

BOMBAY HIGH COURT

Radheshyam Makhanlal

Vs.

Union of India

Misc. Appln. No. 263 of 1957

(Shah and S.T. Desai, JJ.)

10.08.1959

JUDGMENT

Shah, J.

1. In this petition two questions fall to be determined : (i) whether the Union Parliament was competent to enact Section 3 of the Indian Income-tax (Amendment) Act, 1959 (Act No. 1 of 1959) whereby Section 49EE was incorporated in the Indian Income-tax Act, 1922, prohibiting the entertainment of claims for refund of money paid or security furnished pursuant to settlements relating to assessment or re-assessment and conferring power upon the Income-tax Officer, Appellate Assistant Commissioner or the Commissioner to set off in certain cases moneys in the possession of Government against tax found due in proceedings for assessment under the provisions of Section 34 of the Indian Income-tax Act ? and (ii) whether this Court is competent to issue a writ under Article 226 of the Constitution of India compelling the Union of India to refund an amount of money or to return the securities collected or received pursuant to a settlement recorded under the procedure prescribed by Act 30 of 1947 which has since been declared ultra vires the Union Parliament ?

2. In order to appreciate the contentions advanced at the Bar, it is necessary to set out in some detail the legislative history and the effect of certain decisions of their Lordships of the Supreme Court concerning the power of assessment or re-assessment of assessee for the levy and collection of income-tax. Under Section 34 of the Income-tax Act, before it was amended by Act 48 of 1948, the Income-tax Officer was competent to serve on the person liable to pay tax a notice requiring him to furnish a proper return and to proceed to assess or re-assess the income, profits or gains, if in consequence of definite information which had come into his possession the Income-tax Officer discovered that income, profits or gains chargeable to income-tax had escaped assessment in any year or had been under-assessed or had been assessed at too low a rate, or had been the subject of excessive relief under the Income-tax Act, or where the Income-

tax Officer had reason to believe that the assessee had concealed the particulars of his income or deliberately furnished inaccurate particulars thereof. It is a matter of common knowledge that during the period of the last War large fortunes were made by business-men and controls imposed by States on prices and distribution of commodities were often evaded and secret profits were made and kept out of the books and were often invested in shares and immovable properties acquired in the name of benamidars or in the purchase of gold, silver and jewellery. With a view to assess this evaded income, the Legislature enacted the Taxation on Income (Investigation Commission) Act, 1947 (Act 30 of 1947). By Section 3 of the Act power was conferred upon the Central Government to constitute a Commission to be called the Income-tax Investigation Commission to investigate and report to the Central Government on all matters relating to taxation on income with particular reference to the extent to which the existing law relating to, and procedure for, the assessment and collection of such taxation was adequate to prevent the evasion thereof, and to investigate in accordance with the provisions of the Act any case or points in a case referred to it under Section 5 and make a report thereon in respect of all or any of the assessments made in relation to the case. By Section 5(1) the Central Government was authorized to refer to the Commission before a specified date for investigation and report any case or points in a case in which the Central Government had prima facie reasons for believing that a person had to a substantial extent evaded payment of taxation on income, together with such material as may be available in support of such belief. By sub-sec. (2) of Section 5 the Commission was authorized to examine the material submitted by the Central Government with reference to any case or points in a case and make such investigation as it considered necessary, and the Commission was to report to the Central Government if in its opinion further investigation was not likely to reveal any substantial evasion of taxation on income. By sub-sec. (3) the jurisdiction of the Courts to call in question the reference made by the Central Government under sub-sec. (1) or to investigate into the sufficiency of the material on which such a reference was made was excluded. By sub-sec. (4) it was provided :

'If in the course of investigation into any case or points in a case referred to it under sub-sec. (1), the Commission has reason to believe -

(a) that some person other than the person whose case is being investigated has evaded payment of taxation on income, or

(b) that some points other than those referred to it by the Central Government in respect of any case also require investigation, it may make a report to the Central Government stating its reasons for such belief and, on receipt of such report, the Central Government shall, notwithstanding anything contained in sub-sec. (1), forthwith refer to the Commission for investigation the case of such other person or such additional points as may be indicated in that report.'"

By Act 49 of 1948, the words and figures '30th day of June 1948' - being the date prescribed before which the reference was to be made - wherever they occurred in Section 5 of Act 30 of 1947 were substituted by the words and figures '1st day of September 1948'. It is evident that by

sub-sec. (1) of Section 5 authority was conferred upon the Central Government to refer a case to the Commission for investigation before the date prescribed; and by sub-sec. (4) it was open to the Central Government even after the date prescribed, to refer to the Commission for investigation any case which has come to its notice on a report made by the Commission that some person other than the person whose case was being investigated had evaded payment of taxation on income, or that some points other than those referred to it by the Central Government in respect of any case also required investigation. By Section 6 certain powers were conferred upon the Commission to examine any accounts or documents, and by Section 7 the procedure of the Commission was prescribed. By sub-sec. (2) of Section 8 it was provided that the Central Government shall, after considering the report made by the Commission, direct that such proceedings as it thinks fit under the Indian Income-tax Act, 1922, or the Excess Profits Tax Act, 1940, or any other law shall be taken against the person to whose case the report relates in respect of the income of any period commencing after 31-12-1938; and upon such a direction such proceedings may be taken and completed under the appropriate law notwithstanding the restrictions contained in Section 34 of the Indian Income-tax Act, 1922, or Section 15 of the Excess Profits Tax Act, 1940, or any other law, and notwithstanding any lapse of time or any decision to a different effect given in the case by any Income-tax authority or Income-tax Appellate Tribunal. By sub-sec. (4) of Section 8, it was declared that in all assessment or re-assessment proceedings taken in pursuance of a direction under sub-sec. (2), the findings recorded by the Commission on the case or on the points referred to it were, subject to the provisions of sub-secs. (5) and (6), final; and that no proceedings taken in pursuance of such direction shall be a bar to the initiation of proceedings under Section 34 of the Indian Income-tax Act, 1922.

3. By Act 67 of 1949 Section 8A was added to Act 30 of 1947. That section provided machinery for settlement of cases under investigation. By sub-sec. (1) of Section 8A the Commission was authorized to entertain an application of any person in any case referred to or pending before the Commission for investigation to have the case or any part thereof settled in so far as it related to him, and if the Commission was satisfied that the terms of the settlement may be approved, it should refer the matter to the Central Government, and if the Central Government accepted the terms of such settlement, the same were to be recorded by the Commission and thereupon the investigation, in so far as it related to matters covered by such settlement was to be deemed to be closed. Sub-section (2) of Section 8A provided for the enforcement of the terms of any settlement arrived at in pursuance of sub-sec. (1). By sub-sec. (3) it was provided, in so far as it is material, that subject to the provisions of sub-sec. (6) of Section 8, any settlement arrived at under Section 8 shall be conclusive as to the matters stated therein, and no person whose case had been so settled shall be entitled to reopen in any proceeding for the recovery of any sum under Section 8 or in any subsequent assessment or reassessment proceeding relating to taxation on income any matter which formed part of such settlement. By sub-sec. (4) it was provided that where a settlement had been accepted by Government under sub-sec. (1), no proceedings under Section 34 of the Income-tax Act, 1922, or under Section 15 of the Excess Profits Tax Act, 1940

shall be initiated in respect of the items of income covered by the settlement, unless the initiation of such proceedings was expressly allowed by the terms of the settlement.

4. Pursuant to Section 8, in several cases assessments were made by the Commission and in certain cases the persons concerned in the cases referred to or pending before the Commission agreed to settle the cases pending and settlements were duly recorded by the Commission.

5. In the meanwhile, Section 34 of the Indian Income-tax Act was amended by the Income-tax and Business Profits Tax (Amendment) Act, 1948 (Act 48 of 1948). Under Section 34, after it was amended, if (a) the Income-tax Officer had reason to believe that by reason of the omission or failure on the part of an assessee to make a return of his income under Section 22 for any year or to disclose fully and truly all material facts necessary for his assessment for that year, income, profits or gains chargeable to income-tax had escaped assessment for that year, or had been under-assessed, or assessed at too low a rate, or had been, made the subject of excessive relief under the Act, or excessive loss or depreciation allowance had been computed, or (b) notwithstanding that there had been no omission or failure as mentioned in clause (a) on the part of the assessee, the Income-tax Officer had in consequence of information in his possession reason to believe that income, profits or gains chargeable to income-tax had escaped assessment for any year, or had been under-assessed, or assessed at too low a rate, or had been made the subject of excessive relief under the Act, or that excessive loss or depreciation allowance had been computed, he could issue a notice within the time prescribed upon the assessee and proceed to assess or re-assess such income, profits or gains or recompute the loss or depreciation allowance.

6. Section 34(1) was amended presumably because it was apprehended that a large number of cases may be traced which did not fall within Section 5(4) of the Taxation on Income (Investigation Commission) Act and which could not be referred for investigation to the Commission. These cases had to be dealt with under the ordinary procedure for assessment or re-assessment under Section 34 of the Income-tax Act. Under Section 34, before it was amended in 1948, definite information coming into the possession of the Income-tax Officer in consequence of which it was discovered that income, profits or gains chargeable to income-tax had escaped assessment was a condition precedent to the exercise of jurisdiction to issue a notice upon the assessee and to the assessment or reassessment of such income, profits or gains. It was thought necessary to tone down the rigour of this provision and accordingly by the amended Section 34 it was provided that the Income-tax Officer may, if he has reason to believe that by reason of the omission or failure on the part on an assessee to make a return of his income under Section 22 or to disclose fully and truly all material facts necessary for his assessment, income, profits or gains chargeable to income-tax had escaped assessment, proceed to assess or re-assess such escaped income, profits or gains. By the amendment of Section 34 in that manner, the Government was able to convey the information which it collected in regard to substantial evaders of income-tax to the income-tax authorities concerned and to ask them to take proceedings against those

evaders under the amended Act. The Commission was, therefore, competent to proceed to make an investigation in respect of cases referred to it under Section 5(1) and also under Section 5(4); and in respect of cases not so referred the Income-tax Officer was, relying upon the information supplied by the Government or otherwise coming to his knowledge, able to assess or re-assess the income of tax-evaders. It is evident that after the amendment of Section 34 of the Income-tax Act by Act 48 of 1948 there were in respect of tax-payers two procedures simultaneously in operation : one under Act 30 of 1947 applicable to persons whose cases had been referred to the Commission and the other under Section 34 of the Income-tax Act applicable to persons whose cases were not so referred. The procedure prescribed by Act 30 of 1947 was drastic and summary and the decisions of the Commission were made final, whereas under Section 34 of the Income-tax Act the assesseees to whom notices for assessment or reassessment were issued, had diverse rights which were denied to the assesseees whose cases were referred to the Commission under Act 30 of 1947. This was a clear case of discrimination between persons falling in the same category and otherwise similarly situated. But before the Constitution came into force on 26th January 1950 legislation was not liable to be struck down as ultra vires on the ground of discrimination between the same class of persons similarly situated. Since the enactment of the Constitution, the provisions of Section 5(4) of the Taxation on Income (Investigation Commission) Act, 1947, became prima facie discriminatory.

7. The validity of Section 5, sub-section (4) of the Taxation on Income (Investigation Commission) Act, 1947, was challenged before the Supreme Court in *Suraj Mall Mohta and Co. v. Visvanatha Sastri*¹. In that case, the case of Messrs. Jute and Gunny Brokers, Ltd., was referred for investigation to the Commission under Section 5(1) of Act 30 of 1947, and the Commission discovered in the course of that investigation that Messrs. Suraj Mall Mohta and Co., had made secret profits which they had not disclosed and had evaded tax payable thereon. A report was then made by the Commission to the Central Government, and the Central Government referred the case to the Commission under Section 5(4). On receiving intimation from the Commission that their case had been referred for investigation to the Commission under Section 5(4) of Act 30 of 1947, Messrs. Suraj Mall Mohta and Co., filed a petition under article 32 of the Constitution praying for an appropriate writ restraining the Commission from taking action against them under the provisions of Act 30 of 1947, on the ground that certain provisions of that Act had become void being discriminatory in character, after the coming into force of the Constitution of India. Their Lordships of the Supreme Court held that

'Section 34 of the Indian Income-tax Act, 1922, as amended by Act 48 of 1948, and subsection (4) of Section 5 of the Taxation on Income (Investigation Commission) Act, 1947, dealt with all persons who had similar characteristics and similar properties, the common characteristics being that they were persons who had not truly disclosed their income and had evaded payment of taxation on income';

that the procedure prescribed by the Taxation on Income (Investigation Commission) Act, 1947,

was substantially more prejudicial and more drastic to the assessee than the procedure prescribed under the Indian Income-tax Act; and that subsection (4) of Section 5 and the procedure prescribed by the Act of 1947, in so far as it affected persons proceeded against under that subsection, being a piece of discriminatory legislation, offended against the provisions of article 14 of the Constitution and, therefore, was void and unenforceable. This judgment immediately focused attention upon the constitutionality of Section 5(1). It was contended in Suraj Mall Mohta's case, 1955-1 SCR 448 that Section 5(1) itself was vague and the classification attempted to be made thereby between substantial tax-evaders and others was bad, but the Court did not express any opinion on that contention.

8. On 28th May 1954, the Union Parliament attempted to rectify what was apparently a vague provision by basing the classification on a definite standard, and enacted the Income-tax (Amendment) Act, 1954 amending Section 34 whereby sub-section (1A) to (1D) were added to Section 34. By this amendment Section 5(1) was protected from challenge based on vagueness and uncertainty of classification, but exposed it to an unexpected challenge. By the amendment of Section 34 persons who originally fell within the ambit of Section 5(1) of the Taxation on Income (Investigation Commission) Act, 1947, and formed a distinct class of substantial tax-evaders, also could be assessed under Section 34 of the Income-tax Act as amended by the Act of 1954. The cases of substantial

¹(1955) 1 SCR 448

tax-evaders, which had originally been referred to the Commission, continued to remain liable to be dealt with by the Commission, but others whose cases were not so referred could be dealt with under the normal procedure prescribed by Section 34 of the Income-tax Act. It is evident that the result of this amendment was again to discriminate between persons similarly situated and falling in the same class of substantial tax-evaders.

