

suffering adverse possession against him to mature, does neither attach to the collaterals' possession before us the quality of adverse possession nor does it impose any legal obligation on the respondents before us to have instituted a suit for possession pending the earlier suit against them for possession by the collaterals. I do not consider it necessary on the view I have taken to refer to other decisions of the various High Courts because they do not touch this aspect. In so far as the unreported Supreme Court decision in *Mst. Murti Dussadhin v. Surajdoo Singh, etc.* Civil Appeal No. 625 of 1960 is concerned, again, on the view that I have taken, its ratio does not come into the picture at all and I do not consider it necessary on this occasion to advert to its effect on the scope and applicability of Articles 142 and 144, Indian Limitation Act.

Santa Singh
and others
v.
Rajinder Singh
and others
—
Dua, J.

After giving to the various aspects of the case and the points raised my earnest thought and careful consideration, as discussed above, I am constrained with respect to disagree with my learned brethren and in the result to dismiss this appeal with costs.

Order of the Court.

In view of the decision of the majority, the appeal is allowed and the decision of the lower Appellate Court is set aside and that of the trial Court restored. In view of the nature of the points involved, there will be no order as to costs throughout.

B.R.T.

FULL BENCH

Before S. S. Dulat, A. N. Grover and P. D. Sharma, JJ.

THE ASSESSING AUTHORITY,—Appellant

versus

MANSA RAM,—Respondent

Supreme Court Application No. 92 of 1964

Constitution of India (1950)—Articles 133 and 226—Order passed on a petition under Art. 226 in a matter relating to taxation—Whether order passed 'in a civil proceeding'—High Court—Whether competent to grant certificate for appeal to Supreme Court against such an order—Civil right—Meaning of—Claim asserting non-liability to tax—Whether a civil right.

1965
—
March, 26th.

Held that, in accordance with the rules of the Punjab High Court concerning writ petitions under Article 226 of the Constitution contained in volume V, Chapter 4-F of the Rules and Orders, proceedings under Article 226 are either civil or criminal. The applications for writs of *habeas corpus* are criminal proceedings and all other petitions for writs of *mandamus*, prohibition, *quo warranto* and *certiorari* and for other directions are civil proceedings. The petitions for writs of *certiorari* or *mandamus*, etc., concerning taxing statutes or taxation matters cannot be classified as revenue proceedings but will be clarified as civil proceedings. An order passed in such proceedings will be a judgment, decree or order 'in a civil proceeding' within the meaning of Article 133 of the Constitution and the High Court has the power to issue a certificate that the case is a fit one for appeal to the Supreme Court.

Held that, a civil right means a right vesting in a person in his capacity as the citizen of a State, and it does not matter whether that rights arises out of a statute or otherwise and when a tax is imposed on a citizen and he claims that he is not liable and goes to Court to establish that right, he is asserting a civil right.

Case referred by a Division Bench consisting of the Hon'ble Mr. Justice A. N. Grover and the Hon'ble Mr. Justice Gurdev Singh on 23rd October, 1964 to a larger Bench for decision of an important question of law involved in the case. The Full Bench consisting of the Hon'ble Mr. Justice S. S. Dulat, the Hon'ble Mr. Justice A. N. Grover and the Hon'ble Mr. Justice P. D. Sharma, after deciding the question referred to them on 26th March, 1965, returned the case to the Division Bench, for final disposal.

Petition under Article 133 of the Constitution of India praying that a certificate of fitness for leave to appeal to the Supreme Court of India, be granted against the order of the Division Bench consisting of the Hon'ble Mr. Justice A. N. Grover and the Hon'ble Mr. Justice Gurdev Singh, passed in C. W. No. 229 of 1963 on 1st May, 1964.

M. R. SHARMA, R. L. SHARMA, AND M. R. AGNIHOTRI, ADVOCATES,
for the Appellant.

BHAGIRTH DAS AND B. K. JHINGAN, ADVOCATES, for the Respondents.

ORDER OF THE FULL BENCH

Dulat, J.

