KUNCHI AMMA v. MINAKSHI AMMA.

when a tavazhi claims to take its share of the tarwad properties. Such a claim must be deemed to have been made when a notice demanding its share is given, or at least when a suit is filed for that purpose. There is, therefore, no substance in this contention.

For these reasons, we consider that the decision of the learned District Munsif was correct and we dismiss this petition with costs.

A.S.V.

APPELLATE CIVIL.

Before Mr. Justice Venkataramana Rao.

1935, October 23.

K. R. M. T. T. THYAGARAJA CHETTIAR, PETITIONER,

v.

THE COLLECTOR OF MADURA, RESPONDENT.*

Indian Income-tax (Act XI of 1922), *sec.* 46—*Arrears of income-tax—Proceedings taken by Collector to recover—Jurisdiction of High Court to issue writ of* certiorari *where the Collector* bona fide *believed he was acting under sec.* 46 *of Act—Government of India Act,* 1915, *sec.* 106 (2)—*High Court's jurisdiction, if barred by.*

Where an assessee applied to the High Court for the issue of a writ of *certiorari* to quash the proceedings for his arrest taken by the Collector for realizing arrears of income-tax levied upon him, on the ground that the said proceedings were in contravention of section 46 (7) of the Indian Income-tax Act (XI of 1922) and of section 48 of the Revenue Recovery Act (I of 1890), and it appeared that, in issuing the certificates required by section 46 of the Income-tax Act and in making the orders for arrest and issuing

* Civil Miscellaneous Petition No. 2544 of 1935.

warrants, the Collector *bona fide* believed that he was acting according to section 46 of the Income-tax Act,

held, that the application was unsustainable because (i) income-tax is revenue, and the Supreme Court had no jurisdiction to issue a writ of *certiorari* in matters concerning revenue, and the High Court, which has in this respect only such jurisdiction as the Supreme Court had, had no jurisdiction to do so either, and (ii) section 106 (2) of the Government of India Act bars the jurisdiction of the High Court to issue such a writ.

The phrase "original jurisdiction" in section 106 (2) of the Government of India Act is not confined to ordinary original civil jurisdiction; under section 106 the High Court is vested with the original jurisdiction more specifically described in Clauses 12 and 13 of the Letters Patent as well as the original jurisdiction of the abolished Supreme Court.

Govindarajulu Naidu v. *Secretary of State*, (1926) I.L.R. 50 Mad. 449, referred to and distinguished.

It does not matter whether the executive acts done were justified or not on a right construction of the statute (in this case section 46 of the Income-tax Act) so long as they were done in the *bona fide* belief that its requirements were complied with. If so, the jurisdiction of the Court to deal with the said executive act is gone.

Spooner v. *Juddow*, (1850) 4 M.I.A. 353, followed.

Observations of BARON PARKE in *Calder* v. *Halket*, (1839) 2 M.I.A. 293, distinguished.

PETITION praying that, in the circumstances stated in the affidavit filed therewith, the High Court will be pleased to issue a writ of *certiorari* to the Collector of Madura acting under the statutory powers given by section 46 of the Indian Income-tax Act directing the prosecution of the petitioner for the recovery of the arrears of income-tax due by him for the assessment years 1931–32, 1932–33 and 1933–34 and to quash the same.

K. V. Krishnaswami Ayyar and *T. M. Ramaswami Ayyar* for petitioner.

THYAGARAJA CHETTIAR v. COLLECTOR OF MADURA.

Government Pleader (*K. S. Krishnaswami Ayyangar*) for respondent.

Cur. adv. vult.

ORDER.

This is an application for the issue of a writ of *certiorari* to quash the proceedings of the Collector of Madura taken in regard to the realization of the arrears of income-tax levied on the petitioner. The case of the petitioner is that he was assessed to income-tax for the years 1931-32, 1932-33 and 1933-34 in the sum of Rs. 5,610-2-0, Rs. 7,503-5-0 and Rs. 8,333-6-0 respectively, totalling Rs. 21,746-13-0. The notices of demand for the several years were respectively issued on 31st January 1932, 31st January 1933 and 16th November 1933. After assessment, proceedings under section 46 of the Income-tax Act were commenced and certificates as required by the said section were issued. In March 1935 the Revenue Divisional Officer issued an order for the arrest of the petitioner for the said arrears and the petitioner was arrested on 26th March 1935, when he gave twenty-two post-dated cheques commencing from 1st April to 6th September 1935 and he was thereafter released and then two of these cheques were cashed but he understands that proceedings for arresting him had already been issued and he seeks to quash them on the ground that they violate section 46 (7) of the Income-tax Act in that the proceedings were not commenced within the expiration of one year from the last day of the year in which any demand was made under the Act and also in contravention of the provisions of section 48 of the Revenue Recovery Act which

requires as a condition precedent that there should be wilful default.

