

Income-Tax Officer, Special Investigation Circle-B, Meerut

Vs

Messrs Seth Brothers and Others Etc

Civil Appeal Nos. 700 to 703 of 1965

(J. C. Shah, G. K. Mitter JJ)

15.07.1969

JUDGMENT

SHAH, J. -

1. M/s. Seth Brothers run a flour mill in the name and style of "Imperial Flour Mills". From April 1, 1953 to March, 1956, the business was carried by M/s. Seth Brothers, of which the partners were Baikunth Nath and Vishwa Nath. Between March 1956 and March 31, 1957, the business was carried on by Baikunth Nath, Vishwa Nath, Dr. Manmohan Nath, Mrs. Rama Rahi and Mrs. Sushila Devi. On April 7, 1957 Mrs. Prem Lata was admitted as a partner. The partners were engaged in carrying on other businesses in the names of Seth Brothers (Private) Ltd., Nath Brothers (Private) Ltd., and Meerut Cold Storage and General Mills.

2. The owners of the business were, year after year, assessed to Income-tax in respect of arising in course of the business. On March 14, 1963 the Income-tax Officer, Meerut issued a notice under Section 148 of the Income-tax Act, 1961, intimating M/s. Seth Brothers that there was reason to believe that their income chargeable to tax had escaped assessment and it was proposed to reassess this income for the assessment year 1954-55. In response to the notice Baikunth Nath and Vishwa Nath filed a return under protest. In the meantime information was received by the Income-tax Commissioner, U. P., that M/s. Seth Brothers were maintaining "duplicate records" and were evading assessment of their true income and that it was necessary to seize the records which may be found at "Shanti Niketan" Meerut in which M/s. Seth Brothers carried on the business of Imperial flour Mill and other business. The Commissioner of Income-tax, U. P. on May 29, 1963, drew up a memorandum that on a report of the Income-tax Officer, D-Ward, Meerut, requesting for authorisation under Section 132 of the Income-tax act, 1961, to enter and search the premises of M/s. Seth Brothers, he was satisfied about the need for the issue of the authorisation. The commissioner also issued an order in form 45 prescribed under rule 112 of the Income-tax Rules, 1962, authorising to Income-tax Officers- R. R. Agarwal and R. Kapoor to enter the premises known as "Shanti Niketan", at Meerut and to search for and seize such books and documents as may be considered relevant or useful for the purpose of the proceeding of reassessment, and to place identification marks thereon and to convey them to the Income-tax Officer.

3. On the 7 and 8 of June, 1963, the premises described in the order were searched and account books and certain documents found therein were seized and were carried to the Income-tax Office. M/s. Seth Brothers then moved a petition in the High Court of Allahabad for an order quashing the proceedings of the Income-tax authorities. Petitions were also filed by Nath Brothers (Private) Ltd., Seth Brothers (Private) Ltd. and Seth Brothers, Meerut for the same relief. By these petitions they claimed writs of certiorari quashing the letters authorising search of the remises at Shanti Niketan,

and writs of mandamus directing the Income-tax Officer to return all the books, papers and articles seized during the search and for writs of prohibition restraining the Income-tax Department from using any information gathered as a result of the search. It was submitted by the petitioners that K. L. Ananda, Income-tax Officer and Satya Prakash an "ex-employee" of M/s. Seth Brothers had given false information to the Deputy Director of Inspection with a view to blackmail the partners of M/s. Seth Brothers, and that the order of search was made by the commissioner of Income-tax at the direction of the Deputy director of Inspection, that the action of the Income-tax Officer in searching the premises and in seizing the books of account was malicious and that in any event Section 132 of the Income-tax Act, 1961, and the rules framed thereunder, were violative of the fundamental freedoms guaranteed by articles 14, 19(1) (f) & (g) and 31 of the Constitution.

4. Affidavits were filed on behalf of M/s. Seth Brothers. It was affirmed that "the so-called duplicate records" seized by the Income-tax Officer were copies of the books of account and that action had been taken by the Commissioner of Income-tax, not on his own initiative but at the behest of the directorate of Inspection. In reply to the contentions raised by the assessee several affidavits sworn by Officers of the Income-tax Department were filed. The Commissioner of Income-tax stated in his affidavit that before issuing letters of authorisation and the warrants of search he was satisfied that it was necessary to take action under Section 132 of the Indian Income-tax Act, 1961, and that the letters of authorisation were not issued at the direction the Directorate of inspection. The Income-tax Officers stated that in consequence of the search a large number of "duplicate account books and records" maintained by M/s. Seth Brothers were recovered, that the search was carried out according to law and in the presence of two of the partners of the firm and their advocates, that all the documents seized were relevant for the purpose of reassessment, that there was close connection between the different business activities of the partners of M/s. Seth Brothers and that all the documents which were seized were in relation to those activities. The Deputy Director of Inspection in his affidavit stated that he did not give any direction to the Commissioner to issue authorization for search and seizure.