DULAT, J.—A petition under Article 226 of the Constitution was filed in this Court questioning the legality of an assessment made under the Punjab General Sales Tax Act, and a Division Bench allowed the petition and quashed the assessment. The Assessing Authority, thereupon, applied

for a certificate of fitness for appeal to the Supreme Court and, when that matter was considered by the Division Bench, a question arose whether the order of the High Court sought to be appealed against was an order made 'in a civil proceeding' in the High Court. The Division Bench entertained some doubt about the proceedings in the High Court being civil proceedings and, therefore, decided to refer the question to a Full Bench. A similar question appears to have arisen in other similar cases in the High Court round about the same time (S.C.A.s. 28 to 33 of 1964 and S.C.A. 107 of 1964), and it is that question with which we are now concerned. The Division Bench has framed the question thus—

The Assessing
Authority
v.
Mansa Ram

Dulat, J.

“Whether the order of the High Court on the petition under Article 226 of the constitution in the present case is a judgment, decree or order ‘in a civil proceeding’ within the meaning of Article 133 of the Constitution and whether the High Court has the power to issue a certificate that the case is a fit one for appeal to the Supreme Court?”

It is admitted that in this Court, proceedings under Article 226 of the Constitution challenging the validity of assessments made or proceedings taken under the Punjab General Sales Tax Act or for that matter under other taxing statutes including the Income-tax Act, have so far been treated as civil proceedings and certificates of fitness have been freely granted. More significant perhaps is the circumstance that numerous such cases have on such certificates gone to the Supreme Court and the appeals have been decided by the Supreme Court on the assumption that the fitness certificates were properly granted without any suggestion having been made that such proceedings in the High Court are not civil proceedings. The Division Bench entertained some doubt on this question because of certain decisions of other High Courts in India to which, of course, I shall be presently referring.

Before, however, I do that it is, I think, necessary to consider the rules framed by our High Court for dealing with such matters. These rules concerning writ petitions under Article 226 of the Constitution are contained in Volume V, Chapter 4-F, of the Rules and Orders of the

The Assessing
Authority
v.
Mansa Ram

Dulat, J.

High Court, and they fall in two parts. The first part is F(a) and contains rules for writs of *habeas corpus* under Article 226 of the Constitution read with the Criminal Procedure Code, section 491, and they indicate the manner in which this Court should proceed with such applications. The second part called F(b) is titled 'Civil' and contains rules for dealing with writs of *mandamus*, *prohibition*, *quo warranto* and *certiorari* and for other directions. Applications for writs of *habeas corpus* are criminal proceedings without any doubt and are consequently separately provided for by the rules. All other petitions under Article 226 are provided for in the second part called 'Civil'. The two sets of rules are not indetical for obvious reasons. It would, therefore, appear that as far as the rules of this High Court are concerned, petitions under Article 226 of the Constitution fall into only two categories, namely, *habeas corpus* petitions which are criminal proceedings, and other petitions for *certiorari* etc., which are civil proceedings. As far as this Court is concerned, therefore, I should think that the rules are sufficiently clear on the point that writ petitions are either criminal proceedings if they are brought for a writ of *habeas corpus*, or, they are civil proceedings if brought with the object of obtaining any other writ or direction, and as I have said, the procedure for each category is separately mentioned. It is said in support of the opposite view that this broad division made by the rules is not decisive and the main point made in support of the submission is that Article 132 of the Constitution apparently divides proceedings in a High Court not into two but three categories, namely, civil, criminal and other proceedings, and it is sought to be inferred, therefore, that there are, in fact, other proceedings which are neither criminal nor civil, and proceedings like the present would fall in that third category. This argument, which has been used in certain decisions, appears to me to overlook two matters. The first is that Article 132 of the Constitution is not concerned merely with proceedings under Article 226 of the Constitution but generally with all proceedings that may happen to be taken in the High Court, and just because Article 132 envisages a category of proceedings which may be neither criminal nor civil, it does not in any sense follow that there must be proceedings under Article 226 of the Constitution also which fall neither in the category of criminal proceedings nor that of civil proceedings. The second and equally important fact, which the argument overlooks,