9. The validity of Section 5(1) of the Taxation on Income (Investigation Commission) Act, 1947, was challenged in several petitions on the ground that the classification made thereby was vague and uncertain. Before these petitions could be heard Section 34 of the Income-tax Act was amended by adding thereto sub-section (1a). The enactment of this amendment furnished to the applicants an additional ground for challenging the classification made by Section 5(1). In *Shree Meenakshi Mills, Ltd., Madurai, v. Sri A. V. Visvanatha Sastri*², their Lordships of the Supreme Court held that Section 34 of the Income-tax Act, as amended by the Income-tax (Amendment) Act 331 of 1954, operated on the same field as Section 5(1) of the Taxation on Income (Investigation Commission) Act, 30 of 1947, and, therefore, Section 5(1) of the latter Act had become void and unenforceable being discriminatory in character. The Supreme Court on that view prohibited further proceedings before the Income-tax Investigation Commission or proceedings commenced under Section 5(1) of the Taxation on Income (Investigation Commission) Act. By these two judgments - the cases of Suraj Mal Mohta 1915-1 SCR 448 and *Shree Meenakshi Mills, Ltd., 1955-1 SCR 787* - substantially the entire Sec. 5 of Act 30 of 1947 was struck down as ultra vires the Union Parliament.

10. The validity of Section 8(2) of the Taxation on Income (Investigation Commission) Act was then challenged before the Supreme Court, and in *M. Ct. Muthiah v. Commissioner of Income Tax, Madras*³, it was held that barring the cases which were already concluded by reports made by the Commission and the directions given by the Central Government under Section 8(2) of Act 30 of 1947 culminating in the assessment or re-assessment of the escaped income, those cases which were pending on 26th January 1950 for investigation before the Commission as also the assessment or reassessment proceedings which were pending on 26th January 1950 before the Income-tax Officers concerned in pursuance of the directions given by the Central Government under Section 8(2) of the Act would be hit by article 14 of the Constitution and would be invalidated.

11. Thereafter the validity of the procedure prescribed by Section 8A of the Taxation on Income (Investigation Commission) Act, 1947, was challenged before the Supreme Court : and in *Basheshar Nath v. Commissioner of Income Tax, Delhi and Rajasthan*⁴, decided on 19th November 1958, their Lordships of the Supreme Court declared the procedure prescribed by Section 8A for enforcement of the settlement in a case of evasion of taxation under investigation as void, being discriminatory in character.

12. In the meanwhile, several tax payers, whose cases were referred to the Commission, had entered into settlements with the Union of India under Section 8A of Act 30 of 1947 and had made from time to time payments pursuant to those settlements. The procedure prescribed by Section 8A for enforcement of the settlements so arrived at having been declared invalid, the Union Parliament enacted the Indian Income-tax (Amendment) Act

²(1955) 1 SCR 787

⁴1959-35 ITR 190

³(1955) 2 SCR 1247

1959, (Act No. 1 of 1959) on 12th March 1959, and by Section 3 of that Act, Section 49EE was inserted after section 49E of the Indian Income-tax Act, 1922. By Section 49EE it was provided as follows :

'Power to set off in certain cases moneys in the possession of Government against tax found due under assessments etc., thereafter to be made. - (1) Where in pursuance of any settlement relating to the assessment, re-assessment or case of any person made or purported to have been made before the 17th day of January, 1959, whether under this Act or otherwise, any sum of money or any security for the payment of any sum of money has been paid or furnished by him, or on his behalf by any other person no claim for the refund of any sum so paid or for the return of any security so furnished shall be entertained or allowed on the ground that the settlement is invalid -

(a) in any case where a notice under Section 34 in respect of the income, profits or gains relating to the settlement aforesaid has been issued before the 17th day of January, 1959; and

(b) in any other case, for a period of two years from that date and, if during the period of

the said two years any notice under Section 34 is issued, pending the completion of the assessment, re-assessment or settlement in pursuance of such notice;

and, accordingly, no application, suit or other legal proceeding for the refund of any such money or the return of any such security shall lie or be allowed to continue –

(1) pending the completion of the assessment, re-assessment or settlement in pursuance of the notice referred to in clause (a); or

(ii) during the period of two years referred to in clause (b) or pending the completion of the assessment, re-assessment or settlement in pursuance of the notice referred to in that clause.

(2) The Income-tax Officer, Appellate Assistant Commissioner or the Commissioner, as the case may be may set off the amount referred to in sub-section (1) or the amount of the security referred to in that sub-section which may be realized for the purpose against the tax, interest, penalty or any other sum which may become payable by reason of any assessment, re-assessment or settlement made in pursuance of the notice referred to in clause (a) of that sub-section or in pursuance of any such notice issued within the period of two years referred to in clause (b) of that sub-section.

(3) In computing the period of limitation prescribed for any legal proceeding in relation to any such sum or security aforesaid, the time during which any such proceeding cannot be instituted by reason of the provisions contained in sub-section (1) shall be excluded.'

13. The petitioner Radheshyam is the son and legal representative of one Makhanlal Gordhandas who died on 6th July 1951. The Central Government, in exercise of the powers conferred by Section 5(1) of the Taxation on Income (Investigation Commission) Act, 1947, referred to the Commission as many as 23 related cases of escaped income, and one such case was R. C. No. 801/11 of Makhanlal Gordhandas father of the petitioner. After the death of Makhanlal, Gordhandas the petitioner was brought on the record on 28th July 1951 as the heir of his father, and the proceedings were continued against him. The Commission found that income aggregating to Rs. 89,96,722/- had been withheld from assessment between 12th November 1939 and 12th November 1947 under diverse heads by the 23 assesseees whose cases were before it : and out of this escaped income, Rs. 14,86,000 had already suffered assessment during the regular assessments and the balance of Rs. 75,10,722 was escaped income fa the hands of Subhkaran Bholaram, Bai Basantibai, Kudilal Govindram and Radheshyam Makhanlal - the last being the petitioner in this case. The petitioner and others offered to settle the cases against them on 20th October 1951, and on 28th December 1951 they submitted formal applications to the Commission for settlement. On 29th December 1951, the Commission submitted its report on the settlement submitted by the petitioner and others, and on 5th January 1952, the Government accepted the proposed settlement and finally the Government passed an order on 1st February 1952 sanctioning the settlement. It was agreed between the Government of India and the four assesseees (including the petitioner) that the tax on the escaped income was to be 75 per cent

thereof and Rs. 10,00,000/- were to be recovered as penalty. These assesseees agreed that they were jointly and severally liable to pay Rs. 66,33,042/- as tax and penalty, and the amount was to be paid in four specified installments. They also agreed not to transfer or encumber the properties and certain shares specified in the schedules to the settlement, and that in default of payment of any of the installments on the date or dates specified or in the event of breach or non-performance of any part of the undertakings contained in clauses 8, 9, 10 and 11 of the terms of settlement, the entire tax and penalty then remaining due shall become payable forthwith with interest thereon at 6 per cent. per annum from the date of default or breach till realization. This settlement was signed by the petitioner. The terms of the settlement were not complied with, and on 6th June 1952 a certificate was issued to the Collector for recovering the amount due under the settlement. Thereafter the petitioner made certain payments between 21st July 1952 and 26th March 1953 aggregating to Rs. 4,00,000/-, and deposited with the Central Government 3270 shares of Seksaria Cotton Mills, Ltd., 50 shares of Seksaria Industries, Ltd., 2 shares of Govindram Bros. Ltd., and 318 shares of Seksaria Cotton Mills. Ltd., and documents of properties styled as Seksaria Chambers at 139, Medows Street, Bombay, and Seksaria Bhuvan at 106/7, Koregaon Park, Poona.

14. Doubts having arisen as to the validity of the proceedings taken before the Commission a notice was served on the petitioner on 9th August 1954 under section 34(1)(a) of the Income-tax Act for assessment of escaped income. The petitioner by his letter dated 9th October 1954, addressed to the Income-tax Department, claimed refund of the amount of Rs. 4,00,000/- paid by him, stating that the same had been recovered from him 'personally under threats and coercion' and as the settlement in pursuance of which he was made to pay the said amount was no more enforceable by the Government, the amount was refundable to him immediately. The Income-tax Officer did not carry out the requisition contained in the letter, and by letter dated 26th June 1957 called upon the petitioner to pay the balance of the amount due with interest. By letters, dated 16th July 1957 and 26th July 1957 the petitioner declined to carry out the requisition. The Income-tax Officer (Central) : Circle I-C, Bombay, then served a notice under Section 46(5A) of the Income-tax Act upon certain persons, who were indebted to the petitioner, to pay the amount due by them to the petitioner to the Income-tax Department. The petitioner then filed on 26th August, 1957, a petition in this Court for a direction, order or writ including a writ in the nature of Certiorari quashing the settlement and the notices issued under section 46(5A) of the Income-tax Act and the other proceedings taken in pursuance of the settlement and for a direction, order or writ including a writ in the nature of Mandamus compelling the Union of India to refund Rs. 4,01,612/22 nP. being the amount paid by him under the settlement and the amount recovered from the Bank of Baroda pursuant to the notice under Section 46(5A), and for a further direction against the Union of India and the Commissioner of Income-tax to return the shares and other documents of title deposited by him as security. The petitioner also claimed a direction, order or writ including a writ in the nature of Mandamus and/or Prohibition permanently restraining the Union of India, its officers, agents and employees from taking any action in pursuance of the settlement. This petition was amended on 21st July 1959 and the direction or writ including a

writ in the nature of Mandamus for refund of the amount of Rs. 4,01,612/22 nP. was claimed not only against the Union of India but also against the Income-tax Officer and the Commissioner of Income-tax. Similarly, the direction, order or writ including a writ in the nature of Mandamus and/or Prohibition restraining further action by way of recovery or otherwise in pursuance of the settlement was claimed against the Union of India as well as against the Income-tax Officer and the Commissioner of Income-tax.

15. Since the amendment of the Indian Income-tax Act by Act 1 of 1959, the validity of section 49EE, which was incorporated in the original Act by the amending Act, was challenged by an amendment to the petition made on 21st July 1959 of which further particulars were submitted on 24th July 1959. The petitioner contended that section 49EE provided for compulsory acquisition or requisitioning of property within the meaning of article 31(2) of the Constitution and violated the fundamental right of the petitioner guaranteed by that article, in that it did not provide for compensation for compulsory acquisition or requisitioning, and was on that account void. He also contended that Section 49EE discriminated between tax-payers whose cases had not been referred to the Investigation Commission and those whose cases had been referred : and also between tax-payers whose cases were referred and who have settled and made payments and those tax-payers who had not made payments pursuant to the settlements. According to the petitioner, the provisions of the said Act imposed a more onerous burden on the persons who had settled and paid than upon those whose cases had been referred and settled but who had not made payments pursuant to the settlements. He also contended that because the impugned provision did not provide for payment of interest on the amounts to be withheld there was discrimination between tax-payers who made payments under a settlement and those who made advance payment of tax under Section 18A of the Income-tax Act. Submitting that the provisions of the Taxation on Income (Investigation Commission) Act being discriminatory and void all settlements made there under were invalid, the petitioner challenged the provisions of section 49EE as being in 'furtherance and in implementation of the discriminatory provisions of law' and also as imposing unreasonable restrictions on his right to hold and dispose of his property delivered to the Union Government in pursuance of a void settlement. Finally it was claimed that the amount of tax paid and the value of the securities deposited by him being in excess of the estate left by his deceased father, by virtue of Section 24B of the Income-tax Act he could not be held liable to pay as tax an amount in excess of the estate left by his deceased father even if the settlement under the Act was valid, and on that account he was entitled to claim refund of tax already paid and return of the securities.

16. The Attorney-General appearing for the Union of India has raised two preliminary objections to the maintainability of this petition. He contends that a petition under article 226 of the Constitution for a writ is not maintainable, because it is not the appropriate remedy for enforcement of a claim to obtain refund of the amount paid or for return of securities furnished in pursuance of a voluntary settlement. Secondly, it is urged that the petition is not maintainable

because the Union of India is not located within the territorial limits of the jurisdiction of this Court and this Court has no power to entertain a petition for a writ against the Union of India for refund of the amount paid under the settlement and for return of the securities and title deeds of property deposited.

17. In support of the contention that an order for refund of moneys paid pursuant to a settlement under section 8A of Act 30 of 1947 cannot be claimed in a petition for a writ, reliance was placed upon two cases decided by the Supreme Court : *Gopal Das Mohta v. Union of India*⁵, and *Baburao Narayanrao Sanas v. Union of India*⁶, The first of these was a case in which the party concerned applied for settlement under the provisions of the Taxation on Income (Investigation Commission) Act, 1947 and in the settlement application he expressed his willingness to pay the amount declared by the Commission to be due by him as evaded tax, in certain installments. The Central Government accepted the proposal and the claim for evaded income-tax was thus finally settled and the amount was made payable in installments. When a part of the amount remained unpaid, the petitioner filed a petition under article 32 of the Constitution contending that the entire proceeding under Act 30 of 1947, which had resulted in imposition upon him of a liability and in the payment already made, was illegal and ultra vires. In his petition the petitioner urged that the provisions of sections 5, 6, 7 and 8 of Act 30 of 1947 were ultra vires as they contravened articles 14, 19(1) (f) and 31 of the Constitution; and relying upon the judgment in *Suraj Mall Mohta*'s case claimed a writ for refund of the amount already paid and also an order or a Writ of Prohibition against recovery of the amount sought to be recovered from him. The Constitutional Bench of the Supreme Court rejected the petition. The petition was regarded as 'wholly misconceived' and it was observed :

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

Rejecting the contention of counsel for the petitioner that the settlement was made under 'the pressure of circumstances and in view of the coercive machinery of Act 30 of 1947', their Lordships observed that the contention could not be raised in an application under the provisions of article 32 of the Constitution and that the forum for investigating such

⁵(1955) 1 SCR 773

⁶1954-26 ITR 725

allegations was elsewhere.

