Ajoy Kumar Mukherjee vs Local Board Of Barpeta on 11 February, 1965

Equivalent citations: 1965 AIR 1561, 1965 SCR (3) 47, AIR 1965 SUPREME COURT 1561

Author: K.N. Wanchoo

Bench: K.N. Wanchoo, P.B. Gajendragadkar, M. Hidayatullah, J.C. Shah, S.M. Sikri

PETITIONER:
AJOY KUMAR MUKHERJEE

Vs.

RESPONDENT:
LOCAL BOARD OF BARPETA

DATE OF JUDGMENT:
11/02/1965

BENCH:
WANCHOO, K.N.
BENCH:
WANCHOO, K.N.
GAJENDRAGADKAR, P.B. (CJ)
HIDAYATULLAH, M.
SHAH, J.C.
SIKRI, S.M.

CITATION:
1965 AIR 1561 1965 SCR (3) 47
CITATOR INFO :
D 1975 SC2193 (6,12,13,14)
RF 1991 SC1766 (28,31,62)

ACT:
Assam Local Self Government Act 1953, (Act 25 of 1953), s. 62-Tax--Whether on land used for market or on market--State legislature, competence--Constitution of India Seventh Schedule, List II Entry 49--Interpretation--Discrimination--Allegations--Burden of proof.

HEADNOTE:
The appellant as a land-holder held a hat or market on

his land. The respondent, the local board, within whose jurisdiction the market was held, issued notice to the appellant to take out a licence and pay a certain sum as licence fee for holding the market. Inspire of the continued protests of the appellant against the levy, the amount was sought to be recovered by the issue of distress warrants and attachment of his property. The appellant file.d a writ petition in the High Court challenging on a number of grounds, the constitutionality of the impost, which was dismissed. In appeal by certificate the appellant contended that (i)the Assam Legislature had no legislative competence to tax markets, and (ii) the tax actually imposed on this market infringed Art. 14 of the Constitution, because the board fixed a higher rate for the appellant's market as compared with other neighbouring markets.

HELD:(i) The tax in the present case being on land within the meaning of Entry 49 of List II of the Seventh Schedule of the Constitution, would clearly be within the competence of the State Legislature. [49 E-C]

The Scheme of s. 62 of the Assam Local Self Government Act, 1953 shows that the tax provided therein is a tax on land, though its incidence depends upon the use of the land as a market and the owner, occupier or farmer of that land .has to pay a certain tax for its use as such. But there is no tax on the transaction that may take place within the market. Further the amount of tax depends upon the area of the land on which the market is held and the importance of the market subject to a maximum fixed by the State Government. Section 62(2) which used the words "impose an annual tax thereon" clearly shows that the word "thereon" refers to any land for which a licence is issued for use as a market and not to the word "market". The use to which the land is put can be taken into account in imposing a tax on it within the meaning of entry 49 of the List II. Ralla Ram v. The Province of East Punjab, [1948] F.C.R. 207, applied. [51 C-F]

(ii) It was for the appellant to show that in fixing the tax on the other markets as it did, the board acted arbitrarily and did not take into account the size and importance of the markets. As there was no material by which the relative size and importance of those markets, could be judged, it was not possible to hold that there was discrimination in taxing this market. [52 F-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 630 of 1963.

Appeal from the judgment and order dated June 8, 1959 the Assam High Court in Civil Rule No. 42 of 1957. D.N. Mukherjee, for the appellant.

Naunit Lal, for the respondent No. 3.

The Judgment of the Court was delivered by Wanchoo, J. This appeal on a certificate granted by the Assam High Court raises the question of the constitutionality of an annual tax levied by local boards for the use of any land for the purpose of holding markets as provided by s. 62 of the Assam Local Self- Government Act, No. XXV of 1953, (hereinafter referred to as the Act). The appellant is a landholder in the district of i Kamrup. As such landholder, he holds a hat or market on his land since the year 1936 and this market is known as Kharma hat. In 1953-54, the local board of Barpeta, within whose jurisdiction the Kharma market is held, issued notice to the appellant to take out a licence and pay Rs. 600/- for the year 1953-54 as licence-fee for holding the market. Later this sum was increased to Rs. 700/- for the year 1955-56. The appellant continued .protesting against this levy but no heed was paid to his protests and the amount was sought to be recovered by issue of distress warrants and attachment of his property. Consequently, the appellant filed a writ petition in the High Court challenging the constitutionality of the impost on a number of grounds. In the present appeal two main contentions have been urged in support of the appellant's case that the impost is unconstitutional, namely, (i) that the Assam legislature had no legislative competence to tax markets, and (ii) that the tax actually imposed on the Kharma market infringes Art. 14 of the Constitution. We shall therefore consider these two contentions only. This attack on behalf of the appellant is met by the respondent by relying on item 49 of List 1I of the Seventh Schedule to the Constitution, and it is urged that the State legislature was competent to impose the tax under that entry, for this was a tax on land. As to Art. 14, the reply on behalf of the respondent is that under s. 62 of the Act, a rule has been framed prescribing Rs. 1000/- as the maximum amount of tax which may be levied by any local board in Assam on markets licensed under that section. The rule also provides that any local board may with the previous approval of Government impose a tax within this maximum according to the size and importance of a market. So it is submitted that the tax has been imposed by Barpeta local board in accordance with this rule, and the appellant has failed to show that there has been any discrimination in the fixation of the amount of tax on the Kharma market.