is this that a Constitution like ours is not merely intended to provide for a situation which may in fact exist at present but also for situations which may at some future time arise. The assumption in the argument, therefore, that because Article 132 of the Constitution speaks of proceedings other than civil and criminal and, therefore, there must at present be in existence some such proceedings, is in my opinion unwarranted once it is remembered that a Constitution is an instrument of Government intended to be applicable to all foreseeable contingencies. It might well be that the Constitution-makers thought that some proceedings might conceivably arise in the future which may not be appropriately describable as civil or criminal and, therefore, mentioned a possible third category in Article 132. In any case, this mention of a third category in Article 132 of the Constitution can hardly be a ground for inferring that writ proceedings under Article 226 of the Constitution must be divided into not two but three categories. The rules of this Court divide writ petitions under Article 226 into two categories and there is no reason why that should not be considered exhaustive. This was the view adopted by the Rajasthan High Court in *Nahar Singh v. State of Rajasthan* (1), where Wanchoo, C.J., was considering the rules of that High Court which are in terms identical with the rules of this Court, and he concluded that writ proceedings are under the rules either criminal or civil. I find myself in entire agreement with that view and but for certain decisions of other High Courts it should have been quite unnecessary to say anything more.

The Assessing
Authority
v.
Mansa Ram

Dulat, J.

The earliest decision adopting the contrary view brought to our notice is *Sriram Gulabdas v. Board of Revenue* (M.P.) (2). That was not, however, a case concerning a writ petition but arose out of a reference made under the Sales Tax Act of Madhya Pradesh. The High Court decided certain questions of law and against the High Court's decision an appeal was sought to be taken to the Supreme Court. The question was whether an appeal lay to the Supreme Court. The Nagpur High Court held that it did not, and it so held on two grounds—(1) that the decision of the High Court was not a 'judgment, decree or final order', as the final order had actually to be made later by the Sales Tax authorities, and (2) that the

(1) A.I.R. 1955 Raj. 56.

(2) A.I.R. 1954 Nag. (F.B.).

The Assessing
Authority
v.
Mansa Ram

Dulat, J.

proceedings in the High Court were not 'Civil' but 'revenue' proceedings. The first question was discussed at considerable length and the view of the High Court, that the decision appealed against was not a final order of the High Court, was of course sufficient to dispose of the matter. In passing, if I may say so, and very briefly the High Court touched on the second question and expressed the view that the proceedings were not civil proceedings because they arose out of collection of revenue and the essence of the proceedings was 'the collection of revenue' and 'not the decision of any dispute of a civil nature in the strict sense'. There was no further discussion of the matter. It is likely that the High Court thought that the proceedings in the High Court were a continuation of the proceedings before the Board of Revenue, as they had gone to the High Court on a reference by that Board. The situation in a writ petition is, however, entirely different, as a writ petition filed in a High Court can in no sense be called a continuation of the proceedings which it impugns. Such proceedings, which commence with a petition under Article 226 of the Constitution, are entirely separate from the proceedings before the tribunal whose decision may be in dispute. The second case, *Allen Berry and Co. V. Income-Tax Officer* (3), is more to the point, for the proceedings in the High Court started with a writ petition. The view adopted by the Patna High Court was that because the writ petition challenged the validity of certain assessments made by the Income-tax authorities, it was not in the nature of a civil proceeding, and the High Court inferred this from the fact that there was no right of suit against the impugned assessment order. The opinion of the High Court is expressed thus—

“In the cases before us, the nature of the proceeding was that it called into question certain assessment orders made by the Income-Tax Authorities. The proceeding was not a civil proceeding as there was no right of suit, and I do not think it can be said to be a civil proceeding within the meaning of Article 133 of the Constitution.”

Considerable reliance was placed by the High Court on the decision of the Privy Council in *Raleigh Investment Co. Ltd. v. The Governor-General in Council* (4) holding that no

(3) A.I.R. 1956 Pat. 175.