18. This view was reiterated by the Supreme Court in 1954-26 ITR 725 . In that case also, the assessee applied for settlement of his liability under Section 8A of Act 30 of 1947, and the Government accepted the request and entered into a settlement with him and directed the Income-tax Officer to enforce payment of the evaded tax according to the terms and conditions of the settlement. The assessee then preferred a petition under article 32 of the Constitution challenging the procedure adopted for assessing the tax and resulting in the imposition upon him of the liability to pay tax on the ground that it was illegal, ultra vires, void and unconstitutional. The Court approving of the judgment in Seth Gopal Das Mohta's case held that the liability of the assessee to pay evaded tax arose under the settlement voluntarily entered into by him with the Central Government and such a settlement could not be questioned by preferring a petition under article 32 of the Constitution.

19. Relying upon the observations made in these two judgments, it is urged that if a petition under article 32 of the Constitution for refund of amounts paid and for an order restraining enforcement of the settlement is incompetent at the instance of an assessee who has under the settlement made payments in full or partial; discharge or satisfaction of his liability, a petition under article 226 of the Constitution for that relief is equally not maintainable in the High Court. The powers of the High Court under article 226 and of the Supreme Court under article 32 are it is true not co-extensive. Whereas under article 32 the Supreme Court has power to issue appropriate writs for the protection of the fundamental rights conferred by Part III of the Constitution, by article 226 authority is conferred upon the High Court to issue appropriate writs for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose. But in the case before us the petitioner claims a writ under article 226 of the plea that by unlawfully retaining his property the Union of India had infringed his fundamental right. If the Supreme Court is incompetent in a petition under article 32 to issue a writ directing refund of the amount paid by an assessee under a voluntary settlement, the High Court is equally incompetent to entertain a petition under article 226 of the Constitution for a similar relief.

20. Mr. Amin for the petitioner submits that the view taken by the Supreme Court in the two cases is superseded in Basheshar Nath's case, 1959-35 ITR 190 , and, therefore, the principle of the latter case should be followed by us. It is true that whereas in Gopal Das Mohta's case, 1955-1 SCR 773 the entire petition for refund of the amount paid and for a Writ of Prohibition restraining recovery of the amount remaining unpaid under a settlement under Section 8A(2) of Act 30 of 1947 was rejected on the view that a petition under article 32 was not an appropriate remedy, in Basheshar Nath's case, 1959-35 ITR 190 the Supreme Court set aside the order of the Commissioner of Income-tax and quashed all proceedings pending for implementation of the order of the Union Government under the voluntary settlement. There is however no inconsistency between the judgments in Gopal Das Mohta's case, 1955-1 SCR 773 and in Basheshar Nath's case, 1959-35 ITR 190 . In the former case the petitioner applied for a writ under article 32, but in the latter case an appeal under article 136 was filed directly against the decision of the Income-tax Commissioner refusing to refund the amount paid by the assessee

pursuant to a voluntary settlement and also refusing to stay enforcement of the settlement. In Basheshar Nath's case, 1959-35 ITR 190 the claim made by the assessee for refund of the amount paid before the date of the petition was abandoned before the Supreme Court : and evidently that case is not an authority for the proposition that a writ Or an order for refund of the amount paid under a voluntary settlement in proceedings for assessment of income-tax, can be claimed in a petition under article 32 or article 226 of the Constitution.

21. Gopal Das Mohta's case. 1955-1 SCR 773 was brought to the notice of the Supreme Court in Basheshar Nath's case, 1959-35 ITR 190 and that case is expressly referred to in the judgments of Chief Justice S.R. Das, Mr. Justice Bhagwati and Mr. Justice S. K. Das. It is true that the case was relied upon on behalf of the Commissioner of Income-tax in support of the plea that it was open to a citizen to waive his fundamental rights, and the majority of the Court in that case took the view that no person could waive the fundamental right conferred -upon him by article 14 of the Constitution. Evidently before the Court the question whether a petition under article 32 for an order for refund of an amount paid under a voluntary settlement may lie did not fall to be determined, and there is not even an observation made in the judgments of the learned Chief Justice and Mr. Justice Bhagwati (who with Mr. Justice Kapur and Mr. Justice Subba Rao formed the majority) which may indirectly suggest that any doubt was sought to be thrown on the correctness of the view taken in Gopal Das Mohta's case, 1955-1 SCR 773 . We are, therefore, unable to hold that Gopal Das Mohta's case, 1955-1 SCR 773 has been overruled by implication in Basheshar Nath's case, 1959-35 ITR 190 .)

22. Mr. Amin says that the elucidation of the law by their Lordships of the Supreme Court in Basheshar Nath's case, 1959-35 ITR 190 , puts an entirely different complexion on the question as to the validity of the settlement. He contends that whereas in Gopal Das Mohta's case, 1955-1 SCR 773 it was assumed by the Court that the settlement was valid and enforceable and on that footing relief was denied in view of the exposition of the law in Basheshar Nath's case, 1959-35 ITR 190 it cannot now be said that the settlement made under Section 8A (1) of the Taxation on Income (Investigation Commission) Act, 1947, is valid. In support of that contention, counsel has invited our attention to the observations made by Mr. Justice Bhagwati in the opening paragraph of his judgment wherein it is observed that His Lordship agreed with the reasoning adopted and the conclusion reached by the learned Chief Justice and Mr. Justice S. K. Das in regard to the ultra vires character of the proceedings adopted under Section 8A of the Taxation on Income (Investigation Commission) Act, 1947, and the void character of the settlement reached thereunder. Mr. Amin contends that their Lordships took the view in Basheshar Nath's case. 1959-35 ITR 190 that not only was the procedure adopted for settlement of the claim of the Revenue under Section 8A of Act 30 of 1947 illegal, but even the settlement including the agreement which is incorporated therein and which formed basis of the settlement was void and unenforceable. The Attorney-General invites our attention to the fact that His Lordship the Chief Justice only held that the procedure for enforcement of the settlement prescribed by Section 8A (2) was void and unenforceable; and even Mr. Justice S. K. Das primarily dealt with the plea

about the invalidity of the procedure and did not expressly deal with the question as to the validity of the agreement incorporated in the settlement, even though he observed (at p. 230 of the report (ITR)) that the Commissioner of Income-tax had failed to make out the case that the settlement under section 8A of the Act was a legally valid settlement by reason of the severability or non-application of the discriminatory procedure under the Act. There is nothing in Basheshar Nath"s case, 1959-35 ITR 190 which supports the view that the agreement solemnly arrived at between the Central Government and the petitioner and incorporated in the settlement recorded under Section 8A (2) is void and unenforceable. If a voluntary agreement be granted, in my judgment, in proceedings for a claim for refund of an amount already paid pursuant to the settlement in full or partial discharge of liability to pay tax, it will be open to the Central Government to rely upon this agreement and to plead that the petitioner is bound thereby. Against the claim made by the petitioner for refund of the amount if the Central Government is entitled to set up the agreement, evidently disputed questions of law and fact will fall to be determined : and normally a petition under article 226 of the Constitution is not an appropriate proceeding for adjudicating upon disputed questions of fact.

23. But the petitioner has claimed return of the securities and also the title-deeds deposited by him, and he has also claimed that the settlement shall not hereafter be enforced against him. It is conceded by the learned Attorney-General that in view of the decision in Basheshar Nath"s case, 1959-35 ITR 190 , the settlement cannot be enforced by the income-tax authorities under the procedure Prescribed by section 8A (2) of Act 30 of 1947. But it is contended that the petitioner is not entitled in this petition to an order for refund of the amount already paid or for return of the securities and title deeds of property deposited, because the petition in substance is filed against the Union of India and this Court has no jurisdiction to issue a writ directing the Union of India to refund the moneys paid and to return the securities and title-deeds of property deposited by the petitioner. By article 226 of the Constitution it is provided by the first clause, in so far as it is material :

'Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government within those territories directions, orders or writs, including writs in the nature ofmandamus, prohibition and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.'

Evidently the jurisdiction of the High Court is to be exercised throughout the territories in relation to which it exercises jurisdiction, but it cannot issue a writ operative outside that jurisdiction. Under article 226 a writ may undoubtedly issue in appropriate cases against any Government : but the writ may only issue within the territories and not beyond.

24. The learned Attorney-General has invited our attention to several authorities in which it has been held that against statutory authorities located outside its jurisdiction a High Court cannot

issue a writ or order under article 226 of the Constitution. In *Election Commission India v. Venkata Subba Rao*⁷, it was held that the High Court of Madras could not issue a writ under article 226 of the Constitution against the Election Commission which has its office permanently located at New Delhi. In that case, Chief Justice Patanjali Sastri negated the contention of the petitioner that because the infringement complained of operated to the pre-judice of the petitioner within the jurisdiction of the Madras High Court that High Court was competent to entertain an application under article 226 of the Constitution against the Election Commission which

⁷1953 SCR 1144

was located outside the jurisdictions of the Madras High Court. It was observed :

'The rule that the cause of action attracts jurisdiction in suits is based on statutory enactment and cannot apply to writs issuable under article 226, which makes no reference to any cause of action or where it arises but insists on the presence of the person or authority 'within the territories'" in relation to which the High Court exercises jurisdiction'.

It was also observed :

'.....wide as were the powers thus conferred (under the Constitution), a two-fold limitation was placed upon their exercise. In the first place, the power is to be exercised 'throughout the territories in relation to which it exercises jurisdiction', that is to say, the writs issued by the court cannot run beyond the territories subject to its jurisdiction. Secondly, the person or authority to whom the High Court is empowered to issue such writs must be 'within those territories', which clearly implies that they must be amenable to its jurisdiction either by residence or location within those territories.'

This view was approved of in *K. S. Rashid and Son v. Income-tax Investigation Commission*⁸, in dealing with the question about the jurisdiction of the Punjab High Court to issue a writ against the Income-tax Investigation Commission located in Delhi. The same view was affirmed also in *Thangal Kunju Musaliar v. Venkitachalam Potti*⁹, But evidently these are cases in which the competence of the High Court to issue writs under article 226 against authorities located outside the limits of the jurisdiction of the High Court was canvassed. But in none of these cases was a writ claimed against the Union of India which evidently exercises executive authority over the entire territory of the Union.

25. There are several decisions of the High Courts in which it has been held that the High Courts other than the High Court of Punjab have no jurisdiction to issue a writ under article 226 against the Union Government compelling it to carry out its obligations. In *Ramesh Chandra Chatterjee v. Director-General of Observatories*¹⁰, the Calcutta High Court held that it had no jurisdiction to issue a writ under article 226 of the Constitution against the Director-General of Observatories, New Delhi, because that officer could not be said to be carrying on his normal activities within the State of West Bengal. In coming to that conclusion, Mr. Justice Sinha relied upon an unreported judgment of a Division Bench of that Court in *Lloyds Bank Ltd. v. Lloyds Bank Indian Staff Association (Calcutta Branches)*, delivered by Chief Justice Harries wherein it was

observed that a mandamus could not issue against the Government of India restraining it from giving effect to an award because article 226 of the Constitution expressly allowed writs in the nature of prerogative writs to issue against Government located in the territory over which the Court exercised jurisdiction and the Government of India could not be regarded as located in the State of West Bengal. In *P. N. Films Ltd. v. Union of India*¹¹, Mr. Justice Coyajee held that a petition filed in the Bombay High Court challenging the validity of an order issued by the Ministry of Information and Broadcasting at New Delhi exercising powers under Section 5(4) of the Cinematograph Act, 1952, which was made on behalf of the Central Government and issued at New Delhi, was not maintainable as the issuing authority was the Central Government located at New Delhi, and that the mere fact that the authority was

⁸1954 SCR, 738

¹⁰AIR 1953 Cal 76

⁹(1955) 2 SCR 1196

¹¹57 Bom. LR 753

functioning in the territory of the Bombay State did not per se give jurisdiction to the Bombay High Court. In coming to that conclusion the learned Judge purported to extend the principle of the cases decided by the Supreme Court in 1953 SCR 1144 and 1954 SCR 738 .

26. There is a recent decision of the Full Bench of the Madhya Pradesh High Court in *Surajmal Arjundas v. State of Madhya Pradesh*¹², in which Chief Justice Hidayatullah in delivering the judgment of the Court held that a petition under article 226 of the Constitution challenging a communication relating to the rejection of an application filed by the Government of India could not lie in the Madhya Pradesh High Court because a writ binding the Government of India could not issue from that High Court. The learned Chief Justice gave two substantial reasons for holding that such a writ could not issue : (i) that the Central Government could not be deemed to be permanently located or normally carrying on its business within the jurisdiction of the High Court, and (ii) that the record of the case which the Central Government decided was not before the High Court and could not be made available from any legal custody within the State. It was observed in that case that in the context of the Indian Constitution 'Central Government' means the President acting through the Council of Ministers and that it could not be gainsaid that the Government of India as an authority was permanently located and normally carried on its activities from New Delhi and in that sense the Central Government was situated outside the jurisdiction of the Madhya Pradesh High Court.

