

MISCELLANEOUS CIVIL.

*Before Mr. Justice Broadway, Acting Chief Justice and Mr.
Justice Bhide.*

MOHAMMAD FARID - MOHAMMAD SHAFI

Petitioners

versus

COMMISSIONER OF INCOME-TAX, LAHORE

Respondent.

1927

June 23/27

Civil Miscellaneous No. 131 of 1927.

Indian Income-tax Act, XI of 1922, sections 33, 66—Mandamus—High Court (Lahore)—jurisdiction—where Commissioner's order was passed under section 33—Specific Relief Act, 1 of 1877, section 45—inapplicability of.

Held, that where the Commissioner of Income-tax, acting *suo motu* calls for the record of proceedings and, in accordance with the provisions of section 33 of the Income-tax Act, makes an order prejudicial to the Assessee, the High Court has no power to direct the submission of a point of law under the first clause of section 66 of the Act at the instance of the Assessee, nor under the second clause.

Held further, that inasmuch as section 45 of the Specific Relief Act does not apply to this High Court, it has no power to issue a *mandamus* directing the Income-tax Commissioner to do what the Act gives him a discretion to do.

Trikamji Diwan Das v. The Commissioner of Income-tax, Bihar and Orissa (1), and *Krishnaballabh Sahay v. His Excellency the Governor of Bihar and Orissa* (2), referred to.

In re Sheikh Abdul Qadir Marakayar and Co. (3), and *Tata Iron and Steel Co., Ltd. v. Chief Revenue Authority of Bombay* (4), distinguished.

Application under section 66 of the Income-tax Act, for a mandamus to issue to the Income-tax Commissioner, directing him to refer certain points of law to the High Court for opinion.

(1) (1925) I.L.R. 4 Pat. 224, 229. (3) (1926) I.L.R. 49 Mad. 725.

(2) (1926) I.L.R. 5 Pat. 595, 630. (4) (1923) I.L.R. 47 Bom. 724 (P.C.).

1927

J. G. SETHI and FAKIR SINGH, for Petitioners.

MOHAMMAD
FARID-
MOHAMMAD
SHAFI

JAGGAN NATH, AGGARWAL, for Respondent.

ORDER.

r.
COMMISSIONER
OF INCOME-TAX.

BROADWAY
A. C. J.

BROADWAY A. C. J.—This is an application under section 66 of the Income-tax Act asking for a *mandamus* to issue to the Income-tax Commissioner, directing him to refer certain alleged points of law to this Court for opinion.

A preliminary objection has been taken by Mr. Jagan Nath, Aggarwal, for the Commissioner of Income-tax to the effect that the application is incompetent. The facts are briefly these. The firm of Messrs. Mohammad Farid - Mohammad Shafi was assessed income-tax for the year 1923-24 and again for the year 1924-25. The Income-tax Officer excluded from assessment in both years certain large sums of money which the assessee claimed a rebate on as being rental of the factory and premises on which the business was carried on. The assessees accepted this rebate but preferred an appeal to the Assistant Commissioner against certain other matters in which they were unsuccessful. They then remained content with the position of affairs. In August 1926, however, the Commissioner of Income-tax acting *suo motu* sent for the record of the proceedings and after giving notice to the assessees and hearing what they had to say included a sum of Rs. 40,500, which had been exempted from assessment in the assessable income, and called upon the assessee to pay a further sum of Rs. 6,414-8-0. The Commissioner of Income-tax was asked to refer the question as to whether this sum was liable to assessment to this Court but refused to do so.

Now the learned counsel appearing for the assessee has admitted that this application does not fall within the purview of the second clause to section 66, inasmuch as the order passed by the Income-tax Commissioner was not passed either under section 31 or section 32 of the Act. He contends, however, that this Court has power to direct the submission of a point of law under the first clause of section 66. This is to the following effect:—

“ If, in the course of any assessment under this Act or any proceeding in connection therewith, etc., a question of law arises, the Commissioner may, either on his own motion or on reference from any Income-tax authority subordinate to him, draw up a statement of the case and refer it with his own opinion thereon to the High Court.”

It will be seen that this clause refers to the reference of a question of law either by the Commissioner on his own motion or on reference from any Income-tax authority subordinate to him. It does not contemplate a reference at the instance of an assessee. Mr. Sethi urged, however, that this Court had power to issue a *mandamus* directing the Income-tax Commissioner to do what the Act gives him a discretion to do and in support of his contention cited three authorities. The first of these was *In re: Sheikh Abdul Qadir Marakayar & Co.* (1)—an authority which certainly supports his contention.

He next referred to *Sachchidananda Sinha v. Commissioner of Income-tax, Bihar and Orissa* (2), an authority which also appears to support him. Finally reliance was placed on a decision of their Lordships of the Judicial Committee in *Tata Iron and Steel Co., Ltd. v. Chief Revenue Authority of Bombay* (3)

1927

MOHAMMAD
FARID-
MOHAMMAD
SHAFI

COMMISSIONER
OF INCOME-TAX.

