Supreme Court of India
Sockieting Tea Company (Pvt.) ... vs Under Secretary To The Govt. Of ... on 22 March, 1972
Equivalent citations: AIR 1973 SC 851, (1973) 3 SCC 729
Author: A Grover
Bench: A Grover, G Mitter
JUDGMENT A.N. Grover, J.

1. This is an appeal by Special Leave from the Judgment of the Assam and Nagaland High Court.

2. The appellant is an incorporated company. It has a tea garden by the name of Dukhinhongra Tea Estate. This tea estate established a market on its own private land. This market is stated to have been functioning for about 100 years. When the market was under the administrative control of the Local Board, the appellant used to pay Rs. 1,000/- per year as licence fee. In 1959, The Assam Panchayat Act, 1959 came into force The administration of this market vested in what is called Anchalik Panchayat constituted under the provisions of the Act. The Golghat East Anchalik Panchayat in a meeting held on the May 23, 1966 proposed an increase of. the tax and the licence fee and decided that the licence fee should be raised to Rs. 7,000/- per annum. That proposal was accepted by the Government w.e.f. the financial year 1967. In the order itself, it was stated that the revised rate of licence fee shall be Rs. 7,000/-.

3. The appellant filed a petition under Article 226 of the Constitution in the High Court. In the Writ Petition the main point which appears to have been raised is that the licence fee of Rs. 7,000/- per annum was not related to the services rendered by the local authority. The authority of the Panchayat to levy tax or fee in respect of a market was also challenged.

4. From the judgment of the High Court it seems that the only point that was argued was that the imposition of licence fee could not be made without publication under Section 78(4) of the Act. The High Court found no merit in that submission.

5. Before us, Mr. Mukherjee, Learned Counsel for the appellant, has sought to raise certain points which were not raised either in the Writ Petition or in the High Court or even in the petition for Special Leave to this Court. He has invited our attention to the statutory provisions under which the tax could be levied by the Anchalik Panchayat. Firstly, Section 75 may be referred to. It gives powers of taxation to the Gaon Panchayat and the Gaon Panchayat could levy a tax on a house, supply of water, etc., a cess or fee on registration of cattle etc. on licence for starting tea stalls, hotels, etc. and for private hats as prescribed. Section 79 provides: "In the areas which do not fall within the jurisdiction of any Gaon Panchayat, the Anchalik Panchayat shall exercise the powers given to the Gaon Panchayat in Section 78". Section 78, the marginal heading of which is "Powers of Gaon Panchayat to prohibit use of unlicensed markets" provides in Sub-section (2) that "on the issue of order under Sub-section (1) the Gaon Panchayat 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 may be prescribed by rules." Section 76 gives the powers of taxation of Anchalik Panchayat but there is no mention about levying a tax on a hat or market in that section. In exercise of the powers conferred by Section 160 of the Act, the Assam Panchayat (Financial) Rules, 1960 were

promulgated. Rule 15 says that the maximum rates for the following taxes, cess, rate, fees, etc., under Section 76 of the Act shall be as follows:

(1) xxxx (2) xxxx (3) xxxx (4) xxxx (5) xxxx (6) Tax on Private Market falling in areas directly administered at an annual rate not exceeding Rs. 7,000/ per annum.

6. The points, which Mr. Mukherjee has now sought to raise, are:

(1) That Rule 15 only gives rates and provides for the levy of taxes which are authorised by Section 76. In the present case, the Anchalik Panchayat could not have levied any tax under Section 76 because no such power is conferred on it by that section in respect of a Panchayat. It is only under the provisions of Sections 78 and 79 that any tax can be levied if at all on a market. It is contended, therefore, that the entire levy was misconceived and the maximum rate of Rs. 7,000/- per annum could be imposed only under Rule 15(6) which on the face of it is not applicable to the present case.

(2) If the amount of Rs. 7,000/-is levied by way of licence fee, there is no correlation between the services endered by the Anchalik Panchayat and the amount of Rs. 7.000/-.

7. Now none of these points was raised at any stage before as has already been observed and it is not possible in this petition under Article 136 of the Constitution to allow new points to be raised for which no foundation was laid even in the Writ Petition. The only point which was argued has already been mentioned about non-publication as required by Section 78(4) of the Act Mr. Mukherjee has not been able to persuade us that there is any merit in that point.

8. The appeal, therefore, falls and it is dismissed. But since the points, which Mr. Mukherjee has sought to argue, are of law and have not been raised and decided by the High Court and are not being decided by us, we may make it clear that it will be open to the appellant to raise these points in any proceedings in which it may be open to do so.

9. There will be no order as to costs.