27. There is a decision of a single Judge of the Allahabad High Court in *Tej Bhan Madan v. Government of India*¹³, in which also a similar view was taken. In that case, where the order sought to be challenged by a petition for a writ of mandamus was an order passed at New Delhi by the Deputy Secretary to the Government of India it was held that the High Court of Allahabad had no jurisdiction to entertain the petition. In coming to that conclusion the learned Judge purported to follow an unreported judgment of a Division Bench of that Court in *Inderjeet Singh v. Chief Commercial Manager, E. I. Rly., Calcutta*¹⁴. It must, however, be observed that the state of authorities of the Allahabad High Court is somewhat unsatisfactory because in an earlier Full Bench judgment of that Court in *Maqbulunissa v. Union of India*¹⁵, it was held that the Union of India could be said to be within the territorial jurisdiction of the Allahabad High Court as it had

been given authority throughout the length and breadth of the country and accordingly the High Court of Allahabad had jurisdiction under article 226 of the Constitution to issue a writ against the Union of India.

28. The jurisdiction of the High Court to issue writs is circumscribed by a dual restriction - that the writ will not run outside the territory over which the High Court has jurisdiction, and the person or authority against whom the writ is to issue must be within that territory. The test which is determinative of the jurisdiction of the High Court is whether the authority whose action is challenged is within the territory over which the High Court has jurisdiction i.e., whether the authority or person is amenable to the jurisdiction of the High Court. Normally a person permanently residing or an authority permanently located at a place over which the High Court has jurisdiction is within the territory. The Union of India exercises executive authority over the entire territory of India and the right of a

¹² AIR 1958 Mad Pra 103

¹⁴(Civil Misc. Writ No. 449 of 1952) decided on 9th October 1953

¹³ AIR 1954 All 522

¹⁵ AIR 1953 All 477

citizen is undoubtedly infringed at the place where he resides; but the source of the authority of the Union is in New Delhi where the administrative offices are located. The infringement of the rights of the citizen at a given place does not invest the High Court having jurisdiction at that place with authority to issue a writ; and the competence of the Union to exercise authority over the place where the rights are infringed also does not invest the High Court with that authority. The jurisdiction to issue a writ must, therefore, be determined by the competence of the High Court to compel performance of its directions in the event of failure to comply with and in my judgment in the absence of power vested in this Court to compel restitution of property collected by the Union in exercise, of its executive authority, a petition for a writ against the Union for compelling restitution may not be entertained by this Court.

29. This view on the two preliminary objections may be sufficient to justify the dismissal of the petition against the Union of India, but the petition is not liable to be dismissed in limine against the other respondents. By his amended petition the petitioner has claimed relief against the Commissioner of Income-tax and the Income-tax Officer whose offices are admittedly located within the territorial jurisdiction of this Court and who are amenable to the jurisdiction of this Court. We must, therefore, proceed to consider whether Section 3 of Act 1 of 1959, which incorporates section 49EE in the Indian Income-tax Act, is beyond the competence of the Union Parliament, in that it violates the fundamental rights of the petitioner under articles 14, 19(1)(f) and 31 of the Constitution. The scheme of section 49EE is to prohibit the initiation or prosecution of proceedings against the Government of India to recover sums of money paid or securities furnished by tax payers in pursuance of any settlement relating to assessment or re-assessment made before 17th January 1959 under the Indian Income-tax Act or otherwise pending the completion of assessment or re-assessment in any case where a notice under Section 34 of the Income-tax Act has been issued before the 17th January 1959, and to permit retention of the money or security for a period of two years from 17th January 1959 if no notice has been issued under Section 34 before that date, and, if during the period of the said two years any

notice under Section 34 is issued, pending the completion of the assessment, re-assessment or settlement in pursuance of such notice. The Income-tax authorities are also invested with authority to set off the moneys lying with the Government or the amount of the security left in the custody of the Government against the tax, interest, penalty or any other sum which may become payable by reason of any assessment, re-assessment or settlement made in pursuance of any notice issued under Section 34 : and in computing the period of -limitation prescribed for any legal proceeding in relation to any such sum or security, the time during which the proceedings could not be instituted by reason of the provisions contained in sub-section (1) is liable to be excluded.

30. The tax-payers who had entered into settlements voluntarily offered to pay certain sums of money in satisfaction of their liability to pay tax; but the Commission appointed for ascertaining the liability of tax-payers could not, in view of the discriminatory character of the provisions, lawfully assess the liability of these taxpayers, and even the procedure for enforcement of settlements could not be regarded as valid. The Legislature has now authorized the Union Government by the impugned enactment to retain the amount pending determination of the tax liability of the assessee. The impugned enactment evidently affects a certain class of tax-payers viz., those who have entered into settlements either under the Indian Income-tax Act or otherwise before 17-1-1959 relating to assessment or re-assessment and have, in pursuance of such settlements, paid any sum of money or furnished any security for payment of any sum of money. This class of persons is prohibited from claiming refund of the money paid or return of the securities furnished pending the completion of the assessment or re-assessment or settlement in pursuance of the notice under Section 34 if the notice was issued before 17-1-1959 : or for a period of two years in that first instance from 17-1-1959 if no such notice is issued; and if such notice be thereafter issued, pending the completion of assessment, re-assessment or settlement in pursuance of the notice. It is undisputed that a special treatment is meted out to this class of persons.

31. Is the grouping of these persons for special treatment by law invalid as infringing the equal protection clause of the Constitution? Article 14 guarantees equality before the law or the equal protection of the laws to all persons within the territory of India. Equal protection of the laws does not mean that all laws must be general or universal in their character and application. The Legislature is competent to classify persons or objects to be brought under the operation of an enactment, and if the classification is just and has a rational relation to the object the Legislature seeks to achieve, it is not open to the Courts to sit in judgment over the wisdom of the Legislature in making the classification. A special provision made with regard to a class of persons will be regarded as valid if the classification is founded upon a real and substantial distinction and is not arbitrary. Article 14 forbids class legislation, but it does not forbid reasonable classification for purposes of legislation. To satisfy the test of permissible classification, two conditions must be fulfilled : (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others

left out of the group, and (ii) the differentia must have a rational relation to the object sought to be achieved by the statute in question. The impugned enactment itself indicates the persons to whom the provisions are intended to apply, and the basis of the classification is that persons falling in this group after accepting liability and agreeing to pay tax and after making payments or furnishing securities in discharge of liability, are now seeking to go back upon their agreement on the plea that the settlements are void. Under the impugned enactment proceedings cannot be initiated or continued for recovery of the amount paid or security furnished pending determination of liability for payment of tax under the normal procedure prescribed by Sections 23 and 34 of the Income-tax Act. Selection of this group of persons from out of persons who have claims against the Government for special treatment is evidently based upon an intelligible differentia which bears a reasonable relation to the object sought to be achieved facilitating the collection of tax lawfully due by the tax payers. Nor is there ground to suppose that there is any discrimination between groups of tax-payers who have entered into settlements with the Government under Section 8A of Act 30 of 1947. That group of tax-payers who, having settled their liability to pay tax, have not paid anything towards discharge of their liability, have not the same characteristics as the group of tax-payers who are covered by the impugned enactment.

32. By paragraph 18A of the petition it is submitted on three grounds that the impugned legislation makes an unreasonable classification :

- (i) that it imposes more onerous burden on the persons who have settled and made payment than on those whose cases have been settled but who have not paid :
- (ii) that it does not provide for payment of; interest and thereby results in discrimination between persons who have made payments under a settlement and persons who make advance payment under the provisions of the Indian Income-tax Act, and
- (iii) that the provisions of the Taxation on Income (Investigation Commission) Act having been held discriminatory and void, and all settlements made there under having also been declared as void and of no effect, the impugned legislation was intended to be passed in furtherance and in implementation of discriminatory provisions of law and was, therefore, itself discriminatory.

I am unable on any of the three grounds to hold that the impugned legislation makes an unreasonable classification. It is difficult to hold that the persons who have entered into voluntary settlements and have made payments in pursuance of such settlements are unreasonably discriminated against those who have not made such payment. On the view that there is a tax liability, proceedings have to be taken under the procedure prescribed by the Indian Income-tax Act for recovery of the tax due. Those who have not made payments as well as those who have made payments are to be proceeded against under the normal procedure prescribed by Section 34 of the Income-tax Act, but the payments made pursuant to voluntary settlements are permitted to be retained with the Government pending determination of liability. A person who has made payment in satisfaction of a liability which could not be enforced under the procedure prescribed,

by a statute may be in a position less advantageous than that of a person who has not made such a payment; and to that extent, when legislation is enacted preventing the former from claiming refund of the moneys paid, his position may be regarded as more onerous. But it cannot on that account be held that the classification made between the two sets of persons is unreasonable.

33. The second ground also is not substantial. Neither the Indian Income-tax Act nor the general law imposes any obligation upon the State to pay interest on amounts lying with it. It is true that the Legislature by Section 18A of the Income-tax Act has provided for payment of interest on the amount of advance payment of tax which is in excess of the assessed liability. But evidently the scheme of the Income-tax Act is to collect the tax due for the year of account in the succeeding year which is called the assessment year. By section 18A provision is made for demanding and collecting the tax in advance of assessment, and interest has by statute been made payable on excess payments made by way of advance payment. But the distinction arising as a result of the liability imposed by statute upon the Government to pay interest on advance payment of tax under clause (5) of Section 18A and the absence of an express liability to pay interest on amounts retained by virtue of the authority contained in Section 49EE does not even furnish a ground for holding that there is any attempted classification - much less an unreasonable classification. Tax-evaders governed by Section 49EE of the Income-tax Act and persons who have made payment of tax in advance under section 18A(5) of the Act do not fall in the same class; they form distinct groups and are not similarly situated. Article 14 of the Constitution guarantees equal protection of laws : i. e., application of the same laws to persons similarly situated, but the provisions of Section 18A(5) and Section 49EE do not apply to persons who are similarly situated. In the absence of any obligation imposed under any statute or common law to pay interest on amounts lying with the Government pending determination of liability of tax-payers, the absence of a provision to pay interest on such amounts is not a ground for holding that there is an unreasonable classification.

34. Nor is the impugned legislation in furtherance and in implementation of a discriminatory provision of law. It is true that Sections 5(1), 5(4), 8 and 8A(2) of Act 30 of 1947 were declared at diverse times by the Supreme Court to be discriminatory since the Constitution of India came into force. The liability to pay tax arises not by the force of that Act. The Indian Income-tax Act is the source of that liability and it is under the provisions of the Income-tax Act that the tax is sought now to be assessed and collected. By Section 49EE the Legislature has not attempted to give any binding effect to the result of the investigations made by the Commission, nor are the assesseees, who have paid amounts in pursuance of voluntary settlements, sought to be held bound by those agreements. The Legislature has merely authorized the Government of India to hold in reserve the amounts paid voluntarily by those assesseees pending determination of their liability without even seeking to hold them bound by the terms offered by them and accepted by the Government. Such a provision is not intended to implement the provisions of the Taxation on Income (Investigation Commission) Act.

35. Article 19(1)(f) of the Constitution, on which reliance was sought to be placed on behalf of the assessee, grants protection to all citizens in respect of their right to acquire, hold and dispose of property. Evidently the moneys paid and the securities furnished are the property of the petitioner, and the right of the petitioner to hold and dispose of that property is restricted. But the right conferred by Article 19(1)(f) is not absolute : it is subject, by clause (5) of Article 19, to any law imposing reasonable restrictions on the exercise of that right in the interests of the general public. It is in the interests of the general public that the tax due by the citizens should be collected : and if with a view to render effective the collection of tax the liability to pay which was admitted at one time, a provision has been made that the amount paid by the petitioner and others similarly situated should be retained with the Government pending determination of their liability, the law which authorises such retention does not impose an unreasonable restriction on the right to hold or dispose of property. The restriction is expressly limited in duration, i. e., till determination of the liability to pay tax. It was urged by Mr. Amin that the Income-tax Officers, having regard to the amendment made in Section 34, may not now complete the assessment for, say, fifty or hundred years, and such a possibility cannot be ruled out in considering the reasonableness or otherwise of the restriction imposed by the impugned legislation. But the validity of a statute cannot be adjudged in the light of a possible abuse of authority by those entrusted with the obligation of enforcing or administering the same. We do not think that the impugned legislation is invalid as infringing the provisions of Article 19(1)(f) of the Constitution.

36. It is provided by clause (1) of article 31 that no person shall be deprived of his property save by authority of law. Clause (2), as it stood before the amendment by the Constitution (Fourth Amendment) Act, 1955, provided :

'No property, moveable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorizing the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given'.

This clause was substituted by clauses (2) and (2A) by the Constitution (Fourth Amendment) Act, 1955, by clause (2) as amended it is provided :

'No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate'.

By clause (2A) it is provided :

'Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property'.

37. Before the amendment of Article 31, there was a considerable volume of judicial authority as to the meaning and effect of clauses (1) and (2), and especially on the question whether clauses (f) and (2) dealt with the same subject-matter. In *Chiranjitlal Chowdhuri v. The Union of India*¹⁶, Mr. Justice S. R. Das (as he then was) expressed the view that there were several difficulties in taking the view that clauses (1) and (2) of Article 31 dealt with the same topic, viz., compulsory acquisition or taking possession of property, clause (2) being merely an elaboration of clause (f). He further held that clause (1) of Article 31 enunciated the general principle that no person shall be deprived of his property except by authority of law, which, put in a positive form, implied that a person may be deprived of his property, provided he was so deprived by authority of law, and that no question of compensation arose under clause (1); whereas the effect of clause (2) was that only certain kinds of deprivation of property, namely, those brought about by acquisition or taking possession of it, will not be permissible under any law, unless such law provided for payment of compensation. This view was not accepted in a later decision of the Supreme Court, *State of West Bengal v. Subodh Gopal Bose*¹⁷, In that case, a majority of the Court held that Article 31 protected the right to property by defining the limitations on the power of the State to take away private property without the consent of the owner and that clauses (1) and (2) of Article 31 were not mutually exclusive in scope and content, but should be read together and understood as dealing with the same subject, namely, the protection of the right to property by means of limitations on the State's power, the deprivation contemplated in clause (1) being no other than the acquisition or taking possession of the property referred to in clause (2). In *Dwarkanadas Shrinivas v. Sholapur Spinning and Weaving Co. Ltd.*¹⁸, again it was held by a majority of the Court

¹⁶1950 SCR 869

¹⁸1954 SCR 674

¹⁷1954 SCR 587

that from the language employed in the different sub-clauses of Article 31 it was difficult to escape the conclusion that the words 'acquisition' and 'taking possession' used in Article 31(2) had the same meaning as the word 'deprivation' in Article 31(1) and that Article 31 was a self-contained provision delimiting the field of eminent domain and Clauses (1) and (2) of Article 31 dealt with the same topic of compulsory acquisition of property.