BROADWAY
A. C. J.

(1) (1926) I. L. R. 49 Mad. 725. (2) (1924) I. L. R. 3 Pat. 664.

(3) (1923) I. L. R. 47 Bom. 724 (P.C.).

1927

MOHAMMAD
FARID-
MOHAMMAD
SHAFI

v.
COMMISSIONER
OF INCOME-TAX.

BROADWAY
A. C. J.

Now the Madras and Bombay cases proceed on powers that those High Courts have under section 45 of the Specific Relief Act. Inasmuch as that section of the Specific Relief Act does not apply to this Court, it is clear that those two authorities do not afford any assistance in the decision of the point before us. The Patna case, however, would need consideration but for the fact that the correctness of the view in the authority cited has been doubted in *Trikamji Diwan Das v. The Commissioner of Income-tax, Bihar and Orissa* (1). At page 229 of the report the learned Chief Justice says referring to the Privy Council case:—

“ In the Bombay case which was a decision of their Lordships of the Privy Council, section 45 of the Specific Relief Act, which gives the three High Courts in the presidency towns power to make orders in the nature of *mandamus* requiring specific acts to be done or foreborne by persons holding a public office, was relied on, but that section does not confer the same powers upon this High Court; and section 66 of the Income-tax Act, which differs in certain material respects from section 51 of the Act of 1918 which was in force when the case cited was decided, gives the High Court no power over the Income-tax Commissioner except to the limited extent therein provided. The Court, however, by its order considered that it had jurisdiction and ordered the Commissioner to state a case which he has done and it is not competent to this Court now to question the validity of that order.”

The correctness of the view was also raised in *Krishnaballabh Sahay v. His Excellency the Governor of Bihar and Orissa* (2), where it was stated that “ it

(1) (1925) I. L. R. 4 Pat. 224, 229. (2) (1926) I. L. R. 5 Pat. 595, 630.

was suggested by the learned Vakil for the applicant that this High Court had inherited from the Calcutta High Court much of its inherent jurisdiction, including a right to issue a *mandamus*. In the circumstances of the present application I am content to leave the matter there. When the occasion arises the question can perhaps be further discussed with advantage; but it is noticeable to observe that even by section 45 of the Specific Relief Act none of the High Courts therein mentioned can make any order binding on a Governor."

In these circumstances I must hold that this Court has no power under section 45 of the Specific Relief Act to issue the *mandamus* asked for. Section 66 (1) does not give that power and I know of no other enactment which would enable us to make the order prayed for. Incidentally, as urged by Mr. Jagan Nath, it would appear that the Legislature has intentionally altered the old section 51 by dividing it into two distinct parts, leaving it discretionary in the Commissioner of Income-tax to make references in certain circumstances while making it compulsory for him to do so when circumstances arise within the scope of the second clause to section 66.

It was next contended that the order passed by the Income-tax Officer was really one under section 31 or section 32 and that therefore section 66 (2) would apply. A reference to the proceedings as stated before us clearly shows that the order of the Commissioner was passed under section 33, an order which appears to me to have been within his jurisdiction. Whether the question involved was one which might well have been referred as urged by Mr. Sethi is a matter with which we are not now concerned.

1927

MOHAMMAD
FARID-
MOHAMMAD
SHAFI

T.
COMMISSIONER
OF INCOME-TAX.

BROADWAY
A. C. J.

The application is therefore dismissed. I leave the parties to bear their own costs.

BHIDE J.

BHIDE J.—I concur.

N. F. E.

Application dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Broadway.

TEJA SINGH—Petitioner

versus

THE CROWN—Respondent.

Criminal Revision No. 884 of 1927.

*Criminal Procedure Code, Act V of 1898, section 522—
Order for restoration of immovable property—can be made
only where criminal force has been used.*

Held, that in the absence of a finding that the accused has used *criminal force*, etc., in dispossessing the complainant of his property, no order for restoration can be passed under section 522 of the Criminal Procedure Code.

Ishan Chandra v. Dina Nath (1), *Hari Chand v. Crown* (2), *Batakala Pottiaradu* (3), and *Churaman v. Ram Lal* (4), referred to.

Application for revision of the order of J. W. Hearn, Esquire, District Magistrate, Sialkot, dated the 23rd March 1927, modifying that of Sardar Katha Singh, Magistrate, 2nd class, Daska, district Sialkot, dated the 10th February 1927, convicting the petitioner.

M. L. PURI, for Petitioner.

Nemo, for Respondent.

(1) (1900) I. L. R. 27 Cal. 174. (3) (1903) I. L. R. 26 Mad. 49.
(2) 16 P. R. (Cr.) 1919. (4) (1903) I. L. R. 25 All. 341.