On behalf of the Government a preliminary objection has been taken that the jurisdiction to issue a writ is barred under section 106 (2) of the Government of India Act, and, even assuming jurisdiction, no writ can lie for quashing a ministerial act as, in this case what is sought to be quashed is the warrant issued. It was further contended that even the preliminary order in and by which the warrant was directed to be issued is also ministerial. The argument based on section 106, clause 2, is thus put: Income-tax is revenue. The proceedings that are sought to be quashed were in respect of acts ordered or done in the collection thereof and the Collector acted under section 46 of the Income-tax Act, according to the law for the time being in force. The writ of *certiorari* being an original writ, the jurisdiction is thus barred. It is contended in answer by Mr. K. V. Krishnaswami Ayyar that section 106 (2) does not apply to this case as the original jurisdiction in that clause relates only to suits or actions instituted on the Original Side of the Madras High Court, as section 106 (2) is nothing but a re-enactment of the saving clause in the Supreme Court Act, 39 and 40 Geo. III, Chapter 79, and under that Act the Supreme Court had jurisdiction exercisable only within the limits of the Presidency-town and the saving clause related only to that jurisdiction. He relied on the Privy Council decision in *Alcock, Ashdown and Company, Limited* v. *Chief Revenue-Authority of Bombay*(1). He further contended that the act

(1) (1923) I.L.R. 47 Bom. 742 (P.C.).

THYAGARAJA CHETTIAR v. COLLECTOR OF MADURA.

sought to be quashed is a judicial act. He also contended that even if section 106 (2) may be said to have taken away the power to issue a writ of *certiorari*, if the act which is sought to be quashed is in excess of the jurisdiction of a body which exercises judicial functions, the High Court has power to issue a writ of *certiorari* in the exercise of its inherent jurisdiction.

Before examining the soundness of these contentions, it will be necessary to refer to the relevant provisions of the various statutes which define the scope and extent of the power to issue the writ of *certiorari* possessed by the High Court. The jurisdiction which the High Court has to issue writs of *certiorari* or other prerogative writs is derived from the Supreme Court and it has in this respect only such jurisdiction as the Supreme Court had. The Supreme Court of Madras was established by the Government of India Act, 1800, (39 and 40 Geo. III, c. 79). It provided for the establishment of a Supreme Court of Judicature at Madras

> "with full power to exercise jurisdiction . . . and to be invested with such power and authorities, privileges and immunities . . . and subject to the same limitations, restrictions and control within the said . . . Town of Madras and Territories dependent on the Government of Madras, . . . as the said Supreme Court of Judicature at Fort William in Bengal . . . is invested with or subject to within the said Fort William or the Kingdoms or provinces of Bengal, Bihar and Orissa".

Therefore it is necessary to note what were the powers and limitations of the Supreme Court at Fort William in 1800. The Supreme Court at Fort William was itself established by virtue of the East India Act, 1772, 13 Geo. III, c. 63. Under

the Letters Patent by which the Supreme Court of Bengal was constituted, one of the powers it had was the power to issue a writ of *certiorari* conferred on it by section 4 of the Letters Patent. It is a well known fact that owing to the conflict which arose between the Judges of that Court and the Executive Government it was thought desirable to define and restrict the powers of the Supreme Court. Accordingly, 21 Geo. III, c. 70, was passed. Among others there were two limitations imposed on the powers of the Supreme Court:

(1) "That the Governor-General and Council of Bengal shall not be subject, jointly or severally, to the jurisdiction of the Supreme Court of Fort William in Bengal for or by reason or any act or order, or any other matter or thing whatsoever counselled, ordered or done by them in their public capacity only, and acting as Governor-General and Council."

