a result of these proceedings an assessment under section 34 was made on the four brothers jointly, treating them as an association of persons, for the year 1942-43. Similar assessment proceedings were taken against them in respect of the years 1940-41, 1941-42 and 1943-44.

In December, 1947, the Central Government, under the *bona fide* belief that the petitioner's brothers had made huge profits during the war and had evaded tax, made five references to the Income-tax Investigation Commission under section 5(1) of the Taxation on Income (Investigation Commission) Act, 1947. Reference No. 175 concerned all the brothers as an association of persons while the other four references related

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to the brothers individually. As a result of the proceedings before the Investigation Commission, the Commission made a report to the Central Government on the 26th of September, 1952, estimating the amount of escaped income at Rs. 16,79,203 between the years 1940-41 and 1948-49. In pursuance of this report the Central Government passed an order under section 8(2) of the Taxation on Income (Investigation Commission) Act directing that the assessment proceedings be taken under the Indian Income-tax Act and Excess Profits Tax Act, 1940, as well as under the Business Profits Tax Act, 1947, against Messrs Jamkhandi Bros. as an association of persons with a view to assess or reassess the income that had escaped assessment according to the report of the Investigation Commission. In accordance with these orders the Income-tax Officer commenced proceedings against Messrs Jamkhandi Bros. as an association of persons. On the 30th November, 1953, various assessment orders were passed by the Income-tax Officer assessing the petitioner under the Income-tax Act and the Excess Profits Tax Act. Proceedings were then taken against the petitioner for recovery of the tax assessed by the Income-tax Officer and in those proceedings the properties of the petitioner in the District of Belgaum were attached for payment of the dues and one of his properties comprising of about 12 plots of land was sold by public auction under the provisions of the Bombay Land Revenue Code.

On the 20th September, 1954, the present application was preferred under the provisions of article 32 of the Constitution. It has perhaps been made under the impression that the decision of this Court in *Suraj Mal Mohta v. A. V. Visvanatha Sastri and Another* (1) has application to the facts and circumstances of this case as well and that relief can be obtained against the assessment orders which have become final, by taking proceedings under article 32 of the Constitution. In the petition it was alleged that the attachment and sale of the petitioner's properties was illegal and violates the petitioner's fundamental rights under articles 31(1) and 19(1)(f) of the Constitution. It was also alleged

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that the proceedings before the Income-tax Investigation Commission after the coming into force of the Constitution were illegal as being in contravention of articles 14 and 20(3) of the Constitution and that in view of the decision of this Court in *Suraj Mal Mohta v. A. V. Visvanatha Sastri and Another* (*supra*) proceedings under the Taxation on Income (Investigation Commission) Act, 1947 were discriminatory and that the references made by the Central Government under section 5(1) are not based on a proper classification. It was prayed that this Court may be pleased to issue a writ in the nature of *mandamus* and/or *certiorari* or such other directions as may be appropriate to quash the assessment orders made in pursuance of the order of the Central Government under section 8(2) of the Taxation on Income (Investigation Commission) Act, 1947, and to restrain the respondents from attaching and selling or interfering in any manner with the properties of the petitioner.

From the facts stated above it is plain that the proceedings taken under the impugned Act XXX of 1947 concluded so far as the Investigation Commission is concerned in September, 1952, more than two years before this petition was presented in this Court. The assessment orders under the Income-tax Act itself were made against the petitioner in November, 1953. In these circumstances we are of the opinion that he is entitled to no relief under the provisions of article 32 of the Constitution. It was held by this Court in *Ramjilal v. Income-tax Officer, Mohindergarh* (1) that as there is a special provision in article 265 of the Constitution that no tax shall be levied or collected except by authority of law, clause (1) of article 31 must therefore be regarded as concerned with deprivation of property otherwise than by the imposition or collection of tax, and inasmuch as the right conferred by article 265 is not a right conferred by Part III of the Constitution, it could not be enforced under article 32. In view of this decision it has to be held that the petition under article 32 is not maintainable in the situation that has arisen and that even otherwise in the peculiar circumstances that have arisen it would not be just and proper

(1) [1951] S.C.R. 127.

to direct the issue of any of the writs the issue of which is discretionary with this Court. When this position was put to Mr. Sen, the learned counsel for the petitioner, he very fairly, and, in our opinion, rightly conceded that it was not possible for him to combat this position.

For the reasons given above this petition is bound to fail and it is accordingly dismissed with costs.

Petition dismissed.

DEWAN BAHADUR SETH GOPAL DAS MOHTA

v.

THE UNION OF INDIA AND ANOTHER.

[MEHR CHAND MAHAJAN C.J., S. R. DAS,

GHULAM HASAN, BHAGWATI

and VENKATARAMA AYYAR JJ.]

Constitution of India, Art. 32—Taxation on Income (Investigation Commission) Act, 1947 (XXX of 1947) s. 5(1)—Investigation and Report by Commission in respect of profits made by assessee and tax payable by him—Mutual settlement between assessee and Government—Petition under Art. 32—Whether competent.

The petitioner, a business man, was alleged to have made huge profits during the years of War and the Central Government acting under s. 5(1) of the Taxation on Income (Investigation Commission) Act, 1947 (XXX of 1947) referred his case to the Investigation Commission for investigation and report. During the pendency of the investigation the petitioner's application for settlement under the provisions of s. 8-A of Act XXX of 1947 was accepted by the Central Government and in pursuance thereof the tax was made payable by instalments and the claim for evaded income-tax was thus finally settled by mutual agreement. When the instalments in the sum of Rs. 4 lacs odd still remained due the petitioner preferred the present petition under Art. 32 of the Constitution alleging that the entire proceedings under Act XXX of 1947, were illegal, *ultra vires*, void and unconstitutional, that the Income-tax authorities were not competent to recover the amount due from him and that ss. 5, 6, 7 and 8 of the Act were *ultra vires* as they infringed Arts. 14, 19(1) (f) and 31 of the Constitution.

Held, that the petition under Art. 32 was not competent as whatever had already been paid or whatever was still recoverable from the petitioner was being recovered on the basis of the

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