38. Under the amended clause (2) property can be acquired compulsorily or requisitioned only for a public purpose and by authority of a law which provides for compensation : and the restrictions on the law for acquisition or requisition are further elaborated by clause (2A). Clause (2) of Article 31 in terms provides that property shall be compulsorily acquired or requisitioned

only for a public purpose and by authority of a law which provides for payment of compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner, in which, the compensation is to be determined and given. By clause (2A) a law which does not provide for the transfer of ownership or right to possession of property to the State or to a corporation controlled by the State is not, even if it deprives a citizen of his property, to be deemed a law for compulsory acquisition or requisition. Before the amendment of Article 31, the State's power to take away property was comprehensively delimited by that article. The purpose was not to declare the right of the State to deprive any person of his property but to protect the right to property by defining the limitations on the part of the State to take away private property without the consent of the owner. By the amendment made to the Constitution now clauses (1) and (2) of Article 31 do not deal with the same subject-matter. Clause (1) deals with deprivation of property generally and clause (2) deals with compulsory acquisition or requisitioning of property. In other words, every deprivation of property is not compulsory acquisition or requisitioning of property.

39. It is urged by Mr. Amin that the petitioner being deprived of his property, the legislation which permits that deprivation is contrary to Article 31(1) and, therefore, void. But evidently the deprivation of the property of the petitioner is under the authority of law, and on the bare plea that there is deprivation of his property the petitioner is not entitled to any relief.

40. This deprivation of property again does not amount to requisitioning of property. Counsel for the petitioner fairly concedes that there is no compulsory acquisition of his property because his right to the moneys paid or the securities furnished is not finally extinguished. But it is urged that the petitioner being prevented from exercising his right to that property which belongs to him under the authority of a statute, the retention of his property with the Government constitutes requisitioning of property within the meaning of Article 31(2) and inasmuch as Section 49EE of the Income-tax Act does not provide for payment of compensation for the property requisitioned the provision must be regarded as void. But evidently a law which does not provide for the transfer of a right to possession of any property to the State is not to be deemed a law providing for compulsory acquisition or requisitioning of property. By Section 49EE a restriction is put upon the exercise of the right of the petitioner to his property : that is, he is not entitled to make a claim or to start or continue a proceeding for recovery of that property during a specified period. By the imposition of such a restriction the right to possession of the property is not transferred. Sub-section (3) of Section 49EE expressly provides that in computing the period of limitation prescribed for any legal proceeding in relation to any sum of security paid or furnished to the Central Government under sub-section (1) the period during which the proceedings could not be instituted by reason of the provisions contained in sub-section (1) shall be excluded. Therefore, the right to take proceedings after the completion of the assessment or re-assessment proceedings is also preserved.

41. The contention raised by counsel for the petitioner that the expression 'transfer of used in

clause (2A) of Article 31 does not govern the 'right to possession'", and consequently any law which provides for a right to possession of any property is to be deemed a law relating to compulsory acquisition or requisitioning of property, has, in my judgment, no force. The law which provides for the transfer either of the ownership or of the right to possession of any property to the State or to a corporation owned or controlled by the State must, if it is not to be violative of the fundamental right under Article 31, provide for compulsory acquisition or requisitioning of property. But there is no transfer of a right to possession by virtue of the provisions contained in Section 49EE which restricts the exercise of the right to take proceedings for recovery of the moneys paid or securities furnished and there is consequently no requisitioning of property of the petitioner.

42. The learned Attorney-General also contended that the fundamental right to property guaranteed by Article 31 cannot be set up to defeat the right of the State to impose, levy and collect tax : and in support of his contention he relied upon Article 265 of the Constitution and clause 5(b)(i) of Article 31. It was urged that against the levy or collection of a tax by authority of law no fundamental right can be set up because Article 265 is not included in Part III of the Constitution. Our attention was invited in support of this argument to a judgment of the Supreme Court in *Ramjilal v. Income-tax Officer, Mohindagarh*¹⁹, In that case, it was observed :

'If collection of taxes amounts to deprivation of property within the meaning of Article 31(1), then there was no point in making a separate provision again as has been made in Article 265. It, therefore, fellows that clause (1) of Article 31 must be regarded as concerned with deprivation of property otherwise than by the imposition or collection of tax, for otherwise Article 265 becomes wholly redundant.....In our opinion, the protection against imposition and collection of taxes save by authority of law directly comes from Article 265, and is not secured by clause (1) of Article 31'.

Relying upon these observations it was contended that against the enforcement of a law relating to levy or collection of a tax, a clause of protection of a fundamental right to property affected thereby cannot be set up. Evidently the law referred to in Article 265 must be a valid law. If the impugned law infringes any of the fundamental rights of the taxpayer (other than the right under Article 31), Article 265 will not come to the aid of the authority; and for reasons already set out Section 49EE does not infringe the fundamental rights guaranteed under Articles 14 and 19(1)(f). But the incorporation of clause (5)(b)(i) in Article 31, the Constitution denies the claim to right to property as a fundamental right against the imposition, levy or collection of tax under the authority of a statute. Section 49EE of the Income-tax Act relates to the levy and collection of a tax which has already become due : and by virtue of clause (5)(b)(i) of Article 31 nothing in clause (2) of

¹⁹1951 SCR 127

Article 31 is to affect the impugned enactment.

43. The provisions contained in Section 49EE, in so far as it imposes a disability, cannot be regarded, for reasons already set out as a provision relating to compulsory acquisition or requisitioning of property, and the validity of such a provision does not depend upon any scheme providing for compensation. The contention of the petitioner that the impugned legislation is void as infringing the fundamental rights guaranteed under Articles 14, 19(1)(f) and 31 of the Constitution must, therefore, be negatived.

44. Mr. Amin on behalf of the petitioner urged that the amount of Rs. 4,00,000/-, which has been recovered from the petitioner pursuant to the settlement, and the securities deposited by the petitioner are all the property of the petitioner and they did not belong to the estate of his deceased father. But the question-whether all this property belonged to the estate of the petitioner's deceased father and the question whether by reason of the payment made under the settlement they are liable to be availed of under Section 34 of the Income-tax Act in discharge of liability which may hereafter be determined are questions of fact which cannot be agitated in this petition. Admittedly the petitioner has paid the amounts and furnished the securities in pursuance of the settlement towards satisfaction of the liability declared by the settlement on the footing that the moneys paid and the securities furnished were so payable, and in this petition for the issue of a writ it is not open to the petitioner to ask us to enter upon an enquiry whether the moneys paid and the securities furnished did belong to the estate of the deceased father of the petitioner. An enquiry into those questions will raise numerous questions of fact, and a petition for the issue of a writ is not an appropriate proceeding for determination of those questions.

45. The argument that the settlement was procured by exercising coercion has not been pressed before us.

S. T. Desai, J.

46. This case raises some questions of importance. One of them is with regard to the vires of the new Section 49EE inserted in the Income-tax Act by the Amending Act I of 1959. Another relates to the jurisdiction of this Court to issue a writ under Article 226 of the Constitution to the Union of India. The facts relevant for the purpose of determination of the legal contentions raised on either side have been summarised by my learned brother and I need not repeat them. I agree in the conclusion reached by him on the question of jurisdiction but on the balance of different considerations. For my part it is not without some difficulty that I have reached the conclusion that the newly inserted Section 49EE of the Income-tax Act is intra vires the Legislature and not within the inhibition of the equal protection clause in Article 14 of the Constitution. The section does result in palpable inequality, but, for reasons I shall state, I do not think that deviation to be such as should defeat the legislation.

47. Two contentions have been raised in limine by the learned Attorney-General and strongly

pressed for pur acceptance. One of the reliefs sought by the petitioner is for the issuance of a writ in the nature of Mandamus compelling the 1st Respondent, the Union of India, to refund to the petitioner a sum of Rs. 4,01,612-22 paid by the petitioner under a Settlement effected in accordance with the provisions of the Taxation on Income (Investigation Commission) Act, 1947. Relief of a like nature is also sought by the petitioner compelling the 1st Respondent and the 3rd respondent, the Commissioner of Income-tax, to return to the petitioner certain shares and documents of title deposited by the petitioner as security under that settlement.

48. The preliminary objection relating to jurisdiction of this court to issue a writ under Article 226 of the Constitution directing the 1st respondent to refund that amount and return those shares and documents of title rests on the contention that the Union of India is not within our territorial jurisdiction. It is common ground that the settlement was arrived at in Bombay and the sum of a little over Rs. 4 lacs and the shares and documents of title of which refund and return is claimed by the petitioner had been paid and deposited in Bombay and recovery proceedings are threatened against the petitioner at Bombay.

49. The argument of the learned Attorney-General was that the powers of this Court under Article 226 which extend 'throughout the territories in relation to which it exercises jurisdiction' and in the exercise of which it can issue a writ to 'any person or authority, includingany Government' have the express and explicit limitation upon them that the person or authority or Government must be 'within those territories'". It is said that this question of jurisdiction of the High Court has been considered by the Supreme Court in cases where a writ was sought against an 'authority' such as a Tribunal and it was there held that the proper test to be applied in such a case is that of residence or location of the authority. The authority must be amenable to the jurisdiction of the High Court either by residence or location within the territories in relation to which the High Court exercises jurisdiction. The argument ran that there is no reason why the same test of residence or location favored by the Supreme Court in interpreting Article 226 and particularly the words 'within those territories' should not apply to the case of the 1st respondent which is located at New Delhi outside the territorial jurisdiction of this Court. Learned counsel referred to a number of decisions of the Supreme Court and some High Courts to which I shall presently turn. None of the decisions of the Supreme Court deal with the specific question that has arisen for our determination. They do not lead directly to the solution of this vexed question. But, there are to be found in them instructive observations which afford guidance.

50. In (1953) SCR 1144 , the Respondent, who had been convicted and sentenced to rigorous imprisonment for seven years, was elected a member of the Madras Legislative Assembly. At the instance of the Speaker of the Assembly, the Governor of Madras referred to the Election Commission, which had its offices permanently located at New Delhi, the question whether the respondent was disqualified and could be allowed to sit and vote in the Assembly. The respondent thereupon applied to the High Court of Madras under article 226 of the Constitution for a writ restraining the Election Commission from enquiries into his alleged disqualification for

membership of the Assembly and the High Court issued a writ of Prohibition against that authority. On appeal that decision was reversed by the Supreme Court. Referring to Article 226 of the Constitution Patanjali Sastri, C. J., observed at pp. 1150-1151 (of SCR) : (at pp. 212-213 of AIR) :

'But wide as were the powers thus conferred, a two-fold limitation was placed upon their exercise. In the first place, the power is to be exercised 'throughout the territories in relation to which it exercises jurisdiction', that is to say, the writs issued by the court cannot run beyond the territories subject to its jurisdiction. Secondly, the person or authority to whom the High Court is empowered to issue such writs must be 'within those territories', which clearly implies that they must be amenable to its jurisdiction either by residence or location within those territories.' After observing that such limitation was a logical consequence of the origin and development of the power to issue prerogative writs as a special remedy in England and referring to the exercise there of the King's prerogative power of superintendence over the due observance of the law by his officials and tribunals the learned Chief Justice proceeded to observe :

'We are unable to agree with the learned Judge below that if a tribunal or authority permanently located and normally carrying on its activities elsewhere exercises jurisdiction within those territorial limits so as to affect the rights of parties therein, such tribunal or authority must be regarded as 'functioning' within the territorial limits of the High Court and being therefore amenable to its jurisdiction under Article 226.'

51. In Rashid's case (1954) SCR 738 , it was held by the Supreme Court that the Punjab High Court had jurisdiction to issue a writ under Article 226 of the Constitution to the Income-tax Investigation Commission located in Delhi and investigating the case of the petitioner under Section 5 of the Taxation on Income (Investigation Commission) Act, 1947, although the petitioners were assesseees within the U. P. State and their original assessments were made by the Income-tax authorities of that State. Mukherjea, J., (later Chief Justice of India) reiterated the view expressed in the observations of Patanjali Sastri C. J. in the case of the Election Commission relating to the limitation on powers of the High Court in the matter of issuance of a writ.

52. In (1955) 2 SCR 1196 , question arose whether the High Court of Travancore had jurisdiction to issue a writ under Article 226 against respondent 1, an official authorized under Travancore Taxation on Income (Investigation Commission) Act (XIV of 1124) read with enactments of the Indian Parliament on the subject, and against respondent 2, the Indian Income-tax Investigation Commission. It was pointed out in that case by the learned Attorney General in the course of his arguments that respondent 2 had its office in New Delhi and was permanently located there and the mere fact of its having appointed respondent 1 to function and carry on the investigation within the State of Travancore under its direction did not make it amenable to the jurisdiction of the High Court. He, therefore, contended that the High Court had no jurisdiction to entertain the writ petition against respondent 2. He further contended that the High Court could not do

indirectly what it was not able to do directly and that it could not issue any writ of prohibition, against respondent 1 either, even though he had his office at Trivandrum and had a permanent location within the jurisdiction of the High Court inasmuch as he was merely an arm of respondent 2 and any writ issued against him would have the indirect effect of prohibiting respondent 2 from exercising its legitimate functions within the ambit of its powers under the Travancore Act XIV of 1124 read with Act XXX of 1950 and Act XVIV of 1951. Bhagwati, J., who delivered the judgment of the Court referred to the statement of law from the judgment of Patanjali Sastri, C. J., in the case of the Election Commission quoted by me above, and went on to observe at p. 1208 of the report (SCR) :

'The mere functioning, of the Tribunal or authority permanently located and normally carrying on its activities elsewhere within the territorial limits was not considered sufficient to invest the High Court with jurisdiction under article 226 not was the accrual of the cause of action within the territories considered sufficient for the purpose. The residence or location within the territories of the person or authority was considered a condition of the High Court being empowered to issue such writs with the result that the Election Commission having its office permanently located at New Delhi was held not amenable to the jurisdiction of the High Court for the issue of a writ under Article 226.'