5. The High Court of Allahabad held on a consideration of the averments made in the affidavits filed on behalf of M/s. Seth Brothers and the revenue that "there was reason to believe" that instructions were issued by the Directorate of Inspection for a general raid and seizure of all account books and papers which may be found at the premises of the firm; that some out of the documents seized by the Income-tax Officers were irrelevant for the purpose of any proceeding under the Act; that besides the documents belonging to M/s. Seth Brothers the Income-tax Officers seized documents relating to the transactions of the allied concerns; that marks of identification were not placed on certain documents at the time they were seized; that the documents seized were detained by the Income-tax Officer for more than two months; and that the police force employed during the raid was excessive. The High-Court concluded :-

"It is true that there was an ill-will between the X X (partners of Seth Brothers) on one side and respondent Nos. 1, 3 and 4 (Commissioner of Income-tax, U. P., Punjab and Income-tax Officer, Special Investigation Circle A, Meerut) on the other side. But the extent of the seizure was far beyond the limits of Section 132 of the Act. The action was mala fide in the sense that, there was abuse of power conferred on Income-tax Officers by Section 132 of the Act. The act being mala fide, the proceeding should be quashed by this Court by issuing a writ of mandamus."

The Income-tax Officer, S. I. Circle has appealed to this Court with special leave.

6. Section 132 as originally enacted by Act 43 of 1961 was substituted by a modified provision by the Finance act of 1964, which in its turn was replaced by Section 1 of the Income-tax (Amendment) Act, 1965. By Section 8 of that Act it was provided, inter alia, that any search of a building or place by an Income-tax Officer purported to have been made in pursuance of sub-section (1) of Section 132 of the principal Act shall be deemed to have been made in accordance with the provisions of that sub-section as amended by the Act of 1965 as if those provisions were in force on the day the search was made. The relevant part of Section 132 as substituted by the Income-tax (Amendment) Act, 1965 may, therefore, be set out :

"132. Search and seizure. - (1) Where the Director of Inspection or the Commissioner, in consequence of information in his possession, has reason to believe that -

(a) any person to whom a summons under sub-section (1) of section 37 of the Indian Income-tax Act, 1922 (XI of 1922), or under sub-section (1) of Section 131 of this Act, or a notice under sub-section (4) of section 22 of the Indian Income-tax Act, 1922, or under sub-section (1) of Section 142 of this Act was issued to produce, or cause to be produced, such books of account or other documents as required by such summons or notice, or

(b) any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books of account or other documents which will be useful for, or relevant to any proceeding under the Indian Income-tax Act, 1922 (XI of 1922), or under this Act, or

(c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been disclosed for the purpose of the Indian Income-tax Act, 1922 (XI of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property), he may authorise any Deputy Director of Inspection, Inspecting Assistant Commissioner, Assistant Director of Inspection or Income-tax Officer (hereinafter referred to as the authorised officer) to -

(i) enter and search any building or place where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article of thing are kept;

(ii) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys thereof are not available;

(iii) seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search;

(iv) place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;

(v) make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing.

(2) The authorised officer may requisition the services of any police officer or of any officer of the Central Government or of both, to assist him for all or any of the purposes specified in sub-section (1) and it shall be the duty of every such officer to comply with such requisition.

(3) The authorised officer may, where it is not practicable to seize any such books of account, other document, money, bullion, jewellery or other valuable article or thing, serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section.

#X X X##

(8) The books of account or other documents seized under sub-section (1) shall not be retained by the authorised officer for a period exceeding one hundred and eighty days from the date of the seizure unless the reasons for retaining the same are recorded by him in writing and the approval of the Commissioner for such retention is obtained :

#Provided X X X X X X X##

(13) The provisions of the Code of Criminal Procedure, 1898 (V of 1898), relating to searches and seizure shall apply, so far as may be, to searches and seizure under sub-section (1)."

The Central Board of Direct Taxes has, in exercise of the power conferred by Section 295(1) of the Act, framed Rule 112 prescribing the procedure to be followed by the Commissioner and the authorised officers.

