

PETITIONER:
LAXMANAPPA HANUMANTAPPA JAMKHANDI

Vs.

RESPONDENT:
THE UNION OF INDIA AND ANOTHER.

DATE OF JUDGMENT:
21/10/1954

BENCH:
MAHAJAN, MEHAR CHAND (CJ)
BENCH:
MAHAJAN, MEHAR CHAND (CJ)
DAS, SUDHI RANJAN
HASAN, GHULAM
BHAGWATI, NATWARLAL H.
AIYYAR, T.L. VENKATARAMA

CITATION:
1955 AIR 3
CITATOR INFO :
F 1957 SC 397 (43)
R 1959 SC 149 (16, 30, 51, 52)
R 1959 SC 395 (28)
RF 1961 SC 65 (5, 37)
HO 1961 SC 1457 (6)
RF 1962 SC 1006 (34, 72, 81)
O 1962 SC 1563 (15)
R 1962 SC 1621 (122, 165)
R 1966 SC 619 (7)
R 1970 SC 470 (33)
RF 1971 SC 870 (10)

ACT:
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.

HEADNOTE:
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.

JUDGMENT:
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 770

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

771

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 year, % 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

(1) A.I.R. 1954 S.C. 545.

772

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

773

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

JUDIS