These observations were strongly relied upon by the learned Attorney General and upon the strength of them was founded the argument that the test of 'functioning' within the territorial limits of the High Court by an authority or Tribunal permanently located and normally carrying on its activities elsewhere was negated by the Supreme Court. It was said that these observations should with equal force apply to the case of the Union of India which is permanently located and normally carries on its activities outside the territorial jurisdiction of the High Court. I do not think the analogy is perfect. Nor do I think that any such absolute equation can be established. Of course, as I have already said, the observations of their Lordships of the Supreme Court relied on by learned counsel are very instructive but it will be necessary to consider how far they can apply to the case of 'any government' such for instance as the Union of India. Of this more hereafter.

53. To turn to the decisions of some High Courts to which our attention has been drawn by counsel. In AIR 1953 Allahabad 477, decided by a Full Bench of the Allahabad High Court, it was held that the Union of India can be said to be within the territorial jurisdiction of the High Court as it 'functions' throughout the length and breadth of the country. Mr. M. P. Amin, learned counsel for the petitioner, strenuously urged before us that this decision fully supports his contention that this court has jurisdiction to entertain this petition and issue an appropriate writ against the Union of India; and he leaned heavily on the following observations of Sapru J., at p. 479 of the Report :

'In our opinion, the jurisdiction of this Court to intervene under Article 226 depends not

upon where the Headquarters or the Capital of the Government is situate but upon the fact of the effect of the act done by Government, whether Union or State being within the territorial limits of this Court'.

54. Now, the ratio of this decision is to be gathered from the following observations :

'Obviously, therefore, the reasonable interpretation to place upon Article 226 of the Constitution is to make the test of residence of the applicants and the effect of the order on the applicants the supreme test in deciding whether the Court has or has no jurisdiction in dealing with the writ application.'

With respect I am unable to accept, the effect of an order of the Union Government on the applicant in the territories in which he himself resides, as the ruling test of the matter when we have to interpret the crucial words 'any government within those territories'". But I need not discuss this aspect of the matter which appealed to the learned Judges of the Allahabad High Court who decided that Full Bench case. This line of reasoning and this test do not derive any support from any of the three decisions of the Supreme Court already referred to by me and would indeed seem not to accord with the principles which appealed to their Lordships of the Supreme Court. Incidentally I may observe that in two later decisions the Allahabad High Court does not appear to have adhered to the view taken in the Full Bench case. Mr. Amin also relied strongly on the following observations at p. 478 in the report of the decision of the Full Bench made while repelling the contention pressed by learned counsel on behalf of the Union of India :

'His contention is that this Court has power only to issue writs to any person or authority, including in appropriate cases any government, only if that Government is situate within the jurisdiction of this Court. This argument completely ignores the words 'any government'. They indicate that the founding fathers knew that more than one government would function within the same territory. The assumption on which Mr. Dhaon's argument proceeds is that the Union Government is situate only in Delhi which is the capital of this country and where the President and the Union Government function. This argument is based, in our opinion, upon a misapprehension of the nature of the Constitution under which this country functions'.

Now I am in respectful agreement that in interpreting the relevant and crucial words of Article 226 with which we are concerned the words 'any government' cannot be ignored. In my judgment, full effect must be given to them in view of their collocation. But I am unable from them to see my way directly to the conclusion that because the Union of India 'functions' throughout the length and breadth of this country it must be 'held to be within our territorial jurisdiction. It is not possible, therefore, to accede to the argument of Mr. Amin when he asks us to accede to the bald proposition that because the Union of India 'functions' throughout the territories of all the States it is 'any Government within those territories' in the context in which

we have to interpret those words. The question is not so easily resolvable. There are, as I shall point out a little later, some aspects of the matter which are of cogency and which cannot be dissociated from any determinative or ruling criterion of this question of jurisdiction.

55. In AIR 1953 Calcutta 767, Sinha J. following two earlier decisions of the same High Court held that the Director General of Observatories, New Delhi cannot be said to be carrying on his normal activities within the State of West Bengal and, as such, he would not be amenable to the jurisdiction of the Calcutta High Court which cannot therefore issue a writ under Article 226 against him, nor can it issue such a writ against the Government of India. The learned Judge quoted the following observations of Harries C. J. in the unreported decision of that court :

'Article 226 of the Constitution expressly allows writs in the nature of prerogative writs to issue against Government which is a departure from English practice. That Government must however be located in the territory over which the Court exercises jurisdiction and in my view the Government of India cannot be said to be located in the State of West Bengal and therefore writs under Article 226 cannot issue against it at the instance of this Court'.

56. In AIR 1958 Madhya Pradesh 103, a Full Bench of that High Court held that the Central Government could not be deemed to be permanently located or normally carrying on its business within the jurisdiction of the High Court. Hidayatullah C. J. (as he then was) examined the decisions of the Supreme Court on the subject and inter alia made the following observations (p. 111) :

'In dealing with the cases under Article 226 of the Constitution, which is a new jurisdiction we are of necessity bound to take into account every expression of opinion given by their Lordships of the Supreme Court. After laying aside those statements of their Lordships which were not meant to lay down the law, we must attempt to establish, so to speak, the curve of the law with regard to the interpretation of that article and must attempt to find out where exactly the case which we have in hand falls.'

I am in respectful agreement with the general observations made by his Lordship about the utility and use of precedents of superior tribunals.

57. In 57 Bom LR 753 , decided by Coyajee J. sitting on the Original Side of this court an order emanating from the Ministry of Information and Broadcasting and signed by the Under Secretary to the Government of India exercising powers under Section 5(4) of the Cinematograph Act, 1952, was made on behalf of the Union Government and issued at New Delhi and was served on the petitioner in Bombay. It was held that the authority issuing the order was the Union Government located at New Delhi and this High Court had, therefore, no jurisdiction to issue a writ under Article 226 on the Union of India.

58. Since the matter is res integra I should like to dwell for a little on the salient features and

broad aspects of this question of jurisdiction of the High Court to issue a writ against the Union of India. The test of residence would be rather incongruous since it can have little applicability to a Government and even if it were appropriate to apply it, the Union of India cannot be said to reside in the State of Bombay. Its residence, if it is possible to speak of its residence, must be said to be outside the State of Bombay. Then I put to myself the question: Do the words 'any Government within those territories' require that the Government should be 'located' within the jurisdiction of the High Court and is this to be the sole consideration: or are they comprehensive enough to encompass not only the element of situs and location of the administration of the Government but also that of exercise of dominion and the geographical boundaries within which it exercises that supreme authority? The Union of India, according to Article 1 of the Constitution, is a Union of States. It pervades the whole of India. The Makers of the Constitution, it is true, have endeavored to avoid dual polity and double citizenship and have given a pattern of a unitary state with subsidiary federal features and which is a compromise between rival constitutional doctrines. Even so there is dual government now the executive power of the Union is co-extensive with the legislative power of the Union Parliament and extends over the whole of the territory of India in respect of matters enumerated in Lists I and III of the Seventh Schedule. There are exceptions to this but they are not relevant for the present purpose. Therefore, in case of a Union of States like ours exercising its sovereign powers over the territories of the States in the manner it does, it would not be a correct summation of the position to say that it is outside the territories of the States simply because its actual administration is not carried on from a place within the territories of the component States.

59. The inquiry has to go further than that and the rule to be evolved, - albeit only from interpretation of the relevant words in Article 226 - it seems to me, must comprehend the elements of situs, of being and existence, as also of exercise of dominion. The concept of location in a strict sense appropriate in case of an authority or a tribunal is not necessarily conformable to the case of the Union of States. The concept of 'functioning' it is abundantly clear has now been discountenanced by their Lordships of the Supreme Court in the context of an 'authority' or tribunal. But be it noticed that in discarding the test of 'functioning', the Supreme Court, in the decisions to which I have referred, took care to point out that 'the mere functioning, of the Tribunal or authority permanently located and normally carrying on its activities elsewhere within the territorial limits was not.....sufficient to invest the High Court with jurisdiction under Article 226'.

60. To speak of 'functioning' is apposite in case of an 'authority' or a tribunal. It would not altogether be so when one speaks of exercise of dominion and governance and executive actions by and on behalf of the Union of States. Nor would it be accurate to say that the sovereign powers of the Union are not exercised in the territories of the States. Therefore, it cannot properly be said in the context of the acts done in the exercise of such dominion by and on behalf of the Union in those territories that the Union normally carries on its activities elsewhere. Such exercise of dominion and governance need not be equated with exercise of jurisdiction by a

Tribunal or Commission. In case of a Tribunal or Commission the specialty of the situation is that it has a local habitation and carries on its normal activities 'elsewhere'. It cannot be or exist in all the territories of the Union. The position of the Union, it has been my endeavor to point out, is distinctive, and must be differentiated. Moreover, the Union of India naturally has to act and acts through the instrumentality of various departments and authorities some of which it is quite conceivable may and some of which may not be amenable to the jurisdiction of this Court.

61. I forbear to make further observations on the salient features and broad aspects of this question of jurisdiction. Especially do I refrain from giving illustrations in support of what I have already stated. The crucial words 'any Government within those territories' do not require to be read in the limited sense of 'location' appropriate to a tribunal or an authority. In the context of 'any Government' they embrace the concepts of situs, being and existence as also of exercise of dominion. Full effect must be given to these words 'any Government' and read structurally and in their collocation they do go to show that the makers of the Constitution intended to confer jurisdiction on the High Court to issue writs not only against the State Government but against 'any Government' which expression under the pattern of our Constitution would include the Union Government. Therefore, it is not possible to subscribe to the extreme proposition that under no circumstance a writ can issue from this Court against the Union of India and that solely on the ground that the Union cannot be said to be 'located' within our territorial jurisdiction under Article 226. This is not, to suggest that our jurisdiction to issue writs against the Union is not more limited than that to issue writs against the Government of the State of Bombay. There is as I shall immediately point out an overriding limitation on this power of the High Court. Incidentally it may be pointed out that when the Constitution was on the anvil the Constituent Assembly had sounded a note of warning that the High Court should be careful in issuing writs against other Governments. But it is most desirable that such external aid should be avoided in interpreting the Article.

62. That brings me to the terminating point of this question of interpretation and it is a vital consideration which in actual practice must be largely determinative of any case of the nature before us where it is sought to reach the Union of India with the aid of any prerogative writ under Article 226. The decisions of the Supreme Court already referred to by me lay down and iterate two limitations upon the exercise of its powers by a High Court under Article 226. The second limitation there stated emerges from the interpretation of the words 'within those territories' as applicable to a person or authority. I have already discussed the position that emerges from the words 'any Government within those territories' and pointed out the extent of that limitation as applicable to the case of Union of India. The first of those two limitations laid down by the Supreme Court is that the power is to be exercised by the High Court 'throughout the territories in relation to which it exercises jurisdiction', that is to say the writ issued by the court cannot run beyond the territories subject to its jurisdiction. It is this limitation which in the case of Union of India is the terminus ad quem of the whole matter. It is characteristic of every one of these extraordinary writs that the court exercises great care in these matters to see to its effective use. The

Court is cautious in the exercise of these special powers and refuses to allow itself to be stultified for such would be the consequence if there was disobedience by the respondent against whom redress is sought and the Court is unable to enforce the directions in the writ by attachment for contempt. Therefore, even in a case where it is possible to hold, having regard to its facts, that the Union Government cannot resist the issuance of a writ against it solely on the ground that its actual administration is conducted from a place outside the territorial jurisdiction of the High Court, the Court will only issue a writ against the Union if it is satisfied about its enforceability. The writ can only run within the territories of the High Court and the crucial consideration in any such case must be of its effective use and enforceability. In the course of his argument I put it to Mr. Amin that even if the words 'any Government within those territories' did not create any difficulty in the way of the Petitioner, he had yet to satisfy us that the writ of mandamus that might issue against the Union of India directing refund and return of documents of title as claimed by the Petitioner, could be enforced within our territorial jurisdiction. Learned counsel had little to say in answer to this beyond some vague reference to the Reserve Bank and the statement that if the writ is issued some way may be found out of getting over this difficulty. Therefore, in any view of the matter about the preliminary objection in so far as it is grounded on the contention relating to 'location', the result must follow that the objection should be upheld on the ground that even if a writ of mandamus were to issue against the Union of India in this case, it would not be of effective use. To be of effective use it would have to run beyond the limits of our territorial jurisdiction and this Court is not empowered by Article 226 to direct that it should so run.

63. The other objection raised on behalf of respondents 1 and 3 at the outset, though really not of the nature of a bar in limine, was that even if the Petitioner is in law entitled to relief against them for refund and return of documents of title as contended by him, the Court will not grant such relief on a writ petition. The argument was that even if the Settlement was hit by the decisions of the Supreme Court which had the effect of striking down the provisions of the Taxation of Income (Investigation Commission) Act 1947, it is still open to these respondents to contend that the Settlement is nonetheless binding on the Petitioner as a compromise between the assessee and the Revenue of a disputed claim to tax escaped income. It was urged that various defences of the nature of mistake of fact and law and of estoppel and acquiescence and others on the same line are still open to these Respondents and those contentions would involve investigation into facts which this Court ordinarily declines to do on a petition for prerogative writs of the nature asked by the Petitioner. Our attention was drawn by the learned Attorney-General to certain observations from decisions of the Supreme Court and particular reliance was placed by him on the following observations of Mahajan C. J. in (1955) 1 SCR 773 at p. 776 : (AIR 1955 Supreme Court 1 at pp. 2-3) :

'In our judgment this petition is wholly misconceived. Whatever tax the petitioner has already paid, or whatever is still recoverable from him, is being recovered on the basis of the settlement proposed by him and accepted by the Central Government. Because of his

request for a settlement no assessment was made against him by following the whole of the procedure of the Income-tax Act. In this situation unless and until the petitioner can establish that his consent was improperly procured and that he is not bound thereby he cannot complain that any of his fundamental rights has been contravened for which he can claim relief under article 32 of the Constitution. Article 32 of the Constitution is not intended for relief against the voluntary actions of a person. His remedy, if any, lies in other appropriate proceedings'.

