

# **BOMBAY HIGH COURT**

Ali Ahmed

Vs.

The Collector of Bombay

Criminal Appln. No. 147 of 1949

(Rajadhyaksha and Chainani, JJ.)

14.04.1949

## **JUDGMENT**

### **Chainani, JJ.**

1. This is an application under Section 491, Criminal Procedure Code, for directions of the nature of habeas corpus. The applicant was carrying on business in Bombay in the name of Inter seas Corporation as the sole proprietor thereof. In 1946 he also promoted a private limited company under the name of Allied Agencies Ltd., and became a director thereof. He was assessed to income-tax, super-tax and surcharge, including penalties, at Rs. 10,17,259-8-0 for the year 1943-44. A notice calling upon him to pay this amount was issued by the Income-tax authorities. He, however, did not pay it. The Income-tax authorities, therefore, wrote to the Collector of Bombay and asked him to recover the amount in the manner provided in Section 46, Income-tax Act. Sub-section (2) of this section empowers the Collector to recover the amount as if it was an arrear of land revenue, or as if a decree for that amount had been passed by a civil Court. On 17th May 1948, the Collector attached two bank accounts of the applicant, in which the balance was about Rs. 600, under Order 21, Rule 46, Civil Procedure Code. On 3rd August 1948, the applicant was arrested and detained in a civil jail under Order 21, Rule 40. On 25th August 1948 a creditor, to whom the applicant owed about Rs. 24,000, presented a petition to the High Court for adjudicating the applicant an insolvent. On that application an order adjudicating the applicant as an insolvent was passed by the High Court on 30th August 1948. The applicant then applied under Section 28, Presidency towns Insolvency Act for protection from arrest and detention, but this application was rejected. An appeal was filed against that decision; and we have been informed at the bar that that appeal has been dismissed. On 10th November 1948, the applicant's nephew made an application to this Court under Section 491, Criminal Procedure Code, and prayed for the release of the applicant on the ground that his detention was illegal. That application was withdrawn on 6th December 1948. On 1st December 1948, the Collector of Bombay issued a notice to the applicant under Section 13, Bombay City Land Revenue Act, 1876, calling upon him to pay the amount of income-tax, and informed him that if this amount was not paid within 20 days from the date of the service of the notice, the Collector would proceed to obtain payment of the same by attachment and sale of the applicant's properties or by the other remedies mentioned in Section 13 of the Act. Thereafter certain representations were

made on behalf of the applicant to the Income-tax authorities. On 8th January 1949, the Income-tax Officer, S.I. (Central), Bombay, wrote a letter to the Collector and suggested that the applicant might be released on certain conditions. On 11th January 1949, the applicant also submitted a petition to the Collector and requested for his release on certain conditions. The Collector also heard the applicant's counsel in the matter. As the Collector was of the opinion that it was necessary to continue the applicant's detention in the interest of public revenues, he replied to the Income-tax Officer on 14th January 1949, and enquired how it was in the interest of public revenues that a defaulter who, there was reason to believe, had made away with his assets and had not paid assessment of over ten lacs, should be released. The Income tax Officer then referred the matter to the Central Board of Revenue. On 28th January 1949, the Collector informed the applicant that his request for release could not be granted. Under Section 58, Civil Procedure Code, a person cannot be detained in a civil prison in execution of a decree for more than six months. The period of detention of the applicant ordered by the Collector under the provisions of the Civil Procedure Code, read with Section 46 (2), Income-tax Act was due to expire on 2nd February 1949. As the Collector was of opinion that the income-tax dues would not be realised if the applicant was released, he passed another order under Section 13, Bombay City Land Revenue Act on 28th January 1949, that the applicant should continue to be detained after 2nd February 1949, until further orders. Against that order the present application has been made, and it has been contended that that order is illegal and bad in law and in excess of the powers conferred upon the Collector.

2. Sub-section (2) of Section 46, Income-tax Act provides as follows :

"The Income-tax officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee, and the Collector, on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land-revenue :

Provided that without prejudice to any other powers of the Collector in this behalf, he shall for the purpose of recovering the said amount have in respect of the attachment and sale of debts due to the assessee the powers which under the Civil Procedure Code, 1908, a Civil Court has in respect of the attachment and sale of debts due to a judgment-debtor for the purpose of the recovery of an amount due under a decree."

The words 'without prejudice to any other powers of the Collector in this behalf, contained in the proviso are important. They show that irrespective of any action which the Collector may take to recover the amount of income-tax as an arrear of land-revenue, it is open to him to exercise for the purpose of recovering this amount the powers which a civil Court has for recovering a decretal debt. In other words the Collector has two remedies, and he may pursue either or both of these remedies for recovering the dues. The exercise by the Collector of the powers vested in a civil Court for recovering a decretal debt would not, therefore, preclude the Collector from using the powers conferred upon him by the Bombay City Land Revenue Act.

3. Section 13, Bombay City Land Revenue Act prescribes the manner in which land revenue in arrears may be recovered. This section is in the following terms :

"If any land-revenue is not paid at, or within, the time when it becomes payable the Collector may, on or after the day following that on which the arrears accrue due, cause a notice of demand to be served on the superior holder or on the person in possession, or on both.

Every person to whom such notice is issued shall be chargeable in respect thereof with a fee not exceeding two rupees calculated according to the rates specified in this behalf in the table in Schedule A :

Provided that in no case shall the fee chargeable for any notice exceed the amount of the land-revenue in respect of which the said notice is issued.

