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October 14.

PURSHOTTAM GOVINDJI HALAI

v.

SHREE B. M. DESAI, ADDITIONAL COLLECTOR OF BOMBAY & OTHERS.

[S. R. DAS, ACTING C.J., VIVIAN BOSE, JAGANNADHADAS, JAFER IMAM and CHANDRASEKHARA AIYAR JJ.]

Constitution of India, Arts. 13(1), 14, 21—Indian Income Tax Act 1922 (Act XI of 1922), s. 46(2)—Whether offends Arts. 13(1), 14 & 21 of the Constitution—Bombay Land Revenue Act 1876 (Bombay Act II of 1876)—Whether offends Art. 14 of the Constitution.

The assessee carrying on business in the City of Bombay was assessed to income-tax for the years 1943-44 to 1947-48 and 1951-52 by the Income-tax Officer C-I Ward Bombay. As the assessee did not pay the income-tax due the Income-tax Officer issued in April 1951 to the Additional Collector of Bombay a recovery certificate under s. 46(2) of the Indian Income-tax Act, 1922. In February 1954 the Additional Collector issued a notice of demand and as no payment was made he attached the good will and tenancy rights of the assessee's premises by a warrant of attachment dated 24th March 1954.

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A sale was held in February 1955. The sale proceeds not being sufficient to satisfy the assessed tax the Additional Collector issued a notice under s. 13 of the Bombay City Land Revenue Act, 1876 requiring the assessee to appear before him and show cause why he should not be apprehended and confined to civil prison in satisfaction of the said certified demand. In default of assessee's appearance and showing cause a warrant for his arrest was issued under s. 13 of the Bombay Act, II of 1876 and he was actually arrested on 1st July 1955. An application to the Bombay High Court under Art. 226 of the Constitution for a writ in the nature of a writ of *habeas corpus* having proved unsuccessful, an application under Art. 32 was filed in the Supreme Court for the same relief. Two main points urged on behalf of the assessee were:

(a) that s. 46(2) of the Indian Income-tax Act under which the Income-tax Officer issued the recovery certificate to the Additional Collector of Bombay was void, under Art. 13(1) of the Constitution in that it offended Art. 21 and Art. 14 of the Constitution;

(b) that s. 13 of the Bombay Land Revenue Act, 1876 (Bombay Act II of 1876) under which the warrant of arrest was issued by the Additional Collector was void under Art. 13(1) of the Constitution as the same was repugnant to Art. 14 of the Constitution.

Held (as regards a) (i) that there was no violation of fundamental rights under Art. 21 of the Constitution inasmuch as s. 13 of the Bombay Act II of 1876 under which warrant of arrest was issued for the recovery of the demand certified under s. 46(2) of the Indian Income-tax Act constituted a procedure established by law. Both s. 13 of Bombay Act II of 1876 and s. 46 of the Indian Income-tax Act under which action had been taken against the assessee were not void and therefore no question of violation of fundamental rights under Art. 21 could arise at all;

(ii) the contention that s. 46(2) of the Indian Income-tax Act provides for two different and alternative methods of recovery of the dues and clothes the Collector with the unfettered and unguided power to apply either of the two methods inasmuch as it enables the Collector at his will to discriminate between two defaulters who are similarly situated and thus violates the equal protection clause of the Constitution was without force because sub-section (2) of s. 46 does not prescribe two different procedures. The proviso enacted therein does not indicate a different and alternative mode of recovery of the certified amount of tax but only confers additional powers on the Collector for the better and more effective application of the only mode of recovery authorised by the body of sub-section (2) of s. 46 and therefore, there was no question of possibility of discrimination at all;

(iii) the further contention that s. 46(2) of the Indian Income-tax Act violates the equal protection clause of the Constitution and has thus become void under Art. 14 of the Constitution as s. 46(2) required the Collector, on receipt of the requisite certificate from

the Income-tax Officer, to recover the amount specified in the certificate as if it were an arrear of the land revenue and there are different laws adopted by different States for the recovery of land revenues and thus there is discrimination on the ground that defaulters are treated differently in different States is also without force because discrimination complained of is a permissible classification and does not offend the fundamental right guaranteed by Art. 14 as the grouping of the income-tax defaulters in separate categories or classes State-wise is a territorial classification which is based on an intelligible differentia and there is a reasonable nexus or co-relation between the basis of classification and the object sought to be achieved by the Income-tax Act. The fact that the income-tax demand is a Union public demand makes no difference in the legal position.

