

CIVIL WRIT

Before Kapur and Dulat, JJ.

M/S. BHAGWAN DASS SUD AND SONS,—*Petitioners*

versus

THE INCOME TAX OFFICER, SPECIAL CIRCLE,
AMBALA,—*Respondent*

Civil Writ No. 6 of 1955.

Income Tax Act (XI of 1922)—Section 5, subsections 7(A) and 7(B)—Whether intra vires Article 14 of the Constitution of India—Constitution of India, Article 14—Equal Protection clause—Principles applicable.

1956

Jan., 24th

Held, that subsections 7(A) and 7(B) of section of the Income Tax Act, are *intra vires* of the Constitution of India.

Held also, that in applying equal protection clause in Article 14 of the Constitution the following principles are applicable :—

- (1) that in order that a statute is unconstitutional and contravenes the equal protection clause it must be shown that as a result of that statute the person affected by it will be subjected to a different treatment in the matter of procedure, remedies available and punitive consequences ;
- (2) that it must be shown that the law is purposeful and intentional and would be administered to the disadvantage of the complainant ;
- (3) that the good faith of the officials acting within the ambit of a statute is to be presumed and mere suspicion that they may act in another manner is not enough ; and
- (4) that the mere fact that under a particular statute one particular person is proceeded against

and another is not, is not destructive of the equal protection clause unless what has been said in Nos. (1), (2) and (3) is established.

Petition under Article 226 of the Constitution of India, praying that appropriate writ, orders and directions may kindly be issued quashing the proceedings of the Income Tax Officer, Special Circle, Ambala.

K. L. GOSAIN and GURBUX SINGH, for Petitioner.

S. M. SIKRI, Advocate-General and H. R. MAHAJAN, for Respondent.

ORDER

Kapur, J.

KAPUR, J. The constitutionality of subsections (7A) and (7B) of section 5 of the Income-Tax Act has been challenged in the present petition on the ground that they contravene the equal protection of the laws clause in Article 14 of the Constitution. The former section was inserted by section 3 of the Income-Tax (Amendment) Act, 1940, (Act XL of 1940) and the latter by section 4 of the Indian Income Tax (Amendment) Act, 1953 (Act XXV of 1953) which came into force retrospectively as from the 1st April, 1952. When quoted these subsections are as under—

“(7A) The Commissioner of Income-Tax may transfer any case from one Income-tax Officer subordinate to him to another, and the Central Board of Revenue may transfer any case from any one Income-tax Officer to another. Such transfer may be made at any stage of the proceedings, and shall not render necessary the reissue of any notice already issued by the Income-tax Officer from whom the case is transferred.

(7B) The Director of Inspection, the Commissioner or the Inspecting Assistant Commissioner, as the case may be, may issue such instructions as he thinks fit for the guidance of any Income-tax Officer subordinate to him in the matter of any assessment, and for the purposes of making any inquiry under this Act (which he is hereby empowered to do), the Director of Inspection, the Commissioner and the Inspecting Assistant Commissioner shall have all the powers that an Income-tax Officer has under this Act in relation to the making of inquiries.”

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The petitioners carry on business at Hoshiarpur. A general notice under section 22(I) of the Income Tax Act was first issued by the Income-tax Officer, Hoshiarpur, and then another under section 22(2) of the Income-Tax Act was issued calling upon the petitioners to file a return of their income for the assessment year 1950-51 and it is submitted by the Commissioner that the petitioner did not file any return up to December 1954. The assessee has submitted that they have paid all their demands up to the assessment year 1949-50.

By a notification dated the 27th July, 1953, the Commissioner of Income-tax, Punjab, created a special circle with headquarters at Ambala with effect from 27th August 1953 and the Income-tax Officer appointed to this circle was under the notification to perform all the functions of the Income-tax Officer in respect of cases allotted to him from time to time under section 5(7A) of the Income-Tax Act. A Special Officer was appointed at Ambala on 10th October, 1953.