If the superior holder or the person in possession, as the case may be, shall, for the space of twenty days after service of written notice of demand of payment, fail to discharge the revenue due, it shall be lawful for the Collector to levy the same by attachment and sale of the land on which the revenue is due or of any other property, moveable or immovable, of the defaulter. Such sales shall be by public auction, and shall not take place until at least fifteen days after notice thereof shall have been published in the official Gazette. If the sale of the defaulter's property shall not produce satisfaction of the demand, it shall be lawful for the Collector to cause him to be apprehended and confined in the civil jail under the rules in force at the Presidency for the confinement of debtors, for which purpose a certificate of demand under the Collector's signature sent with the defaulter shall be the Sheriff's sufficient warrant, equally with the usual legal process in ordinary cases of arrest in execution of judgment for debt :

Provided, however, that such imprisonment shall cease at any time upon payment of the sum due, and that it shall in no case exceed one day for each rupee of the said sum."

4. One of the powers conferred upon the Collector for recovering land-revenue or any other amount due to Government and recoverable as an arrear of land revenue is the power to detain the defaulter in a civil jail. Mr. Seervai, who appeared for the applicant, laid considerable stress on the words 'cause him to be apprehended and confined in the civil jail under the rules in force at the Presidency for the confinement of debtors' in para. 5 and argued that the rules referred to in the section are the provisions contained in the Civil Procedure Code for the arrest and detention of persons who default in payment of amounts due under decrees passed against them. It was urged that the provisions of the Civil Procedure Code should consequently be deemed to have been incorporated in the Bombay City Land Revenue Act. Section 58, Civil Procedure Code, provides that the maximum period for which a debtor may be detained in a civil jail shall be six months. It was, therefore, contended that the maximum period for which the Collector could have detained the applicant for failure to pay the income-tax dues is six months, and that as this period has already expired, the present detention of the applicant is unlawful.

5. It is significant to note that while the words first used in para. 5, are 'cause him to be apprehended and confined in the civil jail', the rules referred to are the rules 'for the confinement of debtors.' The words 'under the rules in force at the Presidency for the confinement of debtors' therefore obviously go with the words 'confined in the civil jail'. The rules for confinement are

the rules which regulate the mode of confinement, the places and hours of confinement, the food, clothing and bedding to be given to such persons and other similar matters. Such rules are framed under Section 59, Prisoners Act, 1894, and are contained in chap. XXVIII of the Bombay Jail Manual, Vol. I, 1944 Edn. No separate rules appear to have been framed regulating the manner in which defaulters of land revenue are to be apprehended. It has been argued that such persons must, therefore, be apprehended in the manner laid down in the Civil Procedure Code for the arrest of debtors, and that consequently it must be held that the rules referred to in Section 13 are the provisions contained in the Civil Procedure Code for the arrest and detention of debtors. Section 41, Bombay City Land Revenue Act, empowers the Provincial Government to make rules for the guidance of the Collector and his subordinates in the discharge of their duties or for any other purpose connected with the subject-matter of the Act not expressly provided for therein. Under this section, therefore, the Provincial Government can make rules regulating the manner in which the persons ordered to be arrested under Section 13 are to be apprehended. The mere fact that no such rules have been framed so far would not justify the conclusion that all the provisions contained in the Civil Procedure Code with regard to the arrest and detention of debtors apply to persons arrested under Section 13, Bombay City Land Revenue Act. It may also be pointed out that the words used in the section are 'under the rules in force for the confinement of debtors' and not 'subject to the rules for the confinement of debtors.'

6. Section 36, Bombay City Land Revenue Act, provides that the provisions of the Civil Procedure Code in force for the time being in respect of the issue of summonses and commissions and other matters mentioned in the section shall apply to all persons summoned to appear before the Collector under the provisions of the Act. If the intention of the legislature was that the provisions of the Civil Procedure Code with respect to the arrest and detention of debtors should apply to persons ordered to be arrested under Section 13 of the Act, the Legislature would have used language similar to that used in Section 36 in this section also. The different phraseology used in Section 13, therefore, also supports the conclusion that the rules referred to in this section are the rules framed for the confinement of civil prisoners and not the provisions of the Civil Procedure Code with regard to the arrest and detention of debtors.

7. Assuming, however, that the rules referred to in Section 13 are the provisions of the Civil Procedure Code with regard to the arrest and detention of debtors, the question still arises whether the period of detention would be governed by these provisions in view of the proviso to Section 13, which states that the period of imprisonment shall in no case exceed one day for each rupee of the amount to be recovered. The Bombay City Land Revenue Act was enacted in 1876. The part of Section 13 relating to the apprehension and confinement of debtors has not been amended since then. The Civil Procedure Code which was in force in 1876 was the Code of 1859. Section 278, Civil Procedure Code, provided that "no person shall be imprisoned on account of a decree for a longer period than two years, or for a longer period than six months if the decree be for the payment of money not exceeding five hundred rupees; or for a longer period than three months if the decree be for the payment of money not exceeding fifty rupees." The maximum period of two years was reduced to six months in the Code of 1888. Under Section 58 of the present Code the period of detention prescribed is six months, if the decree is for the payment of a sum of money exceeding Rs. 50 and six weeks in other cases. The first two paragraphs of Section 13 provide that the Collector should issue a notice of demand to the defaulter, and that very person to whom the notice is issued shall be chargeable in respect thereof with a fee not exceeding Rs. 2 or the amount to be recovered from him. The section, therefore,