Held, (as regards b) that the contention that s. 13 of the Bombay Act II of 1876 became unconstitutional under Art. 13(1) of the Constitution in that the procedure prescribed by s. 13 of the Bombay Act II of 1876 in respect of a defaulter residing in the City of Bombay was harsher and more drastic than the procedure laid down in s. 157 of the Bombay Act V of 1879 in respect of a defaulter residing outside the City of Bombay was without force because s. 13 of the Bombay Act II of 1876 was amended on 8th October 1954 and a new law laid down a law similar to the law laid down by s. 157 of the Bombay Act V of 1879 and thus the vice of unconstitutionality 'if any' was removed.

State of Punjab v. *Ajaib Singh & Another* ([1953] S.C.R. 254), *Shaik Ali Ahmed* v. *Collector of Bombay* (I.L.R. 1950 Bom. 150), *Chiranjit Lal Chowdhury* v. *The Union of India* ([1950] S.C.R. 869) *Budhan Choudhry and others* v. *The State of Bihar* ([1955] 1 S.C.R. 1045), *Middleton* v. *Texas Power and Light Company* (249 U.S. 152), *Bowman* v. *Lewis* (101 U.S. 22; 25 L.Ed. 689), *The State of Rajasthan* v. *Rao Manohar Singhji* ([1954] S.C.R. 996), *Bhikaji Narayan Dhakras* v. *The State of Madhya Pradesh, Nagpur and Another* ([1955] 2 S.C.R. 589) and *Erimmal Ebrahim Hajee* v. *The Collector of Malabar* ([1954] 26 I.T.R. 509), referred to.

ORIGINAL JURISDICTION : Petition No. 270 of 1955.

Under Article 32 of the Constitution of India for a Writ in the nature of Habeas Corpus.

Hemendra Shah, J. B. Dadachanji and *Rajinder Narain,* for the petitioner.

M. C. Setalvad, Attorney-General of India, C. K. Daphtary, Solicitor-General of India, (*B. Sen* and *R. H. Dhebar,* with them) for the respondent No. 1.

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DAS ACTG. C.J.—This rule was issued on a petition filed under article 32 of the Constitution by one Purshottam Govindji Halai, a citizen of India, calling upon the respondents to show cause why a writ in the nature of a writ of *habeas corpus* should not be issued by this Court directing the Superintendent, House of Correction, Byculla, being the second respondent herein, to produce before this Court one Govindji Deoji Halai, the father of the petitioner, who is also a citizen of India, for the purpose of being released forthwith.

The facts which are not in dispute may be shortly stated as follows. The said Govindji Deoji Halai (hereinafter referred to as the "assessee") is the sole proprietor of a business carried on under the name and style of Indestro Sales and Service Co. at No. 50-52, Lohar Chawl Street in the City of Bombay. Two private limited companies, namely, Indestro India Ltd., and Indestro Eastern Ltd., also carry on business and have their respective offices in the same premises. The assessee is said to have some connection with the two companies the nature of which, however, is not quite clear on the record before us. In respect of his own business of Indestro Sales and Service Co., the assessee was assessed to income-tax for the years 1943-44 to 1947-1948 and 1951-1952 by the Third Income-tax Officer, C-1 Ward, Bombay, at and for Rs. 40,178-4-0. The assessee not having paid up the assessed amount of tax the Income-tax Officer on the 10th April 1951 issued to the Additional Collector of Bombay, the first respondent herein, a recovery certificate under section 46(2) of the Income-tax Act. It may here be mentioned that the Indestro Eastern, Ltd., was also assessed to income-tax at and for Rs. 1,92,000 and a recovery certificate was also issued by the Income-tax Officer to the Additional Collector of Bombay.