The High Court repelled the contentions raised on behalf of the appellant and dismissed the writ petition. As however, questions of constitutional importance were involved, the High Court granted a certificate under Art. 132 of the Constitution; and that is how the matter has come up before us. The first question which falls for consideration therefore is whether the impost in the present case is a tax on land within the meaning of entry 49 of List II of the Seventh Schedule to the Constitution. It is well-settled that the entries in the three legislative lists have to be interpreted in their widest amplitude and therefore if a tax can reasonably be held to be a tax on land it will come within entry 49. Further it is equally well-settled that tax on land may be based on the annual value of the land and would still be a tax on land and would not be beyond the competence of the State legislature on the ground that it is a tax on income: (see Ralla Ram v.The Province of East Punjab(1). It follows therefore that the use to which the land is put can be taken into account in imposing a tax on it within the meaning of entry 49 of List II, for the annual value of land which can certainly be taken

into account in imposing a tax for the purpose of this entry would necessarily depend upon the use to which the land is put. It is in the light of this settled proposition that we have to examine the scheme of s. 62 of the Act, which imposes the tax under challenge.

It is necessary therefore to analyse the scheme of s. 62 which provides for this tax. Section 62(1) inter alia lays down that the local board may order that no land shall be used as a market otherwise than under a licence to be granted by the board. Sub-section (2) of s. 62 is the charging provision and may be quoted in full:

> "On the issue of an order as in sub-section (1), the board at a meeting may grant within the local limits of its jurisdiction a licence for the use of any land as a market and impose an annual tax thereon and such conditions as prescribed by rules."

Sub-section (3) provides that when it has been determined that a tax shall be imposed under the preceding sub-section, the local board shall make an order that the owner of any land used as a market specified in the order shall take out a licence for the purpose. Such order shall specify the tax not exceeding such amount as may be prescribed by rule, which shall be charged for the financial year. It will be seen from the provisions of these three sub- sections that power of the board to impose the tax arises on its passing a resolution that no land within its jurisdiction shall be used as a market. Such resolution clearly affects land within the jurisdiction of the board and on the passing of such a resolution the board gets the further power to issue licences for holding of markets on lands within its jurisdiction by a resolution and also the power to impose an annual tax thereon. Now it is urged on behalf of the appellant that when sub-s (2) speaks of imposing of "an annual (1) [1948] F.C.R. 207.

tax thereon" it means the imposition of an annual tax on the market, and that there is no provision in List II of the Seventh. Schedule for a tax on markets as such. "Markets and fairs" appear at item 28 of List H, and it is urged that under item 66 of the same List, fees with respect to markets and fairs can be imposed; but there is no provision for imposing a tax on markets in the entries from 45 to 63 which deal with taxes. It may be accepted that there is no entry in List II which provides for taxes as such on markets and fairs. It may also be accepted that entry 66 will only justify the imposition of fees on markets and fairs which would necessitate the providing of services by the board imposing the fees as a quid pro quo. That however, does not conclude the matter, for the contention on behalf of the State is that tax under s. 62 is on land and not on the market and further the tax depends upon the use of the land as a market. It seems to us on a close reading of sub-s. (2) that when that sub-section speaks of "annual tax thereon", the tax is on the land but the charge arises only when the land is used for a market. This will also be clear from the subsequent provisions of s. 62 which show that the tax is on land though its imposition depends upon user of the land as a market. Sub-section (3) shows that as soon as sub- s. (1) and (2) are complied with, the local board shall make an order that the owner of any land used as a market shall take out the licence. Thus the tax is on the land and it is the owner of the land who has to take out the licence for its use as a market.The form of the tax i.e. its being an annual tax as contrasted to a tax for each day on which the market is held also shows that in essence the tax is on land and not on the market held thereon.Further the tax is not imposed on any transactions in the market by persons who come