contemplates cases in which the amount to be recovered is less than Rs. 2. According to the proviso, imprisonment in such cases cannot exceed two days. Under Section 278, Civil Procedure Code of 1859 a debtor could be imprisoned for three months, (6 weeks under the present Code), if the decree was for the payment of money not exceeding fifty rupees. Mr. Seervai, therefore, argued that the object in enacting the proviso was to mitigate the hardship which might be caused to defaulters from whom small amounts had to be recovered, if they were detained in accordance with the provisions of the Civil Procedure Code and not to enhance the maximum period of detention specified in the Code. There is, however, no sufficient reason why the words contained in the proviso should be given such a restricted meaning. If this had been the intention of the Legislature, the proviso would have ended with some such words as, "or the period for which a debtor can be detained under the Civil Procedure Code, whichever is less." In the absence of any such limiting words, we are of opinion that the maximum period for which a person can be detained under Section 13 is that mentioned in the section itself, namely, one day for each rupee of the amount recoverable from him as an arrear of land revenue. If the argument that no defaulter can be detained for a period longer than six months is accepted, it would mean that, although the Collector has two different kinds of powers conferred upon him for realizing arrears of income-tax, viz., the powers vested in a civil Court for recovering a decretal debt and the powers specified in Section 13 for recovering land-revenue arrears, he can, in effect, exercise only one of them. This appears to be contrary to the intention of the Legislature as expressed in sub-sections (2) of Section 46, Income-tax Act.

8. It was also urged that, unless a limited meaning is given to the proviso, it would be possible for the Collector to detain a defaulter for the whole period of his life, if the amount due from him is some lakhs of rupees, as in the present case, and that this could not possibly have been intended by the Legislature. The powers conferred upon a responsible officer like the Collector are to be exercised by him reasonably and not capriciously or oppressively. As observed by the Privy Council in *Babulal Ghoukhani v. Emperor*<sup>1</sup>, it is the implied condition of the exercise of every discretionary power that the power will be exercised fairly and honestly. Merely because of the possibility that in some cases the powers might be abused, it will not be proper to hold that the powers do not exist or to impose arbitrary restrictions on the exercise of those powers. The meaning of the words used in the proviso is plain, and in such cases it is not the duty of the Court to busy itself with the supposed intention of the Legislature : *Pekala Narayana Swami v. Emperor*<sup>2</sup>,

9. In our opinion, therefore, the maximum limit of detention, viz., six months, laid down in the Civil Procedure Code does not apply in cases of persons arrested under Section 13, Bombay City Land Revenue Act. It is true that this section does not specify the actual period for which a person arrested should be detained but only lays down the maximum limit up to which he can be detained. This presumably has been done deliberately. The object of the Legislature in prescribing only the maximum period evidently was to give

<sup>1</sup>65 IA 158 at p. 177: (AIR 1938 PC 130 : 39 Cr LJ 452)

<sup>2</sup>41 Bom LR 428: (AIR 1939 PC 47 : 40 Cr LJ 364)

discretion to the Collector to determine, subject to the limit prescribed by it, the actual period of detention in each case, having regard to the circumstances of that case.

10. The next argument advanced by Mr. Seervai was that the power of the Collector to cause a defaulter to be apprehended and confined in a civil jail is contingent on the sale of the defaulter's

property not realising an amount sufficient to satisfy the Government demand. He contended that the scheme of Section 13 is that the demand should first be satisfied out of the property belonging to the defaulter, and if the property fails to produce an amount sufficient to meet the demand, then and then only is the Collector justified in proceeding to apprehend and confine the defaulter in a civil jail. He emphasised this point by referring to the recent amendment of Section 13 of the Act by Section 2 of Bombay Act XLIX [49] of 1947, which makes it clear that even in respect of sale of property belonging to the defaulter, only so much of it is to be sold as is necessary for the satisfaction of the demand. He pointed out that in the present instance none of the applicant's property had been sold and that, therefore, the condition precedent for the Collector's exercising his powers to apprehend and confine the defaulter in a civil jail had not been satisfied. The answer of the Advocate-General to this contention was that this argument would have been perfectly valid, if it had been advanced in the case of an ordinary defaulter. But, he argued, that as an adjudication order had been passed in respect of the detenu, all his property vested in the Official Assignee, that consequently there was no property which could be said to belong to him and which could be sold by the Collector for the realization of the dues to Government, and that, therefore, the condition precedent was incapable of fulfillment.

11. The scheme of Section 13 of the Act clearly is that the Collector should first proceed against so much of the property of the defaulter as is necessary to satisfy the Government demand, and if the sale of the defaulter's property does not produce an amount sufficient to satisfy the demand, then only can the Collector cause the defaulter to be apprehended and confined in a civil jail. The arrest and confinement are intended to secure, if possible, the realization of the balance of the demand either from him or from some one interested in him. Until the amount of this balance is known, it would not be possible to determine the period for which the defaulter is to be confined. It is true that if the defaulter has no property at all, then it would be open to the Collector to proceed against the defaulter personally and to keep him in jail until the sum due from him is paid or the period of detention calculated on the basis of one day per each rupee of the demand expires. In such a case the question of satisfying the condition precedent does not arise.