On the 1st February, 1954 the Additional Collector issued a notice of demand on the assessee for payment of the assessed amount of tax. No payment

having been made, the Additional Collector attached the goodwill and tenancy rights in the said premises by a warrant of attachment issued on the 24th March 1954. The sale proclamation was issued on the 15th January 1955. The sale was held on the 25th February 1955 fetching a price of Rs. 33,000 and it was confirmed on the 30th March 1955. The sale proceeds not being sufficient to satisfy the assessed tax the Additional Collector on the 7th June 1955 issued a notice under section 13 of the Bombay City Land Revenue Act, 1876, requiring the assessee to appear before him in person on the 16th June 1955 and show cause why he, the assessee, should not be apprehended and confined to civil jail in satisfaction of the said certified demand. The assessee did not appear in person on the appointed day but on the next day, the 17th June 1955, an Advocate acting on behalf of the assessee wrote a letter to the Additional Collector purporting to show cause why the assessee should not be arrested and sent to the civil jail. The contentions put forward on behalf of the assessee not being considered satisfactory the Additional Collector on the 30th June 1955 issued a warrant for the arrest of the assessee under section 13 of the Bombay City Land Revenue Act, 1876. The assessee was actually arrested on the 1st July 1955.

On the 8th July 1955 an application was made by the present petitioner to the Bombay High Court under article 226 complaining of the arrest of his father, the assessee, and praying for a writ in the nature of a writ of *habeas corpus* for the production and release of the assessee. A rule was issued by the High Court but eventually on the 24th August 1955 the High Court (Chagla, C.J. and Desai, J.) discharged the rule. No application was made to the High Court for leave to appeal to this Court from the decision of that High Court but on the 2nd September 1955 the present petition was filed in this Court under article 32 of the Constitution for the relief hereinbefore mentioned. On the 7th September 1955 a rule was issued by this Court on that petition subject to the question of its maintainability in view of the dismissal by the

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High Court of the petition under article 226 from which no leave to appeal to this Court had been sought or obtained. The rule has now come up before us for hearing. In the view we have taken about the merits of the petition it is not necessary for us to consider the question of its maintainability after the dismissal of the petition under article 226 or to make any pronouncement, on this occasion, on the scope and ambit of article 32 of the Constitution in that situation.

The principal contentions urged by the learned Advocate appearing for the petitioner are as follows, namely,—

(a) that section 46(2) of the Indian Income-tax Act under which the Income-tax Officer issued the recovery certificate to the Additional Collector of Bombay is void under article 13(1) of the Constitution in that the same offends article 22(1) and (2), article 21 and article 14 of the Constitution;

(b) that section 13 of the Bombay City Land Revenue Act, 1876 under which the warrant of arrest was issued by the Additional Collector is void under article 13(1) of the Constitution as the same is repugnant to article 14 of the Constitution.

We proceed to deal with the objections seriatim.

Re. (*a*) : Section 46(2) of the Indian Income-tax Act which is impugned before us runs as follows :—

"46. (1) .....

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

Provided that without prejudice to any other powers of the Collector in this behalf, he shall for the purpose of recovering the said amount have the powers which under the Code of Civil Procedure, 1908 (Act V of 1908), a Civil Court has for the purpose of the recovery of an amount due under a decree.

....."

The first objection to the above sub-section is that it

contravenes the fundamental rights guaranteed by clauses (1) and (2) of article 22. In view of the decision of this Court in the *State of Punjab* v. *Ajaib Singh & Another*(1) this objection has not been pressed before us and we need say no more about it.

The second objection to section 46(2) of the Indian Income-tax Act is that it is violative of article 21. Article 21 guarantees that no person shall be deprived of his personal liberty except in accordance with procedure established by law. In this case the assessee has been arrested and is being detained in jail in execution of a warrant of arrest issued under section 13 of the Bombay City Land Revenue Act, 1876 for the recovery of the demand certified under section 46(2) of the Indian Income-tax Act. As long as those sections stand no complaint can be made of infringement of article 21, for those two sections constitute a procedure established by law. It is only if those sections are void that the question of violation of the fundamental right under article 21 can arise at all. We have, therefore, to pass on to the third objection to section 46(2) founded on article 14 of the Constitution which alone has been strenuously insisted on before us by learned counsel for the petitioner.

Article 14 is invoked in two ways. It is pointed out that the first part of section 46(2) provides that the Collector, on receipt of a certificate from the Income-tax Officer, shall proceed to recover from the defaulting assessee the amount specified therein as if it were an arrear of land revenue. It is next said that the proviso to the sub-section invests the Collector with all the powers a Civil Court has under the Code of Civil Procedure for the purpose of the recovery of the amount due under a decree. It is submitted that section 46(2) provides for two different and alternative methods of recovery of the dues and clothes the Collector with the power to apply either of the two methods, that is to say, he may issue a warrant of arrest under section 13 of the Bombay City Land Revenue Act, 1876 against one defaulter and keep him in detention for a period which may

(1)[1953] S.C.R. 254.