(2) "And . . . the said Supreme Court shall not have or exercise any jurisdiction in any matter concerning the revenue, or concerning any act or acts ordered or done in the collection thereof, according to the usage and practice of the country, or the Regulations of the Governor-General in Council."

It will thus be seen that in two matters, i.e., in regard to the jurisdiction over the Governor-General and Council and in regard to matters concerning revenue, the jurisdiction has been curtailed.

These limitations again were emphasized and enacted by 39 and 40 Geo. III, c. 79, and by the Letters Patent which were issued in pursuance thereof constituting the Supreme Court at Madras. The Letters Patent provided in Clause 8

"that the said Chief Justice, and the said Puisne Judges, shall severally and respectively be, and they are all and every one of them hereby appointed to be, Justices and Conservators of

THYAGARAJA CHETTIAR v. COLLECTOR OF MADURA.

the Peace, and Governors, within and throughout the Settlement of Fort St. George, and the Town of Madras, and the limits thereof, and the Factories subordinate thereto, and all the Territories which now are, or hereafter may be, subject to, or dependent upon, the Government of Madras aforesaid; and to have such jurisdiction and authority as our Justices of our Court of King's Bench have, and may lawfully exercise, within that Part of Great Britain called England, as far as circumstances will permit."

It is in virtue of this clause the Supreme Court derived the power to issue a writ of *certiorari*. The proviso in the Letters Patent defined the exception to the jurisdiction of the Court. The relevant provision ran as follows :

"Nor shall the said Court have or exercise any jurisdiction, in any matter concerning the Revenue, under the management of the said Governor and Council, respectively, either within or beyond the limits of the said town or the Forts or the Factories subordinate thereto, or concerning any act done according to the usage and practice of the country, or the Regulations of the Governor and Council."

Thus the Supreme Court had no power to issue a writ of *certiorari* or other prerogative writs in matters concerning revenue within or beyond the limits of the town of Madras or the Forts or Factories subordinate thereto. The present High Court was constituted under the Indian High Courts Act, 1861 (24 and 25 Vic. c. 104). Section 9 of that Act runs as follows :—

"Each of the High Courts to be established under this Act shall have and exercise all such civil, criminal, admiralty and vice-admiralty, testamentary, intestate, and matrimonial jurisdiction, original and appellate, and all such powers and authority for and in relation to the administration of justice in the Presidency for which it is established, as Her Majesty may by such Letters Patent as aforesaid grant and direct, subject, however, to such directions and limitations as to the exercise of original civil and criminal jurisdiction beyond the limits of the Presidency-towns as may be prescribed thereby; and save as by such Letters Patent may be otherwise directed and subject

and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council, the High Court to be established in each Presidency shall have and exercise all jurisdiction and every power and authority whatsoever in any manner vested in any of the Courts in the same Presidency abolished under this Act at the time of the abolition of such last-mentioned Courts."

Dealing with this section VENKATASUBBA RAO J. observed in *Venkataratnam* v. *Secretary of State for India*(1) :

"They (the Letters Patent) contain, in fact, no provision corresponding to clause 8 of the Charter of 1800. The High Court, therefore, derives its power to issue prerogative writs, not from any express clause in the Charter, but from section 9 of the Act, which preserves intact the powers of the abolished Courts. It follows therefore that the Letters Patent have not enlarged the jurisdiction of the High Court in *certiorari*."

Section 106 of the Government of India Act does not carry the matter further. Section 106 (1) is as follows :—

"The several High Courts are Courts of record and have such jurisdiction, original and appellate, including admiralty jurisdiction in respect of offences committed on the high seas, and all such powers and authority over or in relation to the 'administration of justice', including power to appoint clerks and other ministerial officers of the Court, and power to make rules for regulating the practice of the Court, as are vested in them by Letters Patent, and subject to the provisions of any such Letters Patent, all such jurisdictions, powers and authority as are vested in those Courts respectively at the commencement of this Act."

Therefore the question is, had the Supreme Court the power to issue a writ of *certiorari* in regard to matters of revenue and, if so, subject to what limitations? As will be seen from the provisions of the statutes already stated, it had no jurisdiction to issue a writ of *certiorari* concerning any act ordered or done in the collection

(1) (1929) I.L.R. 53 Mad. 979, 994.