12. The condition precedent cannot be said to be impossible of performance in the present case. Section 17, Presidency towns Insolvency Act (III [3] of 1908) reads as follows :

"On the making of an order of adjudication, the property of the insolvent wherever situate shall vest in the official assignee and shall become divisible among his creditors, and thereafter, except as directed by this Act, no creditor to whom the insolvent is indebted in respect of any debt provable in insolvency shall, during the pendency of the insolvency proceedings, have any remedy against the property of the insolvent in respect of the debt or shall commence any suit or other legal proceedings except with the leave of the Court and on such terms as the Court may impose :

Provided that this section shall not affect the power of any secured creditors to realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed."

13. It was, therefore, argued by the Advocate General that as soon as an adjudication order is made, the defaulter's property vests in the Official Assignee and ceases to be the property of the

defaulter within the meaning of Section 13, Bombay City Land Revenue Act. It is true that by operation of law, viz., Section 17, Insolvency Act, the property of the insolvent vests in the Official Assignee, but it still continues to be the property of the insolvent and has been referred to as such in the subsequent sections of that Act. It is the property of the insolvent which is available to his creditors, and the distribution of the proceeds of that property is to be made in a certain manner laid down in the Act. It can, therefore, be said that, although the insolvent's power of disposition over his property is taken away under the Insolvency Act, the property still continues to be the property of the insolvent, and is made available for the benefit of his creditors in the manner specified in the Act. The amount payable to Government for income-tax is a debt which is provable in insolvency. It is not disputed that the Collector can move the Court to sell the property of the insolvent defaulter. It is also possible for the Collector to institute proceedings himself for the sale of the property with the leave of the Court and on such terms as the Court may impose. Consequently, even though by reason of the adjudication order the property of the detinue vests in the Official Assignee, it is still capable of being sold for the realization of Government dues.

14. It was further argued by the Advocate General that even if the property is regarded as the property of the defaulter, who has become insolvent, the Collector could not levy attachment thereon and effect its sale under Section 13, Bombay City Land Revenue Act. We are not satisfied that this contention is correct. Once the leave of the Court is obtained under Section 17, Insolvency Act, the only bar to proceeding against the defaulter's property in the ordinary way is removed, and the Collector could attach and sell the property in the usual manner, subject to such terms as the Court has deemed fit to impose. The sale proceeds will no doubt vest in the Official Assignee, but the Collector can request the Court to apply them for the satisfaction of the Government demand. The Court is bound to grant such request, for under Section 49, Insolvency Act, in the distribution of the property of the insolvent, all debts to the Crown shall be paid in priority.

15. On the view put forward by the Advocate General curious anomalies may arise. As soon as the defaulter is adjudicated an insolvent, the property would vest in the Official Assignee, and if the true construction of Section 13 be as contended by the Advocate General, then it would be open to the Collector to proceed to imprison the defaulter even for a trifling sum of a few rupees on the ground that the defaulter had no property which could be sold, even though the insolvent's property may be worth lacs of rupees and in the distribution of which the Crown debts would have first priority. The proviso to Section 13 is intended to set the maximum limit up to which the detention of the defaulter would be justified, viz., one day for each rupee of the demand which remains to be satisfied after the defaulter's property has been sold. The precise period for which the defaulter can be detained would, therefore, depend upon the difference between the demand and the amount realized by the sale of his property. If the defaulter's property is not sold because it vests in the Official Assignee, then the detention of the defaulter may extend to a very long period. We can hardly believe that this kind of result could have been contemplated that merely because the defaulter's property vests in the Official Assignee, he should go to jail even if there is only one rupee of demand not satisfied or that he should remain in jail for an indefinite period because the Collector would not choose to make an application to the Court for the sale of the defaulter's property.

16. In paras. 11 and 12 of his application to the Collector made on 11th January 1949, i e., about

three weeks before the Collector ordered his detention under Section 13, Bombay City Land Revenue Act, the applicant has stated as follows :

"In the Schedule filed by me my assets are Rs. 7,95,376 which consist of shares in the two Allied Agencies Ltd., of the aggregate value of Rs. 6,65,000 and several time-barred claims on promissory notes.....

On 24th November 1948, I was examined by the Official Assignee and I pointed out that it was possible for me to recover part of the time-barred claims if I was free to approach my debtors. The position of the part of my assets is also such that it would realise a much better price if sold by me. The shares of the private limited companies have no value in the market, but if I am allowed to carry on business in the name of these two companies there is a possibility with my valuable business contracts in India and outside of my being able to pay off a substantial part of my debts." It was, therefore, urged by the Advocate-General that a sale of the applicant's assets would not have realised any appreciable amount. It was also argued by him that the demand is for over ten lacs of rupees, that even the applicant himself has valued his property at about Rs. 8,00,000, and that, therefore, in any case there would be a deficit of over Rs. 2,00,000, for which the detention of the applicant would be justified. The exit value of the property can be ascertained only when the property is actually sold and when only it could be said definitely whether it is or is not sufficient to satisfy the demand, and if it is not, what the amount of deficit is. If the property consists of some speculative scrips, then it is quite conceivable that the property as valued in the schedule, though insufficient to meet the demand at the time of that valuation, may, subsequently due to extraneous circumstances, appreciate in value and produce an amount sufficient to meet the demand, when it is actually sold. In any case, we consider that when a special procedure is prescribed by law for taking a particular action, that procedure must be followed, and it is no answer to say that even if such procedure had been followed, the result would not have been different. As observed by the Privy Council in *Nazir Ahmad v. King Emperor*<sup>3</sup>, it is a well-recognised rule that "When a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all." In our opinion, the procedure prescribed must be strictly followed, particularly where the consequences affect the liberty of a subject.