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work out to be much longer than six months and he may proceed against another defaulter under the Code of Civil Procedure and arrest and detain him for the maximum period of six months. The powers that are thus conferred on the Collector by section 46(2) are unfettered and unguided and enable the Collector, at his will, to discriminate between two defaulters who are similarly situated and thereby violate the behests of the equal protection clause of the Constitution. This argument appears to us to be founded on a misapprehension about the true meaning of section 46(2). On a proper reading, that sub-section does not prescribe two alternative modes of procedure at all. All that the sub-section directs the Collector to do is to proceed to recover the certified amount as if it were an arrear of land revenue, that is to say, he is to adopt the procedure prescribed by the appropriate law of his State for the recovery of land revenue and that in thus proceeding he is, under the proviso, to have all the powers a Civil Court has under the Code. The sub-section does not prescribe two separate procedures. The statement to the contrary in the judgment of the Bombay High Court in *Shaik Ali Ahmed* v. *Collector of Bombay*(1) does not appear to us to be correct. In our opinion the proviso does not indicate a different and alternative mode of recovery of the certified amount of tax but only confers additional powers on the Collector for the better and more effective application of the only mode of recovery authorised by the body of sub-section (2) of section 46. Viewed in this light, there is no question of the possibility of any discrimination at all. This part of the argument cannot, therefore, be accepted.

The other way in which the protection of article 14 is invoked is founded on a comparison of the provisions of the different laws adopted by the different States for the recovery of land revenue. Section 46(2) of the Indian Income-tax Act requires the Collector, on receipt of the requisite certificate from the Income-tax Officer, to proceed to recover from the assessee the amount specified in the certificate as if it were an

(1) I.L.R. [1950] Bom. 150, 155.

arrear of land revenue. This means that the Collector must take such proceedings as he would have done if he were engaged in recovering land revenue. Thus a Collector in the City of Bombay in recovering the certified amount of income-tax must proceed under section 13 of the Bombay City Land Revenue Act, 1876 (Bombay Act II of 1876) and arrest and detain him for the period therein mentioned which, prior to the 8th October 1954, might have worked out to a period much longer than six months. On the other hand, the defaulting assessee in all other parts of the State of Bombay has to be proceeded against under section 157 of the Bombay Land Revenue Code, 1879 (Bombay Act V of 1879) under which he cannot be detained for more than the period limited by the Code of Civil Procedure for the detention of a judgment-debtor in execution of a decree for an equal amount of money. So, even in one State there were two procedures to which defaulting assessees could be subjected according as they were in or outside the City of Bombay. A Collector in the State of Madras in recovering the certified amount of income-tax has to proceed under section 48 of the Madras Revenue Recovery Act, 1864 (Madras Act II of 1864). When the Collector finds that the certified amount cannot be liquidated by the sale of the property of the defaulting assessee and the Collector has reason to believe that the defaulter is wilfully withholding payment or has been guilty of fraudulent conduct in order to evade payment, the Collector may, under section 48 of that Act, cause the arrest and imprisonment of the defaulter, not being a female. But that section goes on to say that no person shall be imprisoned for a longer period than two years or for a longer period than six months if the arrear does not exceed Rs. 500 or for a longer period than three months if the arrear does not exceed Rs. 50. A Collector in West Bengal proceeding to recover the certified amount under the Bengal Public Demands Recovery Act, 1913 (Bengal Act III of 1913) cannot, under section 31 of that Act, direct the detention of the defaulting assessee in prison for more than six months if the amount is more