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It is wrongly given as 1954 in the affidavit. By a notification dated the 20th October 1953 (annexure 'B') six cases including the case of the petitioners were transferred under section 5(7A) of the Income-tax Act to Income-tax Officer, Special Circle, Ambala, and it was directed that he shall exercise the powers of an Income-tax officer in regard to these persons with effect from 22nd October, 1953. On the 1st December, 1953 (annexure 'C') the Income-tax Officer, Special Circle, Ambala, issued a notice to the petitioners informing them that the jurisdiction in regard to their assessment had been transferred to him from the Income-tax Officer, Jullundur, and their case would be dealt with by him.

It appears that the petitioners' assessments in regard to assessment years 1944-45 to 1950-51 have been reopened under section 34 of the Income-Tax Act. Objection has now been taken that by the transfer of their assessment cases from the Income-tax Officer, Jullundur, to the Income-tax Officer, Special Circle, Ambala, the petitioners are subjected to a discriminatory treatment which is contrary to the fundamental right given in Article 14 of the Constitution of India.

It was admitted before us that the department offered to order the Income-tax Officer, Special Circle, Ambala, to take the assessment proceedings against the petitioners at Hoshiarpur instead of at Ambala but the assessee did not take advantage of this offer and preferred to have the proceedings at Ambala and therefore really there should be no objection on the ground of the place of assessment although the petitioners' counsel did make this a ground of grievance basing it on section 64(1) of the Income-Tax Act by which assessment is to be made at the place of business of the assessee and by the Income-tax Officer of that area.

Under section 34 of the Income-Tax Act if an Income-tax Officer has reason to believe that the income, profits or gains chargeable to income-tax of any

person have escaped assessment or have been assessed at too low a rate, he can issue a notice to such person within the time specified in the Act and may proceed to assess or reassess such profits, income or gains. The ordinary place of assessment of income-tax and the officer to take assessment proceedings are mentioned in section 64, subsection (1) of which provides—

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“64(1) Where an assessee carries on a business, profession or vocation at any place, he shall be assessed by the Income-tax Officer of the area in which that place is situate or, where the business, profession or vocation is carried on in more places than one, by the Income-tax Officer of the area in which the principal place of his business, profession or vocation is situate.”

In *Dayaldas Khushi Ram v. Commissioner of Income-Tax (Central)* (1), it was held that this section was intended to ensure that an assessee should be assessed locally and the area to which an Income-tax Officer is appointed must as far as the exigencies of tax collection allow bear some reasonable relation to the place where the assessee carries on business or resides (per Beamont C. J. page 146 and Kania, J. page 149). It was also held that the right to transfer cases or classes of cases under section 5(2) of the Income-Tax Act applied to pending assessments and did not apply to a case in which an assessment had been completed (Per Beamont C. J. page 147). To get over the effect of this judgment subsection (5) was added to section 64 of the Income Tax Act by section 6 of the Income Tax Law (Amendment) Act, 1940 (Act XII of 1940). It enumerates the

(1) (1940) 8 I.T.R. 39

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cases to which the ordinary rules regarding place of assessment laid down in subsections (1) and (2)—viz assessment by Income-tax Officers of the area in which the assessee carries on business or resides—do not apply: see *Commissioner of Income-tax v. Govindram Saksaria* (1), *Sarup Chand Hukam Chand v. Commissioner of Income-tax* (2); see also *Dayaldas Khushiram v. Commissioner of Income-tax* (3), and *Govindram Saksaria v. Commissioner of Income-tax* (4).

The object of the addition of subsection (7A) to section 5 was to give power to the Income-tax Commissioner and the Central Board of Revenue to transfer any case from one Income-tax Officer to another at any stage and it also automatically kept alive all notices issued by the previous Income-tax Officers in relation to proceedings before the new Income-tax Officer: see *Gayaram Gabbulal v. Commissioner of Incometax* (5), and *Kamakshya Narain Singh v. Commissioner of Income-tax* (6). As a matter of fact even before the introduction of this subsection in 1940 on a case being transferred, re-issue of notice under section 22(2) of the Act was held unnecessary. See *Sarupchand Hukamchand v. Commissioner of Income-tax* (2). Otherwise there would be unavoidable delay and assessments under section 34 of the Act have to be completed within a particular time. It has now been held that there is no bar to the transfer of a case even after the first Income-tax Officer has made an assessment: see *M. M. Ispahani Limited v. Commissioner of Excess Profits Tax* (7).