7. The commissioner of the Director of Inspection may after recording reasons order a search of premises, if he had reason to believe that one or more of the conditions in Section 132(1) exist. The order is in form of an authorization in favour of a subordinate departmental officer authorising him to enter and search any building or place specified in the order, and to exercise the powers and perform the functions mentioned in Section 132(1). The Officer so authorised may enter any building or place and make a search where he has reason to believe that any books of account or other documents which in his opinion will be useful for, or relevant to, any proceeding under the Act, may be found. The Officer making a search may seize any such books of account or other documents and place marks of identification on any such books of account or other documents, make or cause to be made extracts or copies therefrom and may make an inventory of any articles or things found in the course of any search which in his opinion will be useful for, or relevant to any proceeding under the Act, and remove them to the Income-tax Office or prohibit the person in possession from removing them. He may also examine on oath any person in possession of or control of any books of account or documents or assets.

8. The Section does not confer any arbitrary authority upon the Revenue Officers. The Commissioner or the Director of Inspection must have, in consequence of information, reason to believe that the statutory conditions for the exercise of the power to order search exist. He must record reasons for the belief and he must issue an authorization in favour of a designated officer to

search the premises and exercise the powers set out therein. The condition for entry into and making search of any building or place is the reason to believe that any books of account or other documents which will be useful for, or relevant to, any proceeding under the Act may be found. If the Officer has reason to believe that any books of account or other documents would be useful for, or relevant to, any proceedings under the Act, he is authorised by law to seize those books of account or other documents,

and to place marks of identification therein, to make extracts or copies therefrom and also to make a note or an inventory of any articles or other things found in the course of the search. Since by the exercise of the power a serious invasion is made upon the rights, privacy and freedom of the taxpayer, the power must be exercised strictly in accordance with the law and only for the purposes for which the law authorizes it to be exercised. If the action of the officer issuing the authorization, or of the designated officer is challenged the officer concerned must satisfy the Court about the regularity of his action. If the action is maliciously taken or power under the section is exercised for a collateral purpose, it is liable to be struck down by the Court. If the conditions for exercise of the power are not satisfied the proceeding is liable to be quashed. But where power is exercised bona fide, and in furtherance of the statutory duties of the tax officers any error of judgment on the part of the Officers will not vitiate the exercise of the power. Where the Commissioner entertains the requisite belief and for reasons recorded by him authorises a designated officer to enter and search premises for books of account and documents relevant to or useful for any proceeding under the Act, the Court in a petition by an aggrieved person cannot be asked to substitute its own opinion irregularity in the course of entry, search and seizure committed by the officer acting in pursuance of the authorisation will not be sufficient to vitiate the action taken, provided the officer has in executing the authorisation acted bona fide.

9. The Act and the Rules do not require that the warrant of authorisation should specify the particulars of documents and books of accounts a general authorisation to search for and seize documents and books of account relevant to or useful for any proceeding complies with the requirements of the Act and the Rules. It is for the officer making the search to exercise his judgment and seize or not to seize any documents or books of account. An error committed by the Officer in seizing documents which may ultimately be found not to be useful for or relevant to the proceeding under the Act will not by itself vitiate the search, nor will it entitle the aggrieved person to an omnibus order releasing all documents seized.

10. The aggrieved party may undoubtedly move a competent court for an order releasing the documents seized. In such a proceeding the officer who has made the search will be called upon to prove how the documents seized are likely to be useful for or relevant to a proceeding under the Act. If he is unable to do so, the court may order that those documents be released. But the circumstances that the large number of documents have been seized is not a ground for holding that all documents seized are irrelevant or the action of the officer is malafide. By the express terms of the Act and the Rules the Income-tax Officer may obtain the assistance of a police officer. But sub-section (13) of Section 132 the provisions of the Code of Criminal Procedure, 1898, relating to searches apply, so far as may be, to searches under Section 132. Thereby it is only intended that the officer concerned shall issue the necessary warrant, keep present respectable persons of the locality to witness the search in the manner provided by the Code of Criminal Procedure. But sub-section (2) of Section 132 does not imply that the limitations prescribed by Section 165 of the code of Criminal Procedure are also incorporated therein.

11. In *Income-tax Officer, A-Ward, Agra and Others v. Firm Madan Mohan Damma Mal and*

Another, it was observed that the issue of a search warrant by the Commissioner is not a judicial or a quasi-judicial act and even if the Commissioner is enjoined to issue a warrant only when in fact there is information in his possession in consequence of which he may from the necessary belief, the matter is not thereby subject to scrutiny by the Court. Section 132 of the Income-tax Act does not require specific mention by description of each particular document which has to be discovered on search : it is for the officer who is conducting the search to decide whether a particular document found on search is relevant for the purpose or not. That statement of the law, in our judgment, accurately states the true effect of Section 132. The mere fact that it may ultimately be found that some document seized was not directly relevant to any proceeding under the Act or that another officer with more information at his disposal may have come to a different conclusion will not be a ground for setting aside the order and the proceeding for search and seizure.