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than Rs. 50 or in other cases for more than six weeks. The defaulter in the Punjab cannot, under section 69 of the Punjab Land Revenue Act, 1887 (Punjab Act XXVII of 1887), be kept in civil jail for more than one month. Section 148 of the U. P. Land Revenue Act, 1901 (U.P. Act III of 1901) limits the period of detention to 15 days and also exempts many persons, e.g. Talukdars and women, from any imprisonment. The Assam Land and Revenue Regulation, 1886 (Reg. I of 1886) does not insist on imprisonment at all. A cursory perusal of the provisions of the different Acts referred to above will at once show that in the matter of recovery of arrears of land revenue the different States have prescribed different machinery, some obviously harsher than others. The argument is that income-tax being a subject with respect to which the Union alone may make law and the recovery of it being the Union responsibility, the machinery for the recovery of income-tax should be framed on a uniform all-India basis, for to the Union all defaulters who may not pay up the Union demand are similarly situated; but the Indian Income-tax Act by section 46(2) authorises the Collectors in different States to adopt machinery which differs from State to State, so that defaulters are treated differently in different States. The contention is that section 46(2) which sanctions such discrimination is clearly violative of the equal protection clause of the Constitution and has, therefore, become void under article 13(1).

The learned Attorney-General appearing for the respondents seeks to meet the aforesaid argument in two ways. In the first place, he urges that the impugned sub-section does not by itself make any discrimination. All that it says is that the certified amount of income-tax is to be recovered as if it were an arrear of land revenue and there its operation ends. In recovering the certified demand the Collector has to have recourse to the machinery available to him for enforcing a demand for arrears of land revenue but the provisions of the State laws which prescribe that machinery are not incorporated in section 46(2).

If the State laws are discriminatory that vice cannot be imputed to section 46(2).

There is good deal to be said on either side. The State laws prescribe the procedure for the recovery of arrears of land revenue only and they are not, in terms and by themselves, concerned at all with the recovery of income-tax demand. That machinery is made available for the purpose of recovery of income-tax by virtue only of section 46(2) of the Indian Income-tax Act. In the matter of recovery of income-tax the Collectors adopt the procedure laid down by the State laws, not because the State laws enjoin them to do so but because section 46(2) directs them to do so. In other words, it is section 46(2) which tells the Collectors of Madras to follow the procedure under section 48 of the Madras Revenue Recovery Act, 1864 as if those provisions are set out in the Indian Income-tax Act *in extenso* and it tells the Collectors of all other States to adopt the procedure prescribed by their own State laws as if the provisions prescribing that procedure were set out in that section. In such a situation it is a plausible argument to say that all the provisions of all the State laws are, *mutatis mutandis,* to be read into section 46(2) and that, therefore, if there be any vice of discrimination in the State laws that vice cannot but be regarded as having crept into section 46(2). On the other hand, to hold that all the provisions of all the State laws for recovery of arrears of land revenue have been referentially incorporated in section 46(2) of the Indian Income-tax Act will lead us into difficulties. Will the subsequent amendments of the State laws be also incorporated in section 46(2)? Section 46(2) of the Indian Income-tax Act having incorporated the State laws as they then stood, how can any State Legislature which has no power to make any law with respect to income-tax alter or amend section 46(2)? Are the State laws as incorporated in section 46(2) at the time it was enacted to be treated as crystallised and to be applied by the Collectors, although the State laws for the recovery of arrears of land revenue may be materially altered by sub-

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sequent amendment? These are some of the questions which will have to be answered before we can come to a decision on this point. In the view we take of the second part of the learned Attorney-General's argument to which we shall presently refer it is not necessary for us to express any opinion on this part of his argument.

The learned Attorney-General then argues that assuming that section 46(2) by incorporating the different State laws which are not uniform has become discriminatory such discrimination is permissible and does not offend the fundamental right guaranteed by article 14. This argument appears to us to be well founded.

The meaning, scope and effect of the article in question have been explained by this Court in a series of decisions beginning with that in *Chiranjit Lal Chowdhury* v. *The Union of India*(1) and ending with that in *Budhan Chowdhury and others* v. *The State of Bihar*(2). The following passage in the unanimous judgment of the Full Court in the last mentioned case at p. 1049 briefly summarises the true intendment of the constitutional provision :—

".....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

(1) [1950] S. C. R. 869.
(2) [1955] 1 S. C. R. 1045.

that article 14 condemns discrimination not only by a substantive law but also by a law of procedure". The respective contentions now put forward as to the validity or otherwise of section 46(2) of the Indian Income-tax Act have to be judged in the light of the principles so laid down by the Full Court.