17. We are, therefore, of the opinion that the provisions of Section 13, Bombay City Land Revenue Act of 1876 which require, in the first instance, the sale of the defaulter's property, before he can be apprehended and confined in a civil jail, could have been complied with in this case. As, therefore, the condition precedent for the Collector's exercising his powers to apprehend and confine the defaulter in a civil jail has not been

<sup>3</sup>38 Bom LR 987 at p. 993; (AIR 1936 PC 253 : 37 Cr LJ 897)

satisfied, the order of the Collector authorizing the detention of the applicant in prison cannot be sustained in law. We would accordingly have directed his release but for the conclusion which we have reached that the present application is not maintainable by reason of the provisions of Section 226, Government of India Act, 1935.

18. It has been contended by the Advocate-General that the present application is barred by Section 226, Government of India Act, 1935. Sub-section (1) of that section provides as follows :

"Until otherwise provided by Act of the appropriate legislature, no High Court shall have any original jurisdiction in any matter concerning the revenue, or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force."

There can be no doubt that in dealing with applications under Section 491, Criminal Procedure Code, the High Court acts in the exercise of its original jurisdiction. It is only the High Court and not any subordinate Court which can exercise powers under this section. Applications under this section are therefore made to the High Court only. They do not come before it by way of appeal or revision against the orders of subordinate Courts. In fact such applications were formerly heard on the Original Side of the High Court by a single Judge. Later on the rules were modified, and it is now provided in Rule 60, Appellate Side Rules that all applications under Section 491, Criminal Procedure Code, shall be made to the Division Court taking criminal business of the Appellate Side of the High Court. The fact that such applications are heard by a Division Court doing criminal work would not alter the position that it is only in the exercise of its original jurisdiction that the High Court entertains such applications."

19. It cannot also be disputed that in ordering the arrest of the applicant for failure to pay the income-tax, the Collector was doing an act "in the collection of revenue." The question for consideration, therefore, is whether this act was done "according to the law for the time being in force" within the true meaning to be given to these words in the light of the facts of this case and decided cases and whether consequently the jurisdiction of the High Court to deal with the present application is ousted? The Advocate-General has relied on the decision of the Madras High Court in *Thyagaraja v. Collector, Madura*<sup>4</sup>, In that case notices of demand calling upon the applicant to pay the income-tax for the years 1931-32, 1932-33 and 1933-34 were issued on 31st January 1932, 31st January 1933 and 16th November 1933, respectively. Thereafter proceedings were commenced under Section 46, Income-tax Act, and in March 1935 the Revenue Divisional Officer issued an order for the arrest of the petitioner. The petitioner was arrested on 26th March 1935, but was released subsequently on giving some post dated cheques. The petitioner then learnt that proceedings for arresting him were being taken again. He, therefore, made an application to the High Court for the issue of a writ of certiorari to quash the proceedings before the Collector for the realization of the arrears of income-tax due from him on the ground that these had not been commenced before the expiration of one year from the last dates of the financial years in which the demands had been made, as required by Section 46 (7), Income-tax Act, and also that these proceedings were in contravention of the provisions of Section 48, Revenue Recovery Act. It was held in that case that as the

<sup>4</sup> AIR 1936 Mad 398 : (59 Mad 702)

orders for the arrest of the petitioner had been issued in pursuance of Section 46, Income-tax Act, it did not matter whether those orders were justified on a right construction of the provisions of that section, that what mattered was whether the Collector *bona fide* believed that he was acting according to these provisions, and that as it had been conceded that the Collector had not acted mala fide, the Court had no jurisdiction to issue a writ of certiorari quashing the proceedings before the Collector.

20. In reply to the above contention of the Advocate General, Mr. Seervai relied on certain observations made by the Privy Council in *Secretary of State v. Mask and Co*<sup>5</sup>, and *Province of*

*Bombay v. Hormusji Manekji*<sup>6</sup>, In the former case, their Lordships in the course of their judgment at p. 773 have observed as follows :

"It is settled law that the exclusion of the jurisdiction of the civil Court is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure." In *Province of Bombay v. Hormusji Manekji*<sup>7</sup>, it has been stated (p. 628) :

"The appellant maintains that the subject-matter of the present suit is an objection to the amount, incidence or mode of assessment of land revenue, within the meaning of Section 4 (b). but Sir Cyril Redcliffe, on behalf of the appellant, rightly conceded that the civil Courts have jurisdiction to determine a question as to excess of the statutory powers conferred by the Code."

Mr. Seervai therefore argued that the protection given by Section 226, Government of India Act 1935, is only in respect of acts which have been done according to the law for the time being in force, and that as the Collector's action in the present case ordering the applicant's detention was not in conformity with the law, viz., the Bombay City Land Revenue Act 1876, the High Court has jurisdiction to entertain the present application.