64. The argument in rejoinder to this objection was that the observations relied on by the learned Attorney General were all in the context of Article 82 and if properly examined did not support the present objection. The argument proceeded that the effect of the decisions of the Supreme Court declaring ultra vires the material provisions of the Taxation of Income (Investigation Commission) Act, 1947, is to render the Settlement illegal and void and leaves no scope for raising of any such further contentions by the Respondents and the suggestion was that the further contentions indicated on behalf of Respondents 1 and 3 were more imaginary than real.

65. I am not inclined to dismiss those contentions in a summary manner by regarding them as wholly unreal and fanciful and in the view I take of the matter it is not necessary to examine the strength or weakness of those contentions. The remedy sought by the petitioner is purely discretionary and the issuance of these prerogative writs cannot be claimed as a matter of right. The petitioner voluntarily entered into a settlement with the Revenue in respect of a large claim made on the estate of his father on the ground of escaped assessment. He made payments to the Revenue in pursuance of that settlement and deposited documents of title as security for the discharge of obligations undertaken by him and challenges that settlement on the ground that the Supreme Court has thereafter decided that all proceedings under the Taxation of Income (Investigation Commission) Act, 1947, were void and also that any settlement made in such proceedings is also void. That was because it was held that the relevant and material provisions of that enactment were ultra vires the Legislature. The Income Tax Act has now been amended by insertion of Section 49EE which inter alia empowers the Revenue to set off monies paid in pursuance of any settlement, that may be found to be invalid, against the liability for tax in respect of the escaped income. The vires of this and some other provisions of the new section is questioned by the petitioner. For the purpose of examination of the present objection I must assume that the petitioner is able successfully to challenge the validity of the impugned provisions of that section. Does it, therefore, follow that he should in this writ petition also be permitted to agitate the further contentions and disputes which respondents 1 and 3 raise in opposition to his claim for refund and return of securities? Having regard to the nature of the settlement and the fact that it was a voluntary act on his part and the circumstances of this case I see no sound reason why this court hearing this writ petition should act as a forum for determination of those disputes. Ex debito justitiae the petitioner is not entitled in these proceedings to the relief by way of refund and return of securities and it is open to him to approach the court by a suit where such disputes are normally tried and decided. For all these

reasons the objection to the relief claimed by the petitioner by way of a writ of Mandamus against respondents 1 and 3 for refund of monies and return of documents of title, must prevail.

66. When these objections were raised we informed learned Counsel that we intended to hear and decide the whole matter. Moreover, it was clear that the objections did not go to the root of the matter and in any case the petitioner, if successful on merits, would have been entitled to the other reliefs claimed by him in the petition against respondents 2 and 3.

67. The petition was filed and rule nisi was granted before Section 49EE was inserted in the Income-tax Act by Section 3 of the Income-tax (Amendment) Act, 1959. The petition was, therefore, allowed to be amended. A further amendment of the petition was sought by Mr. Amin in the course of the hearing before us and that was allowed by us. Section 49EE is as under :

'49EE. Power to set off in certain cases moneys in the possession of Government against tax found due under assessments etc., thereafter to be made: (1) Where in pursuance of any settlement relating to the assessment, reassessment or case of any person made or purported to have been made before the 17th day of January, 1959, whether under this Act or otherwise, any sum of money or any security for the payment of any sum of money has been paid or furnished by him, or on his behalf by any other person, no claim for the refund of any sum so paid 'or for the return of any security so furnished shall be entertained or allowed on the ground that the settlement is invalid -

(a) in any case where a notice under Section 34 in respect of the income, profits or gains relating to the settlement aforesaid has been issued before the 17th day of January 1959; and

(b) in any other case, for a period of two years from that date and, if during the period of the said two years any notice under Section 34 is issued, pending the completion of the assessment, reassessment or settlement in pursuance of such notice;

and accordingly, no application, suit or other legal proceeding for the refund of any such money or the return of any such security shall lie or be allowed to continue -

(i) pending the completion of the assessment, re-assessment or settlement in pursuance of the notice referred to in clause (a); or

(ii) during the period of two years referred to in clause (b) or pending the completion of the assessment, re-assessment or settlement in pursuance of the notice referred to in that clause.

(2) The Income-tax Officer, Appellate Assistant Commissioner or the Commissioner, as the case may be, may set off the amount referred to in sub-sec. (1) or the amount of the security referred to in that sub-section which may be realised for the purpose against the tax, interest, penalty or any other sum which may become payable by reason of any assessment, re-assessment or settlement made in pursuance of the notice referred to in clause (a) of that sub-section or in pursuance of any such notice issued within the period

of two years referred to in clause (b) of that sub-section.

(3) In computing the period of limitation prescribed for any legal proceeding in relation to any such sum or security aforesaid, the time during which any such proceeding cannot be instituted by reason of the provisions contained in subsection (1) shall be excluded'.

68. The principal contention of the Petitioner now is that the provisions of Section 49EE are in violation of the fundamental rights guaranteed under Article 14 of the Constitution. His case is that those provisions discriminate between tax evaders whose cases have not been referred to the Investigation Commission or who have not entered into settlement with the Investigation Commission or who have not made any payment pursuant to the settlement and those whose cases were referred and have been settled and who have made payments. It is also his case that those provisions do not provide for any payment of interest and result in discrimination between payments made under a settlement and advance payment under the provisions of the Income-tax Act.

69. In order to examine the arguments on the several points canvassed before us by learned counsel on either side on this question of constitutionality of Section 49EE. now inserted in the Income-tax Act, it is necessary to have in mind the background afforded by the Taxation of Income (Investigation Commission) Act, 1947, and the decisions of the Supreme Court which struck down the ultra vires provisions of that enactment.

70. The Taxation on Income (Investigation Commission) Act, 1947, to be referred to by me as 'the Investigation Act', came into operation on May 1, 1947 and it was in accordance with the provisions of that Act and certain amendments incorporated in Section 34 of the Income-tax Act that the Settlement between the Petitioner and the Revenue was arrived at in 1955. The ill-fated Investigation Act had a chequered career. The vires of its material provisions was challenged in parts in cases ultimately decided by the Supreme Court and they were held in stages to be ultra vires the Legislature. The history of that Act and those decisions was traced by my Lord the Chief Justice of India in the latest decision on the subject, (1959) 35 ITR 190 . In consequence of the decisions of their Lordships of the Supreme Court the Legislature amended Section 34 of the Income-tax Act with a view to harmonizing the provisions of Tax Law relating to escaped income. A critical resume of the material sections of the Investigation Act, the provisions inserted in Section 34 from time to time and the result of judicial pronouncements of the Supreme Court affecting the Investigation Act has been given by my learned brother, and I will not burden my judgment with a repetition of the same. I will only refer to the relevant provisions relating to escaped income as they abide. This is necessary in view of the arguments pressed for our acceptance on the ground that the impugned provisions of Section 49EE are discriminatory and ultra vires the Legislature. One should have thought that after the chequered career of the Investigation Act was over there would not be much of any aftermath but such does not appear to have been the result and the case before us is an illustration in point. The arguments before us have turned on the effect of the provisions of that Act now declared to be ultra vires and certain

provisions of Section 34 of the Income-tax Act relating to escaped income.

71. Section 34 of the Income-tax Act has itself in effect been subject to alteration. There was intended some effectual interlacing between certain newly inserted provisions in Section 34 and the provisions of the Investigation Act. But such co-ordination as was sought to be achieved between the two sets of provisions which operated simultaneously ceased to exist after the later pronouncements of the Supreme Court in the context of the provisions of the Investigation Act and the provisions of sub-section (1) and particularly sub-sections (1A) to (1D) of Section 34 read with other relevant provisions of the Income-tax Act now abide as the only effective legislation on the vexed subject of assessment of escaped income. I have already set out the provisions of the impugned Section 49EE. The petitioner's case in so far as it rests on the alleged violation by this section of the fundamental rights guaranteed by Article 14 of the Constitution has to be examined substantially in the context of section 49EE and Section 34 of the Income-tax Act. The material and relevant part of sub-sections (1A) to (1D) of Section 84 is as under :

'(1A) If, in the case of any assessee, the Income-tax Officer has reason to believe -

(i) that income, profits or gains chargeable to income-tax have escaped assessment for any year in respect of which the relevant previous year falls wholly or partly within the period beginning on the 1st day of September, 1939, and ending on the 31st day of March 1946; and

(ii) that the income, profits or gains which have so escaped assessment for any such year or years amount, or are likely to amount, to one lakh of rupees or more :

he may, notwithstanding that the period of eight years or as the case may be. four years specified in sub-section (1) has expired in respect thereof, serve on the assessee, or, if the assessee is a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of Section 22, and may proceed to assess or re-assess the income, profits or gains of the assessee for all or any of the years referred to in clause (i)

* * * * *

Provided further that no such notice shall be issued after the 31st day of March, 1956'.

'(1B) Where any assessee to whom a notice has been issued under clause (a) of sub-section (1) or under sub-section (1A) for any of the years ending on the 31st day of March of the years 1941 to 1948 inclusive applies to the Central Board of Revenue at any time within six months from the receipt of such notice or before the assessment or re-assessment is made, whichever is earlier, to have the matters relating to his assessment settled, the Central Board of Revenue may, after considering the terms of settlement proposed and subject to the previous approval of the Central Government, accept the terms of such settlement, and, if it does so, shall make an order in accordance with the

terms of such settlement specifying among other things the sum of money payable by the assessee'

'(1C) Any sum specified in a settlement arrived at in pursuance of sub-section (1B) may be recovered and penalty for default in making payment of any such sum may be imposed and recovered in the manner provided in Chapter VI'.

'(1D) Any settlement arrived at under this section shall be conclusive as to the matters stated therein; and no person, whose assessments have been so settled, shall be entitled to reopen in any proceeding for the recovery of any sum under this Act or in any subsequent assessment or re-assessment proceeding relating to any tax chargeable under this Act or in any other proceeding whatsoever before any Court or other authority any matter which forms part of such settlement.

* * * * *

72. I have not hitherto said anything about the content or effect of Section 49EE, the constitutionality of which is challenged before us. I have already set out the provisions of the section. The expressed object of the section which can be gathered from its provisions and the marginal note to the section - to which we can refer for seeing the trend of the section - is to empower retention by the Government of moneys paid and security furnished by an assessee in pursuance of any settlement relating to assessment or re-assessment notwithstanding the fact that the settlement was invalid. The settlement may have been under the Income-tax Act 'or otherwise' which apparently includes a settlement arrived at under Section 8A of the Investigation Act after the Constitution came into force and which would be void and unenforceable on the score that Section 8A as now held by the Supreme Court in the case of (1959) 35 ITR 190 is discriminatory in character and offends against the provisions of Article 14 of the Constitution. This retention of moneys and security in possession of Government is for the purpose of set off permitted by sub-section (2) of the section. Clauses (a) and (b) of sub-section (1) state the cases in which the right of retention and set off may be exercised: (i) where a notice under Section 34 in respect of income relating to the settlement had been issued before 17th January 1959; and (ii) where a notice under that section is issued within two years of 17th January 1959. In the case of the petitioner before us a notice under Section 34 was issued before the 17th January 1959. Sub-section (1) also lays down that no claim for refund of any sum paid or for the return of any security furnished under any settlement shall be entertained or allowed on the ground that the settlement is invalid and no legal proceeding whatever can lie or be allowed to continue for refund or return of securities in any such case till the completion of the assessment or reassessment of the escaped income in respect of which the settlement had been made and which is said to have become invalid. Sub-section (2) empowers the Income-tax authorities to set off the moneys or the amount of security mentioned in sub-section (1) against the tax, interest or penalty that may become payable by the assessee as a result of the assessment or re-assessment that may be made in cases stated in clauses (a) and (b) of sub-section (1). These would be cases where a settlement had been made in respect of any escaped income and the settlement was invalid as for instance in the case before us. Subsection (3) lays down that in

computing the period of limitation prescribed for any legal proceeding in relation to any such sum or security, the time during which any such proceeding, cannot be instituted by reason of the provisions of sub-section (1) shall be excluded. It is apparent that but for this rule relating to exclusion of time the provisions of sub-sections (1) and (2) would indubitably have become unconstitutional for if no such rule was enacted that would have transparently been a case of unreasonable and arbitrary discrimination against a class of assessee who had entered into any such settlement. It is equally apparent that the section has been designed to secure in advance the amount of assessment or re-assessment that may become payable by an assessee in respect of escaped income and in respect of which he had entered into a settlement with the Revenue but the settlement is invalid and the Revenue wants to apply the machinery of Section 34 relating to such escaped income. Before I pass on to examine the arguments urged before us on behalf of the Petitioner in challenging the constitutionality of this Section 49EE I shall briefly state certain principles which have now become firmly established under the head of equal protection of the laws guaranteed under Article 14.

73. The ambit and operation of Article 14 of the Constitution has been explained by the Supreme Court in a series of cases beginning with (1950) SCR 869 and ending with *Ram Krishna Dalmia v. Mr. Justice Tendolkar*²⁰, The law has been clearly established and was reiterated by Mr. Justice Das, as he then was, in *Budhan Chowdhry v. State of Bihar*²¹, at p. 1049 of the Report : (AIR 1955 Supreme Court 191 at p. 193) :

'It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well-established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure'.