The Indian Income-tax Act imposes a liability on persons who are amenable to it to pay the tax assessed against them. The assessed amount is a public demand of the Union and has to be recovered, if not voluntarily paid up. The assessees are scattered all over the Union and machinery has to be devised for that purpose. On looking round the Union finds that there is machinery in every State for recovery of land revenues which are State demands. Each State in its wisdom has devised a machinery which it has considered appropriate and suitable for the recovery of its own public demand. As was said by the Supreme Court of America in *Middleton* v. *Texas Power and Light Company*(1)—

"There is a strong presumption that a legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based upon adequate grounds".

It is conceded that each State is well within its rights to devise its own machinery for the recovery of its own public demand and that no person belonging to one State can complain that the law of his State is more rigorous than that of the neighbouring State. The reason is obvious, for the people of one State are not similarly situated as people of another State. Their needs, as understood by their own Legislature, are different from those of the people of other States. If in the matter of recovery of arrears of land revenue defaulters of one State cannot complain of denial of equal protection of the laws on the ground of the difference in the modes of recovery prevailing in other States, can it be said to be unreasonable for the Union to adopt, for the recovery of its public demand from defaulters of each State, the same mode of recovery

(1) 249 U. S. 152, 157.

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of public demand prevailing in that State? Here the defaulters are classified on a territorial or geographical basis and this basis of classification has precisely the same correlation to the object of the Indian Income-tax Act as it has to the object of the different Public Demands Recovery Acts. The objects of the two Acts in this behalf are in *pari materia* and the same considerations must apply to both. People of each State are familiar with and used to the coercive processes which each State finds it necessary to impose on its own people for the recovery of public demand and there can be no hardship and consequently no objection to their being put to the same processes for the recovery of the public demand of the Union. The grouping of the income-tax defaulters into separate categories or classes Statewise is certainly a territorial classification which is based on an intelligible differentia and the subjection, for the purposes of the recovery of the certified demand, of each of such classes of defaulters to the same coercive process devised by their own State, on a consideration of local needs, for the recovery of their own public demands, cannot be regarded as bereft of a reasonable nexus or correlation between the basis of classification and the object sought to be achieved by the Indian Income-tax Act any more than it can be so regarded with respect to the respective State laws. The fact that the income-tax demand is a Union public demand appears to us to make no difference in the legal position.

The Indian Income-tax Act classifies people into various groups for the purpose of imposing the tax and taxes them differently, e.g, insurance companies which are taxed differently from an ordinary business concern and in some cases exempts them altogether, e.g., agriculturists and persons with income below a certain level. There can, on the same principle, be no objection to people of a backward area who may be in need of aid in the shape of tax remission to be exempted from taxation either wholly or in part. If this is right when a question of imposition is concerned, it cannot be wrong when the matter is one of recovery. The two together make up the full measure of the

burden and if it is permissible to vary the burden at one end it must be equally valid to vary it at the other for the same or similar reasons.

It is said that the income-tax demand being a Union demand there should be uniformity in the punishment to be meted out to defaulters and it can be done easily by suitably amending section 46(2) so as to provide for the detention of all defaulters for the same period in all cases in all States. In the first place, it is a fallacy to regard arrest and detention of a defaulter who fails to pay income-tax as a punishment or penalty for an offence. It is a coercive process for recovery of public demand by putting pressure on the defaulter. The defaulter can get himself released by paying up the dues. In the next place, the Court is only concerned to interpret the law and, if it is valid, to apply the law as it finds it and not to enter upon a discussion as to what the law should be. The whole problem before us is whether the apparent discrimination can be supported on the basis of a permissible classification. The case of *Bowman* v. *Lawis*(1) is in point. We do not, however, find it necessary to express any opinion on the extreme contention urged by the learned Attorney-General, on the authority of that decision, that a mere territorial classification, by itself and without anything else, is enough to place the law beyond the operation of the equal protection clause. Indeed, in that very case it was recognised that it was not impossible that a distinct territorial establishment and jurisdiction might be intended as or might have the effect of discrimination against a particular race or class where such race or class should happen to be the principal occupants of the disfavoured area. For the purposes of this case it will suffice to say that the discrimination complained of is not unconstitutional for the simple reason that the impugned law is based on a territorial classification having a reasonable nexus or correlation between that basis of classification and the object sought to be achieved by the Act. Our decision in *The State of Rajasthan* v. *Rao Manohar Singhji*(2) which is relied on by learned counsel for the petitioner is easily

(1) 101 U. S. 22; 25 L. Ed 989. (2) [1954] S. C. R. 996.