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- (1) (1955) 27 I.T.R. 653
 - (2) (1949) I.T.R. 213-216
 - (3) (1943) I.T.R. 67
 - (4) (1943) I.T.R. 104, 120
 - (5) (1951) 19 I.T.R. 114
 - (6) (1948) I.T.R. 68
 - (7) (1952) 21 I.T.R. 490

By Act XXX of 1947, the Taxation on Income M/s. Bhagwan (Investigation Commission) Act, 1947, a Special In-Dass Sud and vestigation Commission was set up for the purpose Sons of investigating substantial evasions of payment of v, income-tax, and under section 5(4) of this Act cer-The Income-tain powers were given to the Commission and this tax Officer, subsection was declared *Ultra vires* of the Constitution Special Circle, in *Suraj Mal Mohta and Co. v. A. V. Visvanatha Sastry and another* (5), on the ground that it was a Ambala discriminatory legislation which offended against Kapur, J. the provisions of Article 14 of the Constitution.

Because of this judgment of the Supreme Court the Legislature added by section 2 of the Indian Income Tax (Amendment) Act, 1954 (Act XXXIII of 1954) subsections (IA to ID) to section 34(1) of the Income-tax Act. As a result of this enactment the constitutionality of section 5(I) of the Taxation on Income (Investigation Commission) Act (XXX of 1947) was successfully challenged in *Shree Meenakshi Mills Ltd. v. Sri A. V. Visvanatha Sastry and another* (2).

As a consequence of the recommendation made by the Investigation Commission that the Income-tax Officer should be enabled to obtain advice in difficult cases from his superiors, subsection (7B) was added to section 5 of the Act and as a corollary superior authorities have been empowered to exercise the powers of an Income-tax Officer in making the required enquiries.

The petitioners relying on the rule laid down by the Supreme Court in these two and other cases contend that subsections (7A) and (7B) of section 5 of the Income-tax Act are void because they enable the Commissioner to discriminate in regard to various

(1) (1954) 26 I.T.R. I (S.C.)

(2) (1954) 26 I.T.R. 713

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cases and individuals, that the assessee residing or carrying on business in the same area assessable by the same Income-tax Officer, can because of these added subsections be divided into two categories and treated differently, one dealt with under the ordinary law and the other by the Special Income-tax Officers acting under the guidance and directions of superior officers under section 5(7B) and that as a consequence of this discrimination the persons assessed by the Special Income-tax Officers will in effect be denied their ordinary legal remedies because in their case the Director is entitled to and will give directions and guidance whereas no such thing would and could be done in the case of ordinary assessments by the Income-tax Officers who are not Special Officers.

In a later affidavit which was filed on the day the hearing of this petition started before us and to which objection was taken by counsel for the opposite party allegations have been made that certain instructions were given to Mr. Jagdish Chandra, Income-tax Officer, Special Circle, Ambala, by Mr. Goel, Deputy Director Investigations. Whether that is so or not is not necessary to investigate because if the impugned sections are valid, then these allegations become irrelevant unless the petitioners wish to attack the bona fides of the officers acting under the powers given to them by the statute.

The petitioners in order to support their plea of discriminatory treatment also relied on a judgment of the Supreme Court in *The State of West Bengal v. Anwar Ali Sarkar* (1), where it was held that because sections 3 and 5 of the West Bengal Special Courts Act constituting special Courts and empowering State Government to refer cases or offences or classes of cases or classes of offences to such Courts were in violation of Article 14 of the Constitution of

India the Act was *ultra vires*. The reason for the enactment of the statute was the necessity of speedier trial of cases. It was found that the procedure laid down by the Act for trial by the Special Courts varied substantially from that laid down for trial of offences in the Code of Criminal Procedure and the Act did not classify or lay down any basis for classification of the cases which may be directed to be tried by the Special Courts but left it to the uncontrolled discretion of the State Government. Mr. Justice Das in that case was of the opinion that section 5(1) of the Act in so far as it empowered the State Government to direct offences or classes of offences or classes of cases to be tried by a Special Court did not confer an uncontrolled or unguided power on the State Government and was not void, but that part of the section which empowered the Government to direct cases as distinct from classes of cases to be tried by Special Courts was void. Patanjali Sastri, C.J., held that the Act was not void or unconstitutional wholly or in part. Explaining at p. 320 the implication of Article 14 of the Constitution Mukherje, J., who gave one of the majority judgments said that the principle underlying the Article is not that the same rules of law should be applicable to all persons or same remedies available irrespective of differences of circumstances: see *Charanjit Lal Chowdhari v. Union of India* (1). It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. The learned Judge observed (p. 320)—

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“Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person

(1) 1950 S.C.R. 869

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and another if as regards the subject-matter of the legislation their position is substantially the same."