21. Section 226 corresponds to provisions enacted more than 150 years ago. The effect of these provisions was considered by the Privy Council as long ago as 1850 in *Spooner v. Juddow*<sup>8</sup>, In that case a sum of Rs. 8 and odd was due to Government on account of quit-rent from the plaintiff's purchaser-in-title, Narandas. As the plaintiff did not pay this amount, the Collector issued a warrant to one of his subordinates Babajee authorizing him to enter into and take possession of the house and property of the defaulter Narandas. In pursuance of that warrant, Babajee, the Collector's assistant, Bomanjee and certain other persons went to the house of the plaintiff. The plaintiff then brought an action for trespass against the Collector and Bomanjee before the Supreme Court at Bombay alleging that they had unlawfully entered his dwelling house and taken away certain articles. An objection was then taken on behalf of the Collector that the Court had no jurisdiction to try the case, as it related to a matter concerned with the revenue. The Letters Patent establishing the Supreme Court of Judicature at Bombay contained the following clause :

"Nor shall the said Court have or exercise any jurisdiction in any matter concerning the revenue under the management of the said Governor and Council

<sup>5</sup>42 Bom LR 767 : (AIR 1940 PC 105)

<sup>7</sup>50 Bom LR 624 : (AIR 1947 PC 200)

<sup>6</sup>50 Bom LR 524 : (AIR 1947 PC 200)

<sup>8</sup>4 MIA 353 : 6 MOO PC 257 PC

of Bombay respectively, either within or beyond the limits of the said town, or the forts and factories subordinate thereto, or concerning any act done, according to the usage of the country, or the Regulations of the Governor and Council of Bombay aforesaid."

The Supreme Court held that the quit-rent was not "revenue" within the meaning of the Charter and that the act complained of was not warranted by the usage of the country and the Company's regulations and that the Court had jurisdiction to entertain the action. The finding and judgment of the Supreme Court were reversed by the Privy Council. In the course of his judgment, Lord Campbell at pp. 379 and 380 observed as follows :

"The point, therefore, is whether the exception of jurisdiction only arises where the defendants have acted strictly, according to the usage and practice of the country, and the Regulations of the Governor and Council. But upon this supposition the proviso is wholly nugatory; for if the Supreme Court is to inquire whether the defendants in this matter concerning the public revenue were right in the demand made, and to decide in their favour only if they acted in entire conformity to the Regulations of the Governor and Council of Bombay, they would equally be entitled to succeed, if the Statutes and the Charters contained no exception or proviso for their protection. Our books actually swarm with decisions putting a contrary construction upon such enactments, and there can be no rule more firmly established, than that if parties *bona fide* and not absurdly believe that they are acting in pursuance of Statutes, and according to law, they are entitled to the special protection which the Legislature intended for them, although they have done an illegal act."

Dealing with the argument that the above interpretation might deprive the aggrieved party of any remedy, Lord Campbell stated (p. 378) :

"Whether the plaintiff might have redress before any other tribunal, can only be material in a doubtful construction of the Statutes and Charters establishing the Court in which the action was brought. If by these Statutes and Charters, its jurisdiction in this action is clearly taken away, our decision could not be influenced by the consideration, that the plaintiff is left without remedy."

22. We are not aware of any later decision of the Privy Council in which the above observations have been dissented from. On the other hand, this High Court and other High Courts and the Federal Court have followed the above decision in several cases, and have held that Section 226, Government of India Act, 1935, and the corresponding Section 106, Government of India Act, 1919, applied in all cases in which the officer, whose act is challenged, *bona fide* and not absurdly believed that he was acting in pursuance of statute and according to law.

23. In *Best and Co. v. Collector, Madras*<sup>9</sup>, Coutts-Trotter, J., decided that a suit to declare that an agreement for composition of income-tax entered into by the Collector but which had been repudiated by him, was binding upon him, could not lie on the Original Side of

<sup>9</sup> AIR 1919 Mad 715 : (48 IC 790)

the High Court by reason of Section 106 (2), Government of India Act, 1919. This decision was followed by a bench of the Madras High Court in *Govindarajulu Naidu v. Secretary of State*<sup>10</sup>, and in *Thyagaraja v. Collector, Madura*<sup>11</sup>, to which I have referred above.

24. The question of the interpretation of the above section came up for consideration before Rangnekar, J., in *Dewarkhand Cement Co. Ltd. v. Secretary of State*<sup>12</sup>, In that case a suit was brought for a declaration that the proper stamp duty chargeable on a certain document was Rs. 15,000 and not about Rs. 55,000 as assessed by the Superintendent of Stamps and for a decree for the refund of the excess amount paid to Government. An objection was raised on behalf of Government that the Court had no jurisdiction to entertain the suit by reason of Section 106 (2), Government of India Act, 1919. The plaintiff's reply to this objection was that the construction put by the Stamp authorities upon the relevant provisions of the law was erroneous, that their act was not in accordance with law, and that consequently the jurisdiction of the Court was not taken away. Rangnekar, J., dealt with this contention in the following words (p. 326) :

"It seems to me, however, that the object of the statute plainly was to bar the jurisdiction of the Courts in any matter concerning the revenue and for the purpose of protecting the revenue. Therefore, in a protective statute of this nature it is difficult to construe the words in the latter part of the section in their literal and etymological meaning. For, it is obvious that if an act is done by the revenue authorities for the purpose of collecting the revenue, which they consider to be properly leviable in accordance with law, no special statutory protection is needed. The act is done in accordance with law and can never give rise to any cause of action against the officers or the Secretary of State." He quoted some observations made by Lord Campbell in *Spooner v. Juddow*<sup>13</sup>, and the following passage from Maxwell on the Interpretation of Statutes (9th Edn.) at p. 239 :

"It is obvious that the provisions in numerous statutes which limit the time and regulate the procedure for legal proceedings for compensation for acts done in execution of his office by a justice or other person, or, 'under' or 'by virtue' or in 'pursuance' of his authority, do not mean what the words, in their plain and unequivocal sense, convey, since an act done in accordance with law is not actionable, and therefore needs no special statutory protection. Such provisions are obviously intended to protect, in certain circumstances, acts which are not legal or justifiable and the meaning given to them by a great number of decisions seems, in the result, to be that they give protection in all cases where the defendant did, or neglected, what is complained of, while honestly intending to act in accordance with his statutory powers and, whether reasonably or not believing in the existence of such facts or state of things as would, if really existing, have justified his conduct."