The principles to be borne in mind by the Court were very recently summarized by his Lordship, now Chief Justice of India, in *Dalmia*'s case, AIR 1958 Supreme Court 538. One principle there stated and applicable to the case before us is that a law may be constitutional even though it relates to a single individual or to some individuals if, on account of some special circumstances or reasons applicable to such individual or individuals and not applicable others, such individual or individuals may be treated as a class. In such a case it is upon him who questions such classification on the ground of discrimination to show that there has been a clear transgression of the constitutional principle of equality. *Dalmia*'s case, AIR 1958 Supreme Court 538 was in the

first instance decided by a Bench of this Court to which I was a party and was ultimately carried in appeal to the Supreme Court. In our judgment in that case we pointed out that the Legislature may not be bound to extend a legislation to all cases which it might

²⁰ AIR 1958 SC 538

²¹(1955) 1 SCR 1045

possibly reach. It may take into consideration practical exigencies, it may recognize degrees of harm, and confine the legislation where the need is greatest, and that a law which hits evil where it is most felt will not be overthrown because there are other instances to which it might have been applied; that the Legislature may proceed cautiously step by step; and finally that the inequality produced in order to encounter the challenge of the Constitution must be actually and palpably unreasonable and arbitrary.

74. It was argued by Mr. M. P. Amin, learned counsel for the petitioner, that there is on the face of the legislation in Section 49EE classification and discrimination which is unreasonable. There is discrimination between tax evaders whose cases were referred to the Investigation Commission and had entered into a settlement on the one hand and on the other, those tax evaders whose cases were not so referred and who had not entered into any settlement. Then it was said that there is discrimination between tax evaders whose cases were so referred and who had entered into a settlement and made payments in pursuance of the settlement on the one hand, and on the other, those whose cases were so referred and who had entered into a settlement but had not made any payment. The argument was pressed under three heads. Firstly it was urged that the clear effect of this classification was that the terms of the section operated in a very onerous manner on the category of persons who had settled their tax liability and paid the same, whereas those who had not settled their liability or having settled it had failed to pay were not at all hit by the section. It was argued on the other side by the learned Attorney General that section 49EE deals with a class of persons with whom there has been a settlement either under the Income-tax Act or under any other enactment such as the Investigation Act and who ultimately took their stand upon the invalidity of the settlement. It was said that special treatment was there but the essential characteristic of the class was that they were persons attacking the validity of the settlement. I am unable to uphold the classification sought to be supported on the differentia that the section only applies to those who challenged the validity of the settlement. The argument proceeded that there was nothing onerous in the section as contended by the petitioner. The suggestion was that in any case that could not be a decisive factor. It is difficult to see how it can be said that the section would not operate in any onerous manner on those tax evaders who had settled their liability and made payment in pursuance of the settlement. Of course, they are worse off than those who did not make any payment since they are now by operation of the section prevented from claiming immediate refund of the same. But the circumstance that the impugned legislation operates in an onerous manner on the class of persons selected for its application is not the criterion. It is now settled law that mere differentiation or inequality of treatment or hardship does not per se amount to discrimination with the inhibition of the equal protection clause. To attract the operation of the clause it is necessary to show that the selection is unreasonable or arbitrary; that it does not rest on any rational basis having regard to the object

which the Legislature has in view. It was next argued by the learned Attorney General that the persons selected for operation of Section 49EE were only those who had voluntarily entered into a settlement and of their own volition made payments and given security in pursuance of the settlement. That was the reason applicable to them, and that was the special circumstance, and therefore, the application of the section to them cannot be regarded as hostile discrimination. The test of persons similarly situated, the argument ran, cannot in these circumstances support the petitioner's case because it cannot be said that those who made payments and those who did not make payments are similarly situated.

75. The argument of learned counsel for the petitioner that the impugned section is hit by Article 14 was as I have already mentioned presented under three heads. I have to consider the effect of the three contentions separately and also together and finally to see whether all the aspects of the matter considered as a whole bring the section within the inhibition of the equal protection clause. The principal contention, however, related to the first head and it will be convenient to examine it at this stage.

76. Now at first blush the argument, that the section has the effect of discriminating between those who entered into a settlement and made payment in pursuance of the same on the one hand and on the other, those who did not settle or having settled did not pay, does, seem rather attractive for the only difference between the two sets of tax evaders is that some tax evaders made the payments - albeit voluntarily - while the other tax evaders did not make any payment. It was strenuously urged that there is no reasonable differentia which distinguishes the group of persons selected for the operation of the section from others left out of the group. One answer to this problem, and I shall not deny that the problem does present some difficulty, is that on which the case for the respondents was upto a degree sought to be supported viz. that the settlement and the payment were voluntarily made. This does not seem to me to resolve the difficulty. The differentia does not relate to settlement and payment voluntarily made and that made under compulsion or pressure. In view of the decisions of the Supreme Court striking down the material provisions of the Investigation Act any such settlement made in a case referred to the Investigation Commission would be invalid regardless of its being voluntary or otherwise. Moreover the vires of Section 49EE must be examined on the footing that the settlement is invalid. The voluntary nature of the settlement and payment in accordance with the same is an important circumstance and a relevant reason touching the constitutionality of the section but not a decisive factor. The classification, therefore, if it is supportable, must rest on some broader basis afforded by special circumstances and justifiable reasons applicable to the group of persons brought within the purview of the section.

77. The difficulty that arises at times is not now in the ascertainment of the principles which determine the ambit and operation of the equal protection clause; but is in their application to the facts and circumstances relevant in examination of the legislation which is challenged and in determining on which side of the line of demarcation indicated by those principles the case can be said to fall. The presumption in favor of the constitutionality which permits the Court to

assume that the law is directed to problems manifest by experience and that its discriminations are based on adequate grounds sometimes helps in resolving a difficult case lying on the border line. No classification can be logically complete or accord with a pattern of plumb line precision. When the impugned legislation indicates a policy and brings within its operation those who are similarly situated and it appears that the policy is the result of specific difficulties and the end to which it is directed is not objectionable on the ground that there is arbitrary or hostile discrimination, the Court will not overthrow it simply because it is not couched in all-embracing terms, and results in inequality of treatment. These considerations, to my mind, are of greater cogency in the field of taxation where to say the least, adjustments logical and satisfactory in every way are not to be expected. If the standard adopted and the system employed for any rule affecting the mode or method of recovering tax is supportable on a genuine reason and the mode or method cannot be said to amount to naked discrimination the differentiation that may result should be regarded as merely incidental to the system and not looked upon as unreasonable selection. In any such case the resultant inequality cannot be said to have been imposed by the legislation nor can it be said to flow from any discriminating class legislation favoring some and putting others under a disadvantage.

78. If the above be the law, forming some of the natural and necessary corollaries to the broad principles underlying the equal protection clause in our Constitution, the classification, between those tax evaders who had entered into a settlement and made payment or given security in pursuance of the same on the one hand and those tax evaders on the other who did not settle or having settled did not pay, cannot be regarded as irrelevant or artificial. The differentiation is pertinent and real. The basis for it is the system relating to the mode or method of recovering tax employment of which was justified by practical exigencies and rendered necessary by surrounding circumstances and was the result of specific difficulties. Therefore, the basis of the classification is rational being pertinent and real and cannot be dismissed as unreasonable or arbitrary. The object of the legislation is to render the principle of set-off applicable to the case of all tax evaders who had entered into a settlement and discharged their liability in respect of escaped income and after doing so want refund of the same on the ground that the settlement was invalid. The object and evident intent of the legislation is not to put any burden upon one group from which it exempts another group. Section 49EE has in the present context to be read with the relevant provisions of Section 34. I have already set out the material and relevant part of sub-secs. (1A) and (1D) of Section 34. No support is to be derived from them for this important aspect of the object of Section 49EE. The object, in my judgment, is to bring within the operation of the system employed all tax evaders in the same relation towards this subject-matter of set-off. It is a chance incidence of this system that those who had not paid, escape the operation of the rule. That the system would produce certain inequality is not disputable and has not been disputed. But the resultant inequality is incidental to the system and arises out of the exigencies of the situation. The inequality produced in order to encounter the challenge of the Constitution must be actual and palpably unreasonable and arbitrary. It cannot be said of Section 49EE that such is the resulting position. It follows, therefore, that the object of the legislation cannot be

characterized as impermissible discrimination. It also follows from what I have already discussed that there is a nexus between the basis of classification and the object of the enactment under consideration.

79. The second head of Mr. Amin's argument on this question of Section 49EE being repugnant to Article 14 was that the amount of which refund is claimed by the petitioner and which is sought to be retained by the Revenue will not bear any interest and the Department will take many years before it ascertains the liability of the assessee under assessment or re-assessment that will be made in respect of the escaped income. A differentia was attempted to be made out between assessee hit by Section 49EE and those assessee who have to make advance payment of tax under Section 18A of the Income-tax Act. It was said that these latter, are entitled to get interest as provided in Section 18A. Now the short answer to this contention of the petitioner is that there is here no analogy and the distinction is not between persons similarly situated. The contention is not well founded and must be rejected.

80. The third head of Mr. Amin's argument on the same question was that the provisions of Section 49EE are in furtherance and implementation of the discriminatory provisions of the Investigation Act now held to be ultra vires the Legislature. It was said that the object and effect of the set off permitted by the section was to empower the Government to hold moneys and security lying in its possession without any foundation of claim or right or liability. On the other side, it was argued by the learned Attorney General that there is no basis for this contention and none has been established. Now, the present contention of Mr. Amin ignores that the section postulates settlements which are invalid on any ground whatever and is applicable to all cases of a similar nature. It was next urged by Mr. Amin that the obvious purpose of the rules enacted in the section was to impose this set-off only on tax evaders who had entered into a settlement and made payment in pursuance of the provisions of the Investigation Act while no such set-off could be claimed in case of other tax evaders. The argument is not sustainable in view of the words 'whether under this Act or otherwise' which have the effect of bringing under the class of persons hit by the section, all tax evaders who might have entered into settlement and made payment in pursuance of the provisions of the Investigation Act as also those who might have done so in accordance with the provisions of Section 34 of the Income-tax Act which I have already set out. I have already dealt with other aspects of the challenge to Section 49EE on the ground of its object being unreasonable discrimination and need not rehearse the same.

81. No theoretical or philosophical approach can be helpful in determining whether the impugned legislation is within or without the indefinable range of Article 14. No test exclusive or inclusive is possible and no infallible criterion has been laid down. The Courts do not claim to have achieved this. But what has been done is to lay down the broad principles which rule these matters and to leave the Court to evolve necessary corollaries within the matrix of those principles and which must accord with them and not be of the nature of extension or restriction of those principles. After considering separately and together all the heads of the arguments

advanced before us on behalf of the petitioner on the contention that Section 49EE is repugnant to Article 14, I have reached the conclusion that the provisions of that section challenged before us are not affected by the constitutional inhibition. In order to establish that the section is obnoxious to the constitutional guarantee assured by Article 14 it is incumbent on the petitioner to negative every conceivable basis on which it can be rested and this the petitioner has failed to do. I am conscious that the decision that I have arrived at must allow some anomalies but that is due to the difficulties patent in the situation and the system employed and not due to unreasonable or arbitrary selection. The Legislature must have a large measure of discretion in the matter of selection and classification and certainly so in matters affecting the actual working of the machinery of taxation. That machinery would not work if the Constitution did not allow the Legislature, to adopt the expression of Mr. Justice Holmes, 'a little play in its joints'.

82. The validity of section 49EE was further challenged on two other specific and independent grounds. It was argued that the provisions of the section deprive the petitioner of his right to get possession of the amount paid under a void settlement and amount to unreasonable restrictions on his rights to hold and dispose of that amount which is his property and, therefore, violate the fundamental right guaranteed under Article 19(1)(f) of the Constitution. It was further argued that section 49EE provided for compulsory acquisition or requisition of property within the meaning of Article 31(2) of the Constitution and is repugnant to that Article. The scope and ambit of the clause relating to the freedom of the citizen to acquire, hold and dispose of property has been enunciated in numerous decisions. It seems to me that it would involve a strain on the language of the Article to say that the special provisions of Section 49EE relating to set-off etc. violate the protection of the right to hold and dispose of property. As to Article 31(2) it has in the present context to be read with clause (5)(b)(i). In my judgment it would be wresting the language of these relevant provisions of Article 31 and Article 265 to hold that the provisions of Section 49EE contravene Article 31(2) as contended by the petitioner. I agree with my learned brother that both these contentions fail and must be negated. I also agree with the reasons given and conclusions arrived at by him on these two contentions.

83. The reliefs by way of writs sought by the petitioner are set out in prayers (a) to (c) of his petition. It is clear that the principal relief that he seeks is the one in prayer (b) by way of a writ of Mandamus compelling the first Respondent, the Union of India, to refund the amount of a little over Rs. 4 lacs paid by him in pursuance of the settlement and compelling 1st and 3rd Respondents to return the documents of title deposited by him. I have already said that the Petitioner is not entitled to this relief. But the settlement being invalid under the Investigation Act the petitioner is entitled to certain relief against respondents 2 and 3.

84. P. C.: On the view taken by us, the petition will be dismissed against the Union of India. There will Be an order issued by this Court directing that the notices issued under Section 46(5A) of the Income-tax Act and the proceedings taken in pursuance thereof will stand vacated. There will be a Writ of Prohibition restraining respondents Nos. 2 and 3 and their officers from taking

any further action by way of recovery or otherwise in pursuance of the notices already issued or which may hereafter be issued under Section 8A(2) of the Taxation on Income (Investigation Commission) Act, 1947, or from taking any other proceedings in enforcement of the settlement. The petitioner will pay the costs of the respondents. Costs to be on long cause scale. Two Counsel allowed.

Order accordingly,