But at page 325 the learned Judge was careful to say that if one's interests are not at all affected by a particular piece of legislation, he will have no right to complain and also that if the differences are not material, there may not be any discrimination in the proper sense of the word and minor deviations from the general standard would not amount to denial of equal rights. It must be noted that as a result of the Act impugned in that case the procedure adopted for trial was materially different from that provided for ordinary trials under the Criminal Procedure Code and it was more punitive in effect.

Reference may now be made to *Saurashtra case (Kathi Raning Rawat v. The State of Saurashtra (1))*. Section 11 of the Ordinance under which the trial took place in that case was in identical terms with section 5(1) of the West Bengal Act : see Mahajan, J.'s judgment at page 451. But the Ordinance was upheld on the ground that the clear recital of a definite objective furnished a tangible and rational basis of classification to the State Government for the purpose of applying the provisions of the Ordinance : Per Fazl Ali J. at page 449.

In *Syed Qasim Razvi v. The State of Hyderabad (2)*, and in *Habeed Mohamed v. The State of Hyderabad (3)*, the trials were held to be *intra vires* because the procedure provided by the Special Tribunal Regulation was substantially the same as that provided by the ordinary law.

I would now come to the two income-tax cases decided by the Supreme Court which I have already mentioned and on which a great deal of reliance was placed by the petitioners' counsel. The first is *Suraj Mal*

(1) 1952 S.C.R. 435
(2) 1953 S.C.R. 589
(3) 1953 S.C.R. 661

Mohta and Co. v. A. V. Visvanatha Sastri (1). In *M/s. Bhagwan Dass Sud and Sons v. The Income-tax Officer, Special Circle, Ambala*, Kapur, J.

that case section 5(1) and section 5(4) of the Taxation on Income (Investigation Commission) Act, 1947, were attacked on the ground (1) that under the former section the Central Government was entitled to discriminate between one person and another in the same class and could pick and choose the cases of persons who fell within the group of those who had substantially evaded taxation, and (2) in the latter section arbitrary power was given to the Commission to pick and choose, and (3) because it was highly discriminatory as an evasion, whether substantial or insubstantial, came within its ambit as well as within the ambit of section 34 of the Indian Income Tax Act. It was held that both section 34 of the Indian Income Tax Act and section 5(4) of the Taxation on Income (Investigation Commission) Act deal with all persons who have similar characteristics and similar properties, that is, persons who have not truly disclosed their income and have evaded payment of taxation on income are deprived of the substantial and valuable privileges which they would otherwise have, and therefore, there was discrimination in procedure which was substantially different under the Taxation on Income (Investigation Commission) Act from that under section 34 of the Income Tax Act. The section was declared to be *ultra vires* because the findings of fact given by the Commission as to factum and extent of evasion were final and conclusive under section 8 of the Taxation on Income (Investigation Commission) Act, whereas assessee dealt with under section 34 of the Indian Income Tax Act were entitled to go up in appeal, second appeal and revision, and also because there were certain valuable rights under section 34 of the Indian Income Tax Act which were denied to an assessee under section 5(4) of the Taxation on Income (In-

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Investigation Commission) Act; as this amounted to discrimination section 5(4) was held to be *ultra vires*.

The second case arose as a consequence of this decision, as a result of which subsections (IA) to (ID) were added to section 34 of the Indian Income Tax Act. This addition led to the constitutionality of section 5(I) of the Taxation on Income (Investigation Commission) Act being challenged in *Meenakshi Mills case* (1), and it was held that it became void and unenforceable as being discriminatory in character because subsection (IA) of section 34 of the Indian Income Tax Act deals with the same class of persons as those dealt with under section 5(1) of the Taxation on Income (Investigation Commission) Act and both the procedure prescribed and punitive consequences were more detrimental to an assessee under section 5(I) of the impugned Act than under section 34 of the Income Tax Act.