It was pointed out to him that the view which he was taking might deprive the public of any remedy against what might be the wrong and arbitrary decisions of the Stamp authorities. Referring to this argument he stated at p. 328 as follows :

<sup>10</sup>60 Mad 449 : ( AIR 1927 Mad 689)

<sup>12</sup> ILR 1939 Bom 320 : ( AIR 1939 Bom215)

<sup>11</sup>( AIR 1936 Mad 398 : 59 Mad 702)

<sup>13</sup>(4 MIA 353 : 6 Moo PC 267 PC)

"It is also true that the decision of the stamp authorities practically for all purposes is final; but, in spite of these considerations, it seems to me that it is difficult to get away

from the plain meaning of the words in Section 108 (2), Government of India Act."

He, therefore, hold that the suit was barred by Section 106 (2), Government of India Act, 1919. This case was followed in *Bruusgaard v. Secretary of State*<sup>14</sup>, see also *Dinshaw v. Commissioner of Income-tax Central*<sup>15</sup>, The Calcutta High Court has taken a similar view in *Thin Yen v. Secretary of State*<sup>16</sup>, In that case, a suit was brought before the High Court against the Secretary of State for a declaration that certain goods had been illegally seized and confiscated under the Sea Customs Act. It was held that the suit was barred by Section 106 (2), Government of India Act, 1919. This case was followed in *Wan Ten Lang v. Collector of Customs*<sup>17</sup>,

25. The question of the interpretation to be placed upon Section 226 has also been considered by the Federal Court in two cases : *Governor-General in Council v. Raleigh Investment Co., Ltd*<sup>18</sup>. and *Governor-General v. Shiromani Sugar Mills*<sup>19</sup>, In *Governor-General in Council v. Raleigh Investment Co., Ltd*<sup>20</sup>. a suit was filed before the Calcutta High Court for a declaration that certain provisions of the Income-tax Act were ultra vires and for consequential refund. It was contended on behalf of Government that the suit was not maintainable in view of Section 226, Government of India Act, 1935. The Calcutta High Court by a majority of two to one overruled this objection on the ground that a matter can be held to concern revenue only when the law under which the revenue was claimed was itself valid, and that as in the Court's view the relevant provisions of the law were invalid, the suit must be held to relate not to revenue, but to an illegal exaction. This view was not accepted by the Federal Court. In his judgment Spans, C.J., stated (p. 244) :

"The learned Judges say that where the law imposing the revenue is itself illegal, a dispute in relation to it cannot be said to concern the 'revenue.' This argument, if pursued, to its logical limits will prove too much. If even under a valid revenue law a person who is not liable to be assessed is sought to be assessed to revenue, that claim may well be described as an 'illegal' claim against him. Again, there may be a dispute between a tax-payer and the revenue authorities as to whether the tax-payer has or has not paid what was due from him and if on investigation it should be found that he had paid what was claimed as still due, the claim as against him for further payment might well be described as 'illegal'. If in such case the Court should be called upon to decide whether the claim was well founded in law before applying the bar under Section 226, the provision would be practically rendered nugatory."

At page 246 be observed :

"But as we read Section 226, the bar is absolute, if the dispute concerns revenue, taking the word 'revenue' 'in its ordinary sense'."

<sup>14</sup>42 Bom LR 532 : ( AIR 1940 Bom 294)

<sup>15</sup>45 Bom LR 31 : ( AIR 1943 Bom 77)

<sup>18</sup>1944 FCR 229 : (AIR 1944 FC 51)

<sup>19</sup>48 Bom LR 482 : (AIR 1946 FC 16)

<sup>16</sup> ILR (1939) 1 Cal 257 : ( AIR 1939 Cal763)

<sup>17</sup> ILR (1939) 2 Cal541 : ( AIR 1940 Cal 174)

<sup>20</sup>(1944 FCR 229 : AIR 1944 FC 51)