THYAGARAJA CHETTIAR v. COLLECTOR OF MADURA.

of revenue according to the usage and the practice of the country or the Regulations of the Governor and Council. If the Supreme Court had no jurisdiction to issue a writ of *certiorari*, the High Court has no jurisdiction to do so. This application for the issue of a writ is not therefore maintainable. I am also of opinion that the application is unsustainable in view of section 106, clause 2. I shall now deal with the contention of Mr. Krishnaswami Ayyar on this point. In one sense his argument is self-destructive. According to him the jurisdiction of the Supreme Court to issue a writ of *certiorari* was confined only to the Presidency-town because the jurisdiction of the Supreme Court can only be exercised within the limits of the Presidency-town and not beyond it. If so, the High Court's jurisdiction being only such jurisdiction which the Supreme Court had, his application to this Court for the writ of *certiorari* cannot lie. I do not agree with Mr. Krishnaswami Ayyar that the phrase "original jurisdiction" in section 106 (2) should be confined to ordinary original civil jurisdiction. There is no doubt an observation of the late CHIEF JUSTICE in *Govindarajulu Naidu* v. *Secretary of State*(1) which appears to lend support to the contention of Mr. Krishnaswami Ayyar. The learned CHIEF JUSTICE on page 455, commenting on section 106, clause 2, of the Government of India Act, observes thus:

> "In matters affecting the revenue, the Original Side of this Court and that side alone is debarred from interfering in revenue matters."

(1) (1926) I.L.R. 50 Mad. 449.

The learned Judges in that case were not considering the power of the High Court to issue a writ of *certiorari*. Under section 106, it will be seen that the High Court is vested with (i) the original jurisdiction more specifically described in Clauses 12 and 13 of the Letters Patent and (ii) the original jurisdiction of the abolished Supreme Court which is conferred by the words

> "such jurisdiction, powers and authority as are vested in those Courts, respectively, at the commencement of this Act".

It is not disputed that the writ of *certiorari* is issued in the exercise of original jurisdiction; *Venkataratnam* v. *Secretary of State for India*(1). As an exception to both sets of original jurisdiction above mentioned, section 106, clause 2, has been enacted, just as they have enacted section 110 in regard to exemption conferred in favour of the Governor and Council. The wording of section 106 (2) is in my opinion very suggestive and instructive. The words "have not" and "may not" are both declaratory and prospective and would aptly comprise also the jurisdiction vested in the Court at the commencement of the Act apart from the jurisdiction vested by the Letters Patent.

Considerable stress was laid by Mr. K. V. Krishnaswami Ayyar on the decision of the Privy Council in *Alcock, Ashdown and Company, Limited* v. *Chief Revenue-Authority of Bombay*(2). In that case, the Income-tax Officer refused to refer a case to the High Court of Bombay under section 51 of the Income-tax Act of 1918. Both the Bombay

(1) (1929) I.L.R. 53 Mad. 979, 999, 1017.
(2) (1923) I.L.R. 47 Bom. 742 (P.C.).

THYAGARAJA CHETTIAR v. COLLECTOR OF MADURA.

High Court and the Madras High Court had taken the view that an order under section 45 of the Specific Relief Act could not be issued compelling the Income-tax Officer to refer the case to them because of section 106 (2) of the Government of India Act. Their Lordships of the Judicial Committee negatived this view and held that

> "the order of a High Court to a Revenue Officer to do his statutory duty would not be the exercise of original jurisdiction in any matter concerning the revenue".

As I understand their observation, in their Lordships' view, to ask a Revenue Officer to do his statutory duty would not be a matter concerning revenue. This is made clear by a passage from the previous paragraph :

> "To argue that if the Legislature says that a public officer, even a Revenue Officer, shall do a thing, and he without cause or justification refuses to do that thing, yet the Specific Relief Act would not be applicable and there would be no power in the Court to compel him to give relief to the subject, is to state a proposition to which their Lordships must refuse assent."

Two things are necessary to constitute a bar under section 106 (2), viz., (i) an exercise of original jurisdiction, (ii) a matter concerning revenue or the collection thereof. In their Lordships' view as aforesaid, there was no matter concerning revenue in the case. I do not think their Lordships meant to decide that there was no exercise of original jurisdiction as section 45 of the Specific Relief Act refers to ordinary original civil jurisdiction.