Now all these cases show that where there are special statutes which give rise to discrimination in regard to procedure to be followed, remedies provided and as to their punitive nature they infringe the equal protection clause of Article 14 of the Constitution. But the two impugned sections in the present case, in my opinion, suffer from no such defect. Under section 64 of the Act a person is to be taxed at the place where he carries on business but section 5(7A) gives power both to the Commissioner of Income Tax and the Central Board of Revenue to transfer any case from one Income-tax Officer to another and the transfer can be ordered at any stage of the proceedings. It is not suggested that as a result of this transfer the procedure becomes different or any of the privileges and rights which are given by the Income Tax Act are taken away, or the assessee is exposed to any increased prejudice or punitive consequences.

But it is suggested that in this particular case *M/s. Bhagwan Dass Sud and Sons v. The Income-tax Officer, Special Circle, Ambala* I am unable to agree with this. The two subsections are of universal application and do not on the face of them import any discrimination. In *M. K. Gopalan and another v. The State of Madhya Pradesh (1)*, a Special Magistrate was appointed under section 14 of the Code of Criminal Procedure to try the case of the petitioner in that case. It was held that this did not violate the guarantee under Article 14 of the Constitution as the Special Magistrate had to try the case entirely under the normal procedure and there was no kind of discrimination as was contemplated by the decision in *Anwar Ali Sarkar's case (2)*, and a law vesting discretion in an authority under such circumstances cannot be discriminatory. *Anwar Ali Sarkar's case (2)*, was distinguished on the ground that the decision applied to cases where on the allotment of an individual case to a special Court the procedure authorised was substantially different from the normal procedure and prejudiced the persons tried under the special procedure.

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In *Kedar Nath Bajoria v. The State of West Bengal (3)*, it was held that the equal protection clause does not prohibit special legislation. At page 38 Patanjali Sastri, C. J., said—

“Now, it is well settled that the equal protection of the laws guaranteed by article 14 of the Constitution does not mean that all laws must be general in character and universal in application and that the State is no longer to have the power of distinguishing and classifying persons or things for the purposes of legislation.”

(1) (1955) I.S.C.R. 168

(2) 1952 S.C.R. 284

(3) 1954 S.C.R. 30

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The two impugned subsections, taking into consideration the history and the provisions as given above, are not violative of the equal protection clause.

The learned Advocate-General then rightly submitted that in order to show that Article 14 of the Constitution has been violated it must be proved that the subsections are substantially different in procedure and in the safeguards provided and in regard to the punitive nature and are to the disadvantage of the assessee, which, in my view, has not been shown here. It is not suggested that there is any difference in the procedure to be followed by the Income-tax Officer or in the matter of appeal, second appeal and revision and application to the High Court, but it was suggested that the subsections were purposeful and intentional and would be administered "with an evil eye and uneven hand." Of that there is no proof, nor is there anything to show that the action taken by the Income-tax Commissioner is unlawful and unwarranted by the Act.

It has to be remembered in the language of Mr. Justice Frankfurter in *Snowden v. Hughes* (1), that "The Constitution does not assure uniformity of decisions or immunity from merely erroneous action, whether by the Courts or the executive agencies of a State." This passage was quoted with approval by Das, J. in *Budhan Choudhry v. State of Bihar* (2), and he also points out that—

"The judicial decision must of necessity depend on the facts and circumstances of each particular case and what may superficially appear to be an unequal application of the law may not necessarily amount to a denial of equal protection of law unless there

(1) (1944) 321 U.S.I.

(2) (1955) 1 S.C.R. 1945, 1054

is shown to be present in it an element of intentional and purposeful discrimination (See per Stone, C.J., in *Snowden v. Hughes* (1), (Supra).”

In *Dhirendra Kumar Mandal v. The Superintendent and Remembrancer of Legal Affairs to the Government of West Bengal and another* (2), where the question to be decided was the legality of a notification taking away the right of trial by jury, it was held following *Kedar Nath Bajoria's case* (3), that whether an enactment providing for special procedure for the trial of certain offences is or is not discriminatory and violates Article 14 of the Constitution must be determined in each case as it arises, and no general rule applicable to all cases can be laid down. It was also pointed out that different views have been expressed on the question of application of Article 14 of the Constitution, but there is no difference on any principle as to the construction or scope of that Article.