12. The authorisation issued by the Commissioner was, in the view of the High Court, open to challenge on the ground that the commissioner did not apply his mind to the existence of circumstances which justified the exercise of the power to issue authorisation. The action of the Income-tax Officers who searched the premises was quashed on the ground that they seized some documents which were irrelevant to the process of re-assessment. In our judgment, in reaching their conclusion that the Commissioner acted at the behest of the Director of Inspection, the High Court ignored important evidence on the record. It was in the petition of M/s. Seth Brothers that -

"(56) It appears that the Deputy Director of Inspection at the instigation of Shri K. L. Nanda and Sri Satya Prakash, without making any enquiries or having any material, ordered a raid for search and seizure of all the account books and papers, which could be found."

"(57) That, according to such directions of the Directorate, the commissioner of Income-tax, U. P., Lucknow, was made to issue authorisations under Section 132 of the Act of 1961 in favour of opposite Parties Nos. 3 and 4 to search out the premises of 'Shanti Niketan', Civil Lines, Meerut, and to seize the account books, documents and papers, which could be recovered therefrom.

#X X X X"##

The High Court observed that even though a number of affidavits were filed by the Income-tax authorities, no reference to paragraph 56 of the writ petition was made and the "only affidavit filed by Shri A. L. Jha, Commissioner of Income-tax was vague in the extreme". The allegation in Paragraphs 56 and 57 of the writ petition made no definite allegation that the Commissioner of Income-tax acted at the behest of the Deputy Director of Inspection and not on his own satisfaction reached in consequence of information in his possession. In the verification clause Baikunth Nath stated that the contents of Paragraph 57 were true on information received from the Deputy Director of Inspection (Investigation), Income-tax, Central Revenue Buildings, New Delhi, but said nothing about the contents of Paragraph 56. The affidavits filed on behalf of the Income-tax Department specifically denied the allegations made in Paragraphs 56 and 57. R. R. Agarwal (one of the Income-tax Officers authorised to conduct the search) in his affidavit affirmed that the letter of authorisation was issued to him by the Commissioner of Income-tax, U. P., Lucknow, after the Commissioner had been satisfied on the report submitted by the deponent.

13. The Commissioner of Income-tax, Mr. A. L. Jha, by his affidavit denied that letters of authorisation were issued under the directions of the Deputy Director of Inspection or any body

connected with Directorate. He also stated that in respect of the case of M/s. Seth Brothers some information was brought to him by the Directorate and that information corroborated the report made to him by Mr. R. R. Agarwal and that after taking into consideration all those materials he was satisfied that a search of the premises of M/s. Seth Brothers "was called for" and that he issued the impugned letters of authorisation.

14. Mr. R. V. Ramaswamy, Deputy Director of Inspection (Investigation) in Paragraph 6 of his affidavit denied that the raid or search of the premises of M/s. Seth Brothers was ordered by him.

15. The affidavit of R. Kapur, Income-tax Officer, Special Investigation Circle, who was authorised by the Commissioner of Income-tax to make the search is also relevant. Mr. Kapur averred that some information was received by Mr. R. R. Agarwal from which it appeared that the firm of M/s. Seth Brothers and its partners were "evading tax by maintaining duplicate sets of accounts" and by suppressing relevant documents and papers from the Department; that Mr. R. R. Agarwal made a written request to the Commissioner of Income-tax for letters of authorisation in order to carry out search of the assessee's premises and in pursuance thereof on May 29, 1963 the Commissioner of Income-tax issued three authorisation letters, two in favour of Mr. R. R. Agarwal and one in favour of the deponent authorising them to carry out the search in accordance with the terms of the authorisation letters.

16. In this state of the record we are unable to agree the High court that the letters of authorisation were issued by the commissioner of Income-tax at the direction of the Director of Inspection (Investigation). The attention of the Court was presumably not invited to the relevant paragraphs of the affidavits of the officers concerned.