(4) A.I.R. 1947 P.C. 78.

civil suit was competent to set aside an assessment of income-tax. In our High Court a question akin to the question arising in the present cases was considered by a Full Bench in *Sardar Kapur Singh v. Union of India* (5). S. Kapur Singh, was a member of the Indian Civil Service who had after a departmental enquiry been removed from service. He brought a writ petition to this Court questioning the legality of the order and, after that writ petition was dismissed S. Kapur Singh, applied for leave to appeal to the Supreme Court. One of the questions arising in the case was whether the decision of the High Court was an order made in a civil proceeding and it was in a general form referred to a Full Bench. It was urged before the Full Bench that the proceedings against S. Kapur Singh. were executive proceedings arising out of a service matter and the writ petition in the High Court brought by him, therefore, was not a civil proceeding. The Full Bench did not accept that view. In the course of arguments Kapur, J., who delivered the main judgment, considered the question whether the test of the competency of a civil suit was a good test and in that connection the decision of the Patna High Court I have referred to, *Allen Berry and Co. v. Income-Tax Officer* was cited. Kapur, J., however, said—

The Assessing
Authority
v.
Mansa Ram
Dulat, J.

“The test laid down by the High Court of Patna that if a suit could be brought, the proceeding would be civil and if it could not, then it would not be civil, is a good test *qua* the first part, i.e., where a suit could be brought and the petitioner seeks his remedy by way of a prerogative writ, the proceeding would be civil, but I would not go as far as to say that if the suit could not be brought, the proceeding would not be civil in nature.”

For this opinion the Full Bench depended on an observation of Mahajan, J., in *Province of Bombay v. Khushaldas* (6), that the word ‘sue’ includes any remedy that can be taken to vindicate a matter of right and, therefore, an application for *certiorari* is included in the word ‘sue’. There seems no reason why we should depart from that opinion. I am not, therefore, persuaded that just because a suit is not competent to establish a particular right or to avoid a particular decision made by a tribunal, writ petition brought for the

(5) A.I.R. 1957 Punj. 173.

(6) A.I.R. 1950 S.C. 222.

The Assessing
 Authority
 v.
 Mansa Ram

 Dulat, J.

purpose of avoiding such a decision cannot be called a civil proceeding. In a later case in the Patna High Court, *Collector of Monghyr v. Pratap Singh* (7), a Full Bench appears to have gone further and held that a proceeding started with a writ petition under Article 226 of the Constitution can never be a civil proceeding because the High Court is in connection with such a petition exercising its extraordinary jurisdiction and is not deciding the parties' rights of a civil nature at all, and the learned Judges of the Full Bench overruled a previous decision of that Court and also disapproved of the view adopted in *Allen Berry and Co.'s case* although holding that the particular decision was correct. Before us this extreme position that in no circumstances can a writ petition under Article 226 of the Constitution be called a civil proceeding, has not been seriously pressed for acceptance. One consequence of the adoption of that view would be that in no case, where the High Court decides a writ petition one way or the other, would an appeal be competent to the Supreme Court—a consequence which I cannot, but view with grave apprehension. In the Allahabad High Court this question was considered in *Income-Tax Officer v. Joti Prasad Agarwal and others* (8). A writ petition was there brought to quash an assessment under the Income-tax Act and the petitioner succeeded in the High Court. A certificate of fitness was then applied for, and a Division Bench considered the matter. The decision of the Patna High Court, *Collector of Monghyr v. Pratap Singh*, was placed before the learned Judges, but it does not appear that they were inclined to accept that extreme position. They held, however, that the particular proceedings in the High Court were not civil because the order quashed by the High Court was an order of assessment and that was in a proceeding for the assessment of income-tax not relating to a civil right, as the liability to pay income-tax was not a civil right but the creation of a statute. The learned Judges also depended on the circumstance that Article 132 of the Constitution mentions not only civil and criminal proceedings, but also other proceedings. The assertion, that liability to pay income-tax and the converse presumably, that is, freedom from income-tax is not a civil right, is found in more than one decision, but none of them makes it clear in what sense a person, who claims that he is not liable to pay a particular tax, is not

(7) A.I.R. 1957 Pat. 102 (F.B.).