Mr. Krishnaswami Ayyar attempted to argue that income-tax is not revenue but this argument is not open to him after the ruling in *Messrs. Best & Co., Ltd.* v. *The Collector of Madras*(1).

(1) (1918) 35 M.L.J. 23.

Another argument of Mr. K. V. Krishnaswami Ayyar may be noticed, namely, even if the statute has taken away the writ, when a judicial body acts *ultra vires* this Court can nevertheless issue the writ. The short answer to this is that the High Court had never any jurisdiction to issue the writ in matters concerning revenue.

It was next contended by Mr. K. V. Krishnaswami Ayyar that the exception can only be in favour of acts which have been done according to the law for the time being in force and therefore if the act is not in conformity with the law and in direct contravention of it the jurisdiction is not barred. In this case, the Collector having acted in contravention of section 46, clause 7, he must be deemed to have not acted according to the law for the time being in force. I am unable to accept this contention. This clause was interpreted very early by their Lordships of the Judicial Committee in *Spooner* v. *Juddow*(1). In that case, it was found that the Collector illegally levied quit rent from a person who was not liable to pay it. Dealing with the argument that the exception of jurisdiction would avail only when the act is according to the Regulations of the Governor and Council, Lord CAMPBELL observed :

> " There can be no rule more firmly established, than that if parties *bona fide* and not absurdly believe that they are acting in pursuance of Statutes, and according to law, they are entitled to the special protection which the Legislature intended for them, although they have done an illegal act."

His Lordship concluded the judgment thus :

> " We are, therefore, bound to differ from the Judge below who, says, ' that the jurisdiction of his Court has not been taken

(1) (1850) 4 M.I.A. 353, 379, 381.

THYAGARAJA CHETTIAR v. COLLECTOR OF MADURA.

away, when the act complained of is not warranted by the country, or by the Company's Regulations'. If it concerned the revenue or was a matter concerning an act *bona fide* believed to be done according to the Regulations of the Governor and Council of Bombay, his jurisdiction was gone, although *prima facie* it appeared to be a trespass over which his jurisdiction might be properly exercised."

Mr. K. V. Krishnaswami Ayyar sought to distinguish this case by relying on the observations of BARON PARKE in *Calder* v. *Halket*(1). In that case, there was an action on trespass brought to recover damages for the arrest and false imprisonment of the plaintiff by the Magistrate of Foujdary (criminal) Court of the Zillah of Nuddeah in Bengal. The action was held not to lie by virtue of 21 Geo. III, c. 70, section 24. It prohibited an action against any person exercising a judicial office for an act done by or in virtue of the order of the Court. Dealing with this, his Lordship observed :

"The object may have been to put the Judges of the Native Courts on the footing of Judges of the Superior Courts of Record, or Courts having similar jurisdiction to the native Courts here, protecting them from actions for things done within their jurisdiction, though erroneously or irregularly done, but leaving them liable for things done wholly without jurisdiction."

The question in this case is entirely different. It is not merely exemption from liability in a personal action. In *Spooner* v. *Juddow*(2) their Lordships considered the jurisdiction of the Court from the point of view of the subject-matter and ruled that in respect of the subject-matter the jurisdiction of the Court had been entirely taken away, if the officer acted in the belief that he had jurisdiction. In the present case, it is not

(1) (1839) 2 M.I.A. 293, 306. (2) (1850) 4 M.I.A. 353.

denied that certificates were issued in accordance with the provisions of section 46 of the Income-tax Act and orders for arrest made and warrants issued in pursuance of the said provision. Whether the said orders were justified on a right construction of the said provision does not matter ; but what matters is whether the Collector *bona fide* believed that he was acting according to the said provision. If so, the jurisdiction of the Court to deal with the said act is gone. In this case, it has been conceded that the Collector was not acting *mala fide*. I have therefore come to the conclusion that the preliminary objection must prevail and that this Court has no jurisdiction to issue a writ of *certiorari* to quash the proceedings concerned. I, therefore, dismiss the petition with costs, viz., Rs. 100 (to be paid by the petitioner).

K.W.R.