there for business which again shows that it is an impost on land and not on the market i.e. on the business terein. Then sub-s (5) provides that the tax shall be paid by the owner of any land used as a market which again shows that it is on the land that the tax is levied, though the charge arises when it is used as a market. Sub-section (6) then lays down that on receiving the amount so fixed the board shall issue a licence to the person paying the same. Here again the license is for the rise of the land. Then comes sub-s. (8) which provides that wherever. being the wner or occupier of any land uses or permits the same to be used as a market without a licence shall be liable to fine. This provision clearly shows that the tax is on the land and it is the owner or occupier of the kind who is responsible and is liable to prosecution if he fails to take cut a licence. No liability of any kind is thrown on those who come to the market for-the purpose of trade. Sub-section (9) then lays down that where a conviction has been obtained under sub-s. (8), the District Magistrate or the Sub Divisional Officer, as the case may be, may stop the use of the land as a market. Sub-section (10) then provides that every, owner, occupier or farmer of a market shall cause such drain to be made therein and take all necessary steps to keep such market in a clean and wholesome state and shall cause supply of sufficient water for the purpose as well as for drinking purpose. Sub-sections (ID and (12) give power to the board on the failure of any owner, occupier or farmer to comply with a notice under sub-s. (10), to take possession of the land and the market thereon and execute the works itself and receive all rents, tolls and other dues in respect of the market. This will again show that the tax provided by s. 52(2) is a tax for the use of the land and it is not a tax on the market as such, for the income from the market in the shape of tools, rents and other dues is not liable to tax under s. 52 and is different from tax. The scheme of s. 62 therefore shows that whenever any land is used for the purpose of holding a market, the owner,occupier or farmer of that land has to pay a certain tax for its use as such. But there is no tax on any transaction that may take place within the market. Further the amount of tax depends upon the area of the land on which market is held and the importance of the market subject to a maximum fixed by the State Government. We have therefore no hesitation in coming to the conclusion on a consideration of the scheme of s. 52 of the Act that the tax provided therein is a tax on land, though its incidence depends upon the use of the land as a market. Further as we have already indicated s. 62(2) which uses the words "impose an annual tax thereon"

> clearly shows that the word "thereon" refers to any land for which a licence is issued for use as a market and not to the word "market". Thus the tax in the present case being on land would clearly be within the competence of the State legislature. The contention of the appellant that the State legislature was not competent to impose this tax because there is no provision in List II of the Seventh Schedule for imposing a tax on markets as such must therefore fail. Then we come to the contention under Art. 14 of the Constitution. As to that it is well-settled that it is for the person who alleges that equality before law has been infringed to show that such really is the case. It was therefore for the appellant to produce facts and figures from which it can be inferred that the tax imposed in the present case is hit by Art. 14 of the Constitution. In that connection, all that the appellant has stated in his writ petition is that the board fixed a high rate arbitrarily and thus discriminated against the appellant's market as against the other neighbouring markets where the tax had been fixed at a much lower rate, and that this was hit by Art. 14. There was certainly an allegation by

the appellant that Art. 14 had been infringed; but that allegation is vague and gives no facts and figures for holding that the tax imposed on the Kharma market was discriminatory. It appears that the tax was imposed for the year 1953-54. which was continued Inter on, with some modifications. At that time there were five markets on which the tax was imposed including the Kharma market. The lowest tax was at Rs. 400/- on two markets, then at Rs. 500/- on the third market and at Rs. 600/- on the Kharma market and finally at Rs. 1000/- on the fifth market. Rule 300(2), flamed in accordance with s. 63(3) runs thus:---

"Rs. 1000/- (Rupees one thousand) only per annum has been fixed as the maximum amount of tax which may be levied by the local boards in Assam on markets licensed under section 62 of the Act.

Any local board may with the previous approval of Government impose a tax within this maximum according to the size and importance of a market."

Now the rule provides that Rs. 1000/- is the maximum tax and within that maximum the board has to graduate the tax according to the size and importance of the market. The size of the market naturally takes into account the area of the land on which the market is held; the importance of the market depends upon the number of transactions that take place there, for the larger the number of transactions the greater is the importance of the market. If therefore the appellant is to succeed on his plea of Art. 14 on the ground that the tax fixed on his market was discriminatory he had to adduce facts and figures, firstly as to the size of the five markets on which the tax was levied in the relevant years and secondly as to the relative importance of these markets. But no such facts and figures have been adduced on behalf of the appellant. It is true that the respondent in reply to the charge of discrimination was equally vague and merely denied that there was any arbitrary discrimination. But it was for the appellant to show that in fixing the tax on the five markets as it did, the board acted arbitrarily and did not take into account the size and importance of the markets. As there is no material before us by which we can judge the relative size and importance of the five markets, it is not possible to hold that there was discrimination in taxing Kharma market at Rs. 600/- per year as compared to taxing the three other markets at less than Rs. 600/-. The attack therefore on the amount actually fixed on the ground of discrimination must fail.

We therefore dismiss the appeal with costs. Appeal dismissed.