(8) (1962) 44 I.T.R. 574.

asserting a civil right. I should have thought that a civil right means a right vesting in a person in his capacity as the citizen of a State, and it does not seem to my mind, whether that right arises out of a statute or otherwise, and, to my way of thinking, when a tax is imposed on a citizen and he claims that he is not liable and goes to Court to establish that right, he is asserting a civil right. I have already dealt with the consideration arising out of the language of Article 132 of the Constitution which, as I read it, classifies proceedings in the High Court in general and not proceedings under Article 226 of the Constitution. I am in the circumstances, not convinced by the reasoning of the Allahabad High Court in *Income-Tax Officer v. Joti Prasad Agarwal and others*. Very much the same reasoning was employed in the decision of the Madras High Court, *First Additional Income-Tax Officer, Karaikudi v. R. Shanmugha Rajeswara Sethupathi* (9), where Srinivasan, J., quoted with approval the view of the Allahabad High Court I have referred to and went on to conclude that a judgment in a writ petition seeking relief against the taxing authorities does not come within the expression 'civil proceedings'. This decision of the Madras High Court was again considered in *M. Chettainppan v. Income-Tax Officer* (10), because, in the meantime, a Full Bench decision of the same High Court had made certain observations and it was suggested that the basis of the decision in *First Additional Income-Tax Officer v. R. Shanmugha Rajeswara Sethupathi* was shaken. The Full Bench said in *Southern Roadways (P) Ltd. v. Madurai Veeraswami Nadar and other* (11), that the subject-matter of a petition under Article 226 of the Constitution is entirely different from the matters in controversy agitated before a tribunal whose decision may be in question and that the controversy in the proceedings under Article 226 cannot be equated to the controversy regarding the rights and privileges asserted or claimed before the tribunal whose order is sought to be quashed. The Division Bench, however, thought in spite of these observations that the decision in *First Additional Income-Tax Officer v. R. Shanmugha Rajeswara Sethupathi* needed no reconsideration and affirmed the previous view that a decision of a writ petition challenging the validity of an

The Assessing
Authority
v.
Mansa Ram
Dulat, J.

(9) (1963) 48 I.T.R. 647.

(10) (1964) 54 I.T.R. 293.

(11) (1964) 1 M.L.J. 25.

The Assessing
Authority
v.
Mansa Ram
Dulat, J.

assessment is not a decision in a civil proceeding. The Bombay High Court in *J. P. Sharma v. Phalton Sugar Works Ltd.* (12), adopted the view of the Madras High Court following the decision in *Allen Berry and Co. v. Income-tax Officer and Income-Tax Officer v. Joti Prasad Agarwal and others.*

There are thus the opinions of five High Courts in support of the view, that a writ petition challenging the correctness of an order of a taxing authority is not a civil proceeding, but should be described as a revenue proceeding or as a proceeding other than a civil or criminal. In spite of the weight of this judicial opinion, I remain unconvinced of its validity. I am far more impressed by the simple argument in *Nahar Singh v. State of Rajasthan* (1), that, in accordance with the rules of the High Court, proceedings under Article 226 of the Constitution are either civil proceedings or criminal proceedings. I am no more persuaded that such proceedings can be more properly described as revenue proceedings than the learned Judges of the Full Bench of this Court were in *Sardar Kapur Singh v. Union of India* (5), persuaded that the proceedings in that case could be described as executive or administrative proceedings. Nothing at all, in my opinion, is to be gained by introducing new categories into writ proceedings in the High Court, and the only result would be that a large number of important cases will be denied ready access to the Supreme Court—a result which I cannot view with satisfaction.

For these reasons I would answer the question, framed by the Division Bench, in the affirmative.

Grover, J.

A. N. GROVER, J.—I agree.

Sharma J.

P. D. SHARMA, J.—I agree.

B.R.T.

(12) (1963) 50 I.T.R. 72.