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distinguishable on facts, for, the law impugned in that case for the first time imposed certain disabilities on Jagirdars of a certain area of the State and there was no evidence that those Jagirdars were in any way different from the Jagirdars of the other areas of the State. In the present case the classification has been made Statewise and it is clear that in the matter of payment of public demands of the States the people of different States are not similarly situated and their own States have imposed on them such coercive processes as the circumstances and needs of each State require. The law impugned before us has only adopted, for its own purpose, the same coercive process which was devised by the States for their own purposes which are closely akin or similar to the purpose of the Union. The same or similar considerations apply to both cases. There is the same or similar correlation between the basis of classification and the object sought to be achieved by the Indian Income-tax Act. To deny this power to the Union on constitutional grounds urged before us will lead us to hold that no new offence created by law can be made triable according to the procedure laid down in the Code of Criminal Procedure, for that Code sanctions different modes of trial in different areas, namely, by a Section 30 Magistrate in some areas, by the Sessions Judge with assessors in certain areas and by the Sessions Judge with jurors in other areas. Adoption of an existing machinery devised for a particular purpose cannot, if there be no vice of unconstitutionality in the machinery, render it unconstitutional if it is made to subserve a purpose closely akin or similar to the purpose for which it had been devised. The first objection formulated by learned counsel for the petitioner must, therefore, be rejected.

Re. (*b*).—As already stated under section 46(2), the Collector, on receipt of the certificate from the Income-tax Officer, has to proceed to recover the certified demand as if it were an arrear of land revenue. This means that the Collector of a particular place has to take steps as indicated in the State law relating to the recovery of arrears of land revenue. As already stated, in the State of Bombay there are two

statutes regulating the procedure for the recovery of arrears of land revenue according as the defaulter resides in the City of Bombay or in any other area within the State of Bombay. Section 13 of the Bombay City Land Revenue Act, 1876 applies to the City of Bombay and section 157 of the Bombay Land Revenue Code, 1879 applies to the rest of the State. Prior to the 8th October 1954 the portion of section 13 of the Bombay City Land Revenue Act, 1876 which is relevant for our present purpose was as follows :—

"If the sale of the defaulter's property shall not produce satisfaction of the demand, it shall be lawful for the Collector to cause him to be apprehended and confined in the civil jail under the rules in force at the Presidency for the confinement of debtors, for which purpose a certificate of demand under the Collector's signature sent with the defaulter shall be the sheriff's sufficient warrant, equally with the usual legal process in ordinary cases of arrest in execution of judgment for debt :

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

Section 157 of the Bombay Land Revenue Code, 1879 which provides for the arrest and detention of the defaulter residing outside the City of Bombay contains the following proviso :—

"Provided that no defaulter shall be detained in imprisonment for a longer period than the time limited by law in the case of the execution of a decree of a Civil Court for a debt equal in amount to the arrear of revenue due by such defaulter".

A cursory perusal of the two sections will show at once that the procedure prescribed by section 13 of the Bombay City Land Revenue Act, 1876 for the recovery of arrears of land revenue was harsher and more drastic than the procedure laid down in section 157 of the Bombay Land Revenue Code, 1879 in that a defaulter residing in the City of Bombay could be kept in detention for a day for every rupee of the arrears which might considerably exceed the maximum period of six months which is the period

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limited by the Code of Civil Procedure for the detention of a judgment-debtor in civil jail. The argument is that on the advent of the Constitution section 13 of the Bombay City Land Revenue Act, 1876 became void under article 13(1) in that it denied to the Bombay defaulter equality before the law in comparison with the defaulter outside the City of Bombay, for he could be detained for a longer period of time. In the view we have taken, it is not necessary to express any opinion whether the discrimination brought about by the two sections was supportable on the ground of a reasonable classification based on territorial considerations so as not to offend the constitutional inhibition. Assuming, then, but not deciding, that section 13 of the Bombay City Land Revenue Act, 1876 became inconsistent with the fundamental right guaranteed by article 14 and, therefore, became void to the extent of such inconsistency, it was not, as recently explained by this Court in *Bhikaji Narayan Dhakras* v. *The State of Madhya Pradesh, Nagpur and Another*(1), obliterated from the statute book for all times or for all purposes or for all people. The effect of article 13(1) is that the law could not stand in the way of the enjoyment of fundamental rights. The law was not dead. Further, the law was amended on the 8th October, 1954 when the proviso to section 13 quoted above was replaced by the following proviso :—

"Provided that such imprisonment shall cease at any time upon payment of the sum due and that it shall in no case exceed—

(i) A period of six months when the sum due is more than Rs. 50; and

(ii) A period of six weeks in any other case".