The learned Advocate-General relied on an American case *Sunday Lake Iron Company v. Town of Wakefield* (4), where it was held that the good faith of tax officials and the validity of their actions are presumed, and when assailed, the burden of proof is upon the complaining party. At page 352 while dealing with the equal protection clause Mr. Justice Mc Reynolds said—

“The purpose of the equal protection clause of the 14th Amendment is to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.”

(1) (1944) 321 U.S.I.
 (2) (1955) 1 S.C.R. 224, 237
 (3) 1954 S.C.R. 30
 (4) 247 U.S. 360

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M/s. Bhagwan but he was careful to point out—

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“It is also clear that mere errors of judgment by officials will not support a claim of discrimination. There must be something more,—something which in effect amounts to an intentional violation of the essential principle of practical uniformity. The good faith of such officers and the validity of their actions are presumed ; when assailed, the burden of proof is upon the complaining party.”

Thus the good faith of officials exercising power under the Income Tax Law has to be presumed and if the assessee attacks it the burden is on him and mere errors committed by an official is not proof of discrimination. The complaint must go further and establish intentional violation of some essential principles. Mere suspicion that they may act prejudicially is not enough.

In another American case *Mackay Telegraph and Cable Company v. City of Little Rock* (1), the municipal telegraph franchise ordinance imposed the same pole tax which was exacted by a general ordinance from other companies maintaining poles in the city. It was held that it could not be said necessarily to deny the equal protection of the laws merely because such general ordinance had not been enforced against such other companies in the same manner that it was proposed to enforce the franchise ordinance against the complaining company, which had made no offer to show an arbitrary and intentionally unfair discrimination in the administration of the ordinance.

(1) 250 U.S. 94

The learned Advocate-General then referred to *M/s. Bhagwan Dass Sud and Sons v. J. Hughes* (1), where it was held—

“The unlawful administration by State Officers of a state statute fair on its face resulting in its unequal application to those who are entitled to be treated alike, is not a denial of the equal protection of the law as guaranteed by the Fourteenth Amendment unless there is shown to be present in it an element of intentional or purposeful discrimination.”

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In order to establish discrimination, therefore, the complainant must establish intentional abuse of the power to his detriment.

In *Budhan Chowdhry's case* (2), which I have referred to above, emphasis was laid on purposeful discrimination.

A review of all the authorities therefore shows—

- (1) that in order that a statute is unconstitutional and contravenes the equal protection clause it must be shown that as a result of that statute the person affected by it will be subjected to a different treatment in the matter of procedure, remedies available and punitive consequences ;
- (2) that it must be shown that the law is purposeful and intentional and would be administered to the disadvantage of the complainant ;

(1) 321 U.S. 1

(2) (1955) 1 S.C.R. 1045

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- (3) that the good faith of the officials acting within the ambit of a statute is to be presumed and mere suspicion that they may act in another manner is not enough; and
- (4) that the mere fact that under a particular statute one particular person is proceeded against and another is not, is not destructive of the equal protection clause unless what I have said in Nos. (1), (2) and (3) is established.

In my view and for the reasons I have given above the two subsections by themselves do not contain any element of discrimination and affect neither the procedure nor the remedies, nor do they increase the punitive burden on an assessee.

I would, therefore, dismiss this petition and discharge the rule. The petitioners must pay the costs of the opposite party. Counsel fee Rs. 250.

Dulat, J.

DULAT J. I agree.

REVISIONAL CIVIL

Before Bishan Narain, J.

SHRIMATI KAKO BAI,—*Petitioner*

versus

THE LAND ACQUISITION COLLECTOR, HISSAR AND
OTHERS,—*Respondents*

Civil Revision No. 66 of 1956.

March, 8th

1956

Land Acquisition Act (I of 1894)—Section 18—Application under—Scope of proceedings—Collector—Power of—Whether can refuse to refer the matter under section 18 of the Land Acquisition Act to the District Judge

101 A.S. 1 (500)