

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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settlement between him and the Government. Article 32 is not intended for relief against the voluntary actions of a person.

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

• ORIGINAL JURISDICTION : Petition No. 315 of 1954.

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

H. J. Umrigar, Narain Andley, J. B. Dadachanji and Rajinder Narain for the petitioner.

M. C. Setalvad, Attoreny-General for India, and C. K. Daphtary, Solicitor-General for India (G. N. Joshi, Porus 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.—The petitioner in this matter is a resident of Akola in the State of Madhya Pradesh and carries on business in various lines, *i.e.*, oil mills, banking, money lending, etc. It is alleged that during the war years he made huge profits but evaded payment of tax. In the year 1948 the Central Government, acting under section 5(1) of the Taxation on Income (Investigation Commission) Act, 1947, referred his case to the Investigation Commission for investigation and report, in respect of the profits made by him during the period commencing with 1st of January, 1939, and ending on 31st of December, 1947. The Commission, after investigation, reported on the 28th of February, 1951, that the income of the petitioner concealed and withheld from taxation was in the sum of Rs. 27,25,363 and the tax payable by him amounted to Rs. 18,44,949.

During the pendency of the investigation the petitioner applied for settlement under the provisions of section 8-A of Act XXX of 1947. This application was forwarded along with the report by the Commission to the Central Government. In the settlement application the applicant proposed that he was prepared to pay the sum of Rs. 18,44,949 as under :

On or before 25-6-1951—Rs. 3,44,949

On or before 25-3-1952—Rs. 5,00,000

On or before 25-3-1953—Rs. 5,00,000

On or before 25-3-1954—Rs. 5,00,000

and that he be given credit for a sum of Rs. 32,034-4-6 already paid by him. The Central Government accepted this proposal and the claim for evaded income-tax was thus finally settled by mutual agreement. The assessee, subsequently, asked for more time to pay these instalments and this was also granted from time to time.

Commencing from 16th of July, 1951, and till the 10th April, 1954, the petitioner paid a total sum of about Rs. 14,00,000 towards discharge of the liability voluntarily agreed to by him on account of the tax evaded. A sum of Rs. 4,50,000 still remains due and is payable in instalments up to the 25th of March, 1955. By one of the terms of the settlement the petitioner undertook not to transfer, mortgage, charge or alienate or encumber in any manner whatsoever any of his movable or immovable properties, barring stock-in-trade of the business, except with the permission of the Commissioner of Income-tax and except for the purpose of the payment of the tax due under the settlement.

In June, 1954, after the decision by this Court of *Suraj Mal Mohta v. A. V. Visvanatha Sastri and Another*⁽¹⁾, the petitioner preferred this petition under the provisions of article 32 of the Constitution alleging that he had been advised that the entire proceedings under the Act which had resulted in the imposition upon him of a liability of Rs. 18,44,949 and in the payment already made of an aggregate amount of Rs. 13,99,175 were wholly illegal, *ultra vires*, void and unconstitutional and that the Income-tax authorities were not legally entitled to recover the amount of Rs. 4,50,000 from him. In the grounds of the petition it was stated that sections 5, 6, 7 and 8 of Act XXX of 1947 were invalid and *ultra vires* in so far as they contravene the provisions of articles 14, 19(1) (f) and 31 of the Constitution and that under the Act

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there was no reasonable or equitable basis for classification, and that the Act gave to the executive unrestrained and absolute right to pick and choose and to differentiate between the same class of taxpayers. It was also alleged that the procedure prescribed by the Act for discovering concealed profits was substantially different and was more prejudicial to the assessee than the procedure prescribed under the Indian Income-tax Act by section 34. In the concluding paragraph of the petition it was prayed that an appropriate writ or direction be issued quashing the entire proceedings, and all orders passed under the Act by the Central Government and the respondent Commission, and restraining them from taking any proceedings whatsoever under the Act against the petitioner. It was further prayed that a direction be issued for restoration to the petitioner of a sum of Rs. 13,99,715-10-6 with interest at 6 per cent., and that the respondents be further restrained from taking any action against the petitioner for the recovery of the sum of Rs. 4,50,000 with interest.

In our judgment this petition is wholly misconceived. Whatever tax the petitioner has already paid, or whatever is still recoverable from him, is being recovered on the basis of the settlement proposed by him and accepted by the Central Government. Because of his request for a settlement no assessment was made against him by following the whole of the procedure of the Income-tax Act. In this situation unless and until the petitioner can establish that his consent was improperly procured and that he is not bound thereby he cannot complain that any of his fundamental rights has been contravened for which he can claim relief under article 32 of the Constitution. Article 32 of the Constitution is not intended for relief against the voluntary actions of a person. His remedy, if any, lies in other appropriate proceedings.

The learned counsel for the petitioner contended that apparently the application for a settlement seems to have been made under the pressure of circumstances and in view of the coercive machinery of Act XXX of 1947 and the settlement arrived in such circumstances

was not binding and could not be enforced. Whatever be the merits of such a contention, it obviously cannot be raised in an application made under the provisions of article 32 of the Constitution. The forum for investigating such allegations is elsewhere.

The result is that this petition fails and is dismissed with costs.

Petition dismissed.

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THE STATE OF BOMBAY

v.

BHANJI MUNJI AND ANOTHER.

[MEHR CHAND MAHAJAN C.J., MUKHERJEA,

VIVIAN BOSE, JAGANNADHADAS

and VENKATARAMA AYYAR JJ.]

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Constitution of India, Arts. 19(1) (f), 31(2)—Bombay Land Requisition Act, 1948 (Bombay Act XXXIII of 1948), ss. 5(1) and 6(4) (a) as amended by Bombay Act II of 1950 and Bombay Act XXXIX of 1950—Whether ultra vires the Constitution—Requisition of premises under s. 4(3) of the Act—Validity—Onus—Statute—Whether must contain in express terms the public purpose—Requisition of property—Validity.

Sections 5(1) and 6(4) (a) of the Bombay Land Requisition Act, 1948 (Bombay Act XXXIII of 1948) as amended are not *ultra vires* Arts. 19(1) (f) and 31(2) of the Constitution.

Article 19(1) (f) read with clause (5) postulates the existence of property which can be enjoyed and over which rights can be exercised because otherwise the reasonable restrictions contemplated by clause (5) cannot be brought into play. In the present case the right to occupy the premises has gone, as also the right to transfer, assign, let or sub-let. What is left is merely the husk of title in the lease-hold. Art. 19(1) (f), therefore, is not attracted.

The Bombay Land Requisition Act, 1948, provides for compensation in s. 8 and the requisitions were made for a public purpose. Therefore, the provisions of Art. 31(2) of the Constitution are complied with.

A statute is not invalid for the reason that the purpose for which property is requisitioned is not stated in express terms in the statute itself provided from the whole tenor and intendment of the Act it can be gathered that the property is acquired either for the purpose of the State or for any public purpose and that the intention was to benefit the community at large.