This amendment is nothing less than an enactment of a new provision. It lays down a new law which is similar to the law laid down by section 157 of the Bombay Land Revenue Code, 1879. Therefore, the disparity that prevailed between the original proviso to section 13 of the Bombay City Land Revenue Act, 1876 and the proviso to section 157 of the Bombay Land Revenue Code, 1879 is now removed. The

(1) [1955] 2 S. C. R. 589.

disparity between the two provisions as they originally stood being thus eliminated, the vice of unconstitutionality is also removed and section 13 of the Bombay City Land Revenue Act, 1876, as it now stands, cannot be assailed as repugnant to article 14 of the Constitution.

It was faintly suggested that as the assessment proceedings had been started and the certificate had been issued by the Income-tax Officer to the Additional Collector of Bombay and the Additional Collector issued a notice of demand and actually attached the properties prior to the amendment, the assessee must be governed by section 13 as it originally stood and not by it as subsequently amended. We do not think there is any substance in this contention. It is true that the warrant of attachment of the property was issued on the 24th March 1954 but the sale proclamation was issued and the sale was actually held after the date of amendment. The defaulting assessee might have paid up the dues in which case there would have been no occasion for sale. It is, therefore, his default that occasioned the sale. Again, the sale proceeds might have been sufficient to cover the certified demand, in which case there would have been no occasion for the issue of warrant for his arrest. It is only after the sale proceeds were found to be insufficient to satisfy the assessed amount and the assessee failed to pay up the balance that the question of the arrest of the defaulter arose. By that time section 13 had been amended and the warrant of arrest was issued on the 7th June 1955, that is to say, long after the amendment of the section. In our opinion, the second ground urged by the learned counsel must also be negatived.

We may mention that our attention was drawn to the decision of the Madras High Court in *Erimmal Ebrahim Hajee* v. *The Collector of Malabar*(1) but learned counsel could not rely upon it as an authority as it was itself under appeal before this Court.

The result, therefore, is that this application must be dismissed.

(1) [1954] 26 I. T. R. 509.

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CHANDRASEKHARA AIYAR J.—I agree rather reluctantly. The reluctance is not because there is anything in the reasoning of the judgment pronounced just now by my Lord which does not appear to be sound but because I am not happy about the result.

We have to face and accept wholly different consequences for non-payment of income-tax according as the assessee belongs to one State or another. The nature of the tax is one and the same, and it is levied under a single Central Act, and yet the ultimate coercive processes for recovery differ in nature and extent between State and State. We have to attribute to the legislature a rational classification based on geographical areas, the susceptibilities of people in those areas, and their reactions to the adoption of methods of recovery. For arrest and detention, wilful default or fraudulent conduct is required in Madras. In Assam, there can be no imprisonment at all. The periods of detention vary between Bengal, U.P. and the Punjab. Taluqdars in U.P. are completely exempt. Are we to assume that people in Madras are more amenable and generally ready and willing to pay as compared with those in Bombay who are a tenacious lot and must be subjected to a longer process of detentive coercion? Are the Taluqdars in U.P. exempt from arrest because of possible political repercussions if such influential persons are subjected to such treatment? What is the rationale in providing different periods of detention for Bengal and the Punjab?

We must be in a position to postulate some reasonable basis for the differentiation and we cannot get away from this necessity by vague references to the wisdom of the legislature or by indulging in pure speculation as to what might have been at the back of its mind. Speaking broadly, for the enforcement of the levy of a central tax like the Income-tax there should be uniformity of procedure and identity of consequences from non-payment. The machinery for recovery might be different between the several States but the defaulting assessees must be put on the same footing as regards the penalties.

But the law as it now stands can be supported on the grounds mentioned by my Lord and I do not propose to differ.

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