26. This case went in appeal to the Privy Council who decided it on another ground, viz., that the suit was barred by Section 67, Income-tax Act. The Privy Council expressed no opinion as to the effect of Section 226, Government of India Act, 1935. In *Governor General v. Shiromani Sugar Mills*<sup>21</sup>, a notice of demand in respect of income-tax due from a company was served upon the official liquidators after the company had gone into liquidation. The official liquidators pointed out to the Income tax Department that the proper procedure was to lodge a claim in respect of arrears of tax alleged to be due from the company. Instead of adopting that procedure the Income-tax Department decided to take action under Section 46, Income-tax Act and a certificate asking the Collector to recover the amount as an arrear of land revenue was sent to the Collector of Allahabad under sub-sections (2) of this section. An application was then made by the Liquidators to the High Court praying that the Income-tax Officer should be directed to put in a formal claim to the official liquidators in respect of the amount of income tax and for an order restraining the Collector from recovering the amount as an arrear of land revenue. It was contended before the High Court that it had no jurisdiction to interfere by injunction or otherwise in view of Section 226, Government of India Act. The Allahabad High Court did not accept this view, and ordered that the proceedings before the Collector should not be proceeded with without leave of the Court. In appeal the Federal Court set aside the High Court's order, and held that Section 226 deprived the High Court of its jurisdiction in the matter Spens, C.J., in his judgment at pp. 491-492 observed as follows : "But in our view the more important question in this case is whether the act ordered or done in the collection of the revenue must in truth and in fact have been 'according to the law for the time being in force,' or whether it is sufficient that the person or persons ordering or doing the act should *bona fide* and not absurdly have believed that the act was 'according to the law for the time being in force.' Counsel for the appellant pressed us with the view that the latter only was sufficient to bring this case within Section 226 (1), and he relied upon the well-known case of *Spooner v. Juddow*<sup>22</sup>, The learned Judges in the Court below were able to come to the conclusion that the principles of *Spooner v. Juddow*<sup>23</sup>, did not apply when the complaint was that the whole procedure was not according to the law for the time being in force, or that the revenue authorities had no legal power to do what they had done, as opposed to the complaint of some irregularity in carrying out procedure authorised by law or an irregularity in doing something which they had power to do. We regret that with respect we feel bound to differ from the learned Judges in their limited view of the application of the principles of *Richard Spooner v. Juddow*<sup>24</sup>, On the facts of that case, we doubt, if the officials were only guilty of a mere irregularity of procedure. But be that as it may, it seems to us that there is really no difference in principles between the case of an official believing *bona fide* and not absurdly that some illegal step which he takes in executing a legally authorised procedure is itself according to the law for the time being in force, and that of another official believing *bona fide* and not absurdly that the procedure which he adopts in a particular case is itself according to the law for the time being in force." Although, therefore, the Federal Court was of the opinion that the procedure followed by the Income-tax authorities was 'unauthorized by law', it held that Section 226 operated as a bar to the High Court's entertaining the application made by the Liquidators and directed that it should be dismissed.

<sup>21</sup>(48 Bom LR 482 : AIR 1946 PC 16)

<sup>234</sup> MIA 353 : (6 Moo PC 257)

<sup>224</sup> MIA 353 : (6 Moo PC 257)

<sup>244</sup> MIA 353 : (6 Moo PC 257)

27. It will, therefore, be seen that the provisions of Section 226, Government of India Act, 1935, and similar provisions contained in the earlier statutes, have always been interpreted to mean that if an officer does any act concerning the revenue or in the collection of revenue, *bona fide* and honestly believing that he is acting in accordance with his statutory powers, no suit or application

in respect of such act can be entertained by the High Court, while exercising its original jurisdiction, even if such act is illegal or even if in doing the act the officer has not followed the procedure prescribed by law.

28. So far as the present case is concerned, the Collector in his affidavit has stated as follows :

"I say that in this case the petitioner having been adjudged an insolvent and all his assets having vested in the Official Assignee of Bombay, it is not open to me in law to attempt to sell any of the properties of the petitioner. In fact, from enquiries made by me, it is learnt that no assets have so far been realised by the Official Assignee of Bombay. According to the petitioner's own statement, the overwhelming proportion of his declared assets (over Rs. 7 lakhs) consist of assets which cannot be realized viz. shares in the Allied Agencies Ltd., of the declared value of Rs. 6,65,000 (which shares are not marketable) and time barred claims on promissory notes. It is, therefore, very unlikely that any appreciable portion of the income-tax dues could be realized by the Official Assignee by the sale of the assets vested in him. I further say that the condition imposed by Section 13, Bombay City Land Revenue Act, 1876, as regards attachment and sale of the petitioner's assets cannot be fulfilled in this case, as the petitioner has been adjudged an insolvent and all his assets have therefore been placed out of the reach of the Collector of Bombay, having become vested in the Official Assignee of Bombay, by operation of law. In view of the above fact, it is not open to me to sell any of the petitioner's assets and the said condition imposed by Section 13, Land Revenue Act cannot, therefore, be fulfilled.

After consideration of all the aforesaid facts and after hearing the petitioner's counsel Mr. K. M. Munshi and after having *bona fide* and honestly exercised the discretion vested in me by law I was of opinion that the income-tax dues would not be realized if the petitioner was released and it was, therefore, expedient to detain the petitioner under the powers conferred on me in that behalf under the provisions of Section 13, Bombay City Land Revenue Act, under which imprisonment is not to exceed one day for each rupee of the arrears." It is clear from these statements made by the Collector that he passed his order for the detention of the applicant under the *bona fide* belief that he had authority to make such an order under Section 13, Bombay City Land Revenue Act. Mr. Seervai also stated that in view of the Collector's affidavit he did not wish to press the allegations that the Collector had acted mala fide. In fact from the number of points raised and debated before us, it will be difficult to hold that he has acted mala fide or absurdly. The present application is consequently barred by Section 226, Government of India Act, 1935.

29. We have, therefore, no jurisdiction to interfere in this case. Accordingly, we dismiss the application and discharge the rule. No order as to costs.  
Rule discharged.