17. It is true that a large number of documents were seized from the premises of M/s. Seth Brothers but that has by itself no direct bearing on the question whether the Income-tax Officer acted mala fide. If the Income-tax Officer in making a search had reason to believe that any books of account or other documents useful for, or relevant to, any proceeding under the Act may be found, he may make a search for and seize those books of account or other documents. Some books, maps of the cold storage, assessment returns, and Doctor's prescriptions were seized by the Income-tax Officer. It appears, however, from the inventory that a large number of documents which related to the business of the assesseees and their allied concerns were also seized. It would be impossible merely from the circumstance that some of the documents may be shown to have clear or direct relevance to any proceeding under the Act that the entire search and seizure was made not in bona fide discharge of official duty but for a collateral purpose. The suggestion that the books of account and other documents which could be taken possession of should only be those which directly related to the business carried on by the partners of the firm of assesseees would certainly be relevant because they would tend to show inter-relation between the dealings and supply materials having a bearing on the case of evasion of Income-tax by the firm. We are unable to hold that because of the Income-tax officers made a search for and seized the books of account and documents in relation to business carried on in the names of other firms and companies, the search and seizure were illegal.

18. It is also said that marks of identification were not placed on several documents. Assuming that this allegation is true, in the absence of anything to show that the documents were either replaced or tampered with, that irregularity will not by itself supply a ground for holding that the search was mala fide. A delay of two months in issuing a notice calling for explanation is also not a ground for holding that the action was taken for a collateral purpose.

19. It is not disputed that assistance of the police may be obtained in the course of search. The High Court has, however, found that the police force employed was excessive. But we are unable to hold that on the evidence, in keeping the police officers present at the time of the search in the house of influential businessmen to ensure the protection of the officers and the record, "excessiobe force was used".

20. We accordingly see no good grounds to accept the finding recorded by the High Court that the manner in which the search and seizure were conducted "left no room for doubt that the Income-tax Officer did not apply his mind and formed no opinion regarding the relevancy or usefulness of the account books and documents for any proceedings under the Income-tax Act." The High Court accepted that the correctness of the opinion actually formed by the Income-tax Officer was not open to scrutiny, in a writ petition, but in their view no opinion was in fact formed by the Officer and search and seizure of documents and books of account must on that account be held as made in excess of the powers conferred upon the Income-tax Officer was mala fide. For these observations we find no warrant. The Income-tax Officer concerned have sworn by their affidavits that they did in fact form the requisite opinion under Section 132 of the Act and the other evidence and the circumstances do not justify us in discarding that assertion.

21. These proceedings were brought before the High Court by way of a writ petition under Article 226 of the Constitution before any investigation was made by the Income-tax Officers pursuant to the action taken by them. In appropriate cases a writ petition may lie challenging the validity of the action on the ground of absence of power of on a plea that procedings were taken maliciously or for a collateral purpose. But normally the High Court in such a case does not proceed to determine merely on affidavits important issues of fact especially where serious allegations of improper conduct are made against public servants. The Income-tax Officers who conducted the search asserted that they acted in good faith in discharge of official duties and not for any collateral purpose. The Commissioner of Income-tax also denied that he acted at the direction of the Deputy Director of Inspection and that case was supported by the Deputy Director of Inspection. If the learned Judges of the High Court were of the view that the question was one in respect of which an investigation should be made in a petition for the issue of a writ, they should have directed evidence to be taken viva voce. The High Court could not, on the assertions by the partners of the firm which were denied by the Income-tax officer, infer that the premises of M/s. Seth Brothers were searched and documents were seized for a collateral purpose merely from the fact that many documents were seized for a collateral purpose merely from the fact that many documents were seized or that on some of the documents seized marks of identification were not put or that the documents belonging to the sister concerns of the "Imperial Flour Mills" were seized.

22. In our view the decision of the High Court that the action of the Commissioner of Income-tax, U. P., and the Income-tax Officers who purported to act in pursuance of the letters of authorisation was mala fide, cannot be accepted as correct.

23. Counsel for M/s. Seth Brothers contended that opportunity may be given to the assesseees to lead evidence vive voce to prove that the revenue officers acted for a collateral purpose. We do not entertain this request since we propose to remand the case to the High Court to decide questions which have not been decided. The applicants, if so advised, may move the High Court for leave to lead evidence. It is for the High Court to decide whether at this stage after nearly six years leave to examine witnesses should be granted.

24. The order passed by the High Court is set aside and the proceeding is remanded to the High

court. The High court will deal with and dispose of the proceeding according to law. We may observe that counsel for the Income-tax Officer did not invite us to decide the question of the vires of Section 132 of the Income-tax Act on which the High Court has expressed no opinion. M/s. Seth Brothers and the other petitioners in the High Court will pay the costs of these appeals in this Court. There will be one hearing fee. Costs in the High Court will be costs in the petitions.

</html