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DISTRICT COUNCIL OF THE JOWAI

v.

DWET SINGH RYMBAI ETC.

B

AUGUST 14, 1986

[E.S. VENKATARAMIAH AND G.L. OZA, JJ.]

United Khasi and Jaintia Hills Autonomous District (Management and Control of Forests) Act, 1958—ss. 3, 4, 8, 11 & 13 and Jowai Autonomous District (Administration) Act, 1967—Royalty on timber brought from private forests—Whether in the nature of a tax—Whether constitutionally valid. C

Constitution of India, Art. 244 (2)/Sixth Schedule, Paragraphs 3 and 8—Nature and scope of powers of District Councils—Competency to levy fees. D

The Autonomous District of Jowai, which was previously as subdivision of the United Khasi Jaintia Autonomous District, took the shape of an autonomous district with effect from December 1, 1964 pursuant to a notification issued by the Governor of Assam on November 23, 1964. E

The District Council came into being on March 23, 1967 and in that very year it passed the Jowai Autonomous District (Administration) Act, 1967. By virtue of s. 3 of that Act, the United Khasi and Jaintia Hills Autonomous District (Management and Control of Forests) Act, 1958 and the Rules framed under it, were adopted and made applicable to the Autonomous District of Jowai. Subsequently, on April 20, 1968 the Secretary of the Executive Committee of the District Council issued a notification in exercise of its power under s. 8 of the latter Act fixing the rates of royalty chargeable on red pine, white pine and log pine timber grown in the private forests situated within the jurisdiction of the District Council. F G

The respondents having become liable to pay the royalty, as specified in the Notification, instituted writ petition in the High Court, questioning the competence of the District Council and its Executive Committee and Officers to levy royality on the timber that came from H

A private forests within its jurisdiction, contending that the royalty, in question, which was in the nature of tax was not leviable by the District Council since it had no authority under the Constitution and the laws made thereunder to impose the said levy.

B The District Council contested the writ petitions contending that since the private forests were also under its management and control under the provisions of the law in force in that area, it was open to it to levy the royalty even though it may be in the nature of a tax, and that even though a tax cannot be levied on the trees grown in private forests, since the District Council had the competence to levy tax on lands and buildings, the trees in the private forests being grown on such land the C tax in question could be treated as tax on land which it was entitled to levy. It was further contended that even if it could not levy a tax, such amount can be realised by way of fee in order to meet the expenses incurred by the District Council in connection with the management and control of the private forests; that the forests in question were not D private forests and so the respondents could not maintain the petition at all.

The High Court found that the forests in question were private forests and held that the District Council had no constitutional authority to impose either royality or tax or fee on these forests and that the E notification dated 20th April, 1968 issued under s. 8 of the Act was *ultra vires* and not sanctioned by the Sixth Schedule of the Constitution, and issued a writ of mandamus restraining the District Council from realising royality from the petitioner-respondents in respect of timber extracted by them from the two private forests situated within the jurisdiction of the District Council.

F In the appeals to this Court by special leave by the District Council, on the question of the constitutional validity of the Notification dated April 20, 1968 and whether the royality levied could be realised by the District Council in respect of trees in private forests.

G Dismissing the Appeals, the Court,

HELD: 1. What is sought to be recovered under the Act is not royalty since the forest does not belong to the District Council. The amount claimed is a compulsory exaction of money by a public authority for public purposes enforceable by law and is not a payment for H services rendered. It is truly, in the nature of a tax. [584C-D]

2. Section 4 of the United Khasi and Jaintia Hills Autonomous District (Management and Control of Forests) Act, 1958 which prohibits removal of forest produce except on payment of royalty, refers to protected Forests, Green Blocks and Raid Forests. It does not refer to private forests. Section 8 of the Act, under which the impugned notification is issued merely says that the Executive Committee may make rules fixing the rates of royalty for each class of trees, timber or forest produce. [582G-H; 583A]

3. Paragraph 3 of the Sixth Schedule to the Constitution does not contain any subject which authorises the District and Regional Councils to levy taxes. It confers powers on the said Councils to make laws only to regulate matters specified therein. The subjects relating to taxation are dealt with separately in Paragraph 8. [585D]

4.1 The levy in question does not come within subparagraphs (1) and (2) of Paragraph 8, which authorised levy of tax on lands and buildings. If the levy is land revenue then it should have been fixed in accordance with the principles for the time being followed by the Government of the State in assessing lands for the purpose of land revenue as required by sub-paragraph (1). It cannot be sustained as any other kind of tax on land since the royalty payable has no reference to the extent of the land and the nature of the land and its potentialities. [584E-G]

K.T. Moopil Nair v. *The State of Kerala & Ors.*, [1961] 3 S.C.R. 77, distinguished.

4.2 The royalty in question is not covered by cls. (a) and (c) of Paragraph 8(3) either, for it cannot be said to be a tax on profession, trade, calling and employment or a tax on the entry of goods into the market for sale therein. The appellants have not been able to establish that the impugned royalty was leviable under any other provision. [584D-E]

4.3 The levy is a tax only on the timber which is brought from private forests. The notification in unambiguous terms says that the royalty shall be on the squared log pines, but it has no reference to the land on which those trees have grown. The District Council has no power to levy such a tax on forest produce under Paragraph 8. [584G-H]

5. Though Paragraphs 3 and 8 of the Sixth Schedule of the Constitution follow almost the same pattern in which the subjects in List I and List II of the Seventh Schedule to the Constitution have been en-

A umerated, the legislative powers in respect of certain topics mentioned in Paragraph 3 and the power to levy taxes specified in Paragraph 8 of the Sixth Schedule enjoyed by the District Councils cannot be equated with the plenary powers enjoyed by a legislature. Their powers to make laws are limited by the provisions of the Sixth Schedule. The Courts cannot constructively enlarge their powers to make laws. [580B-C]

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District Council of United Khasi & Jaintia Hills & Ors. Etc. v. *Miss Sitimon Sawian Etc.*, [1972] 1 S.C.R. 398 at page 407, referred to.

6. The High Court erred in holding that even fees could not be levied under Paragraph 3 of the Sixth Schedule. The Act was enacted C for the purpose of making provisions regarding the management and the control of forests in exercise of the powers conferred by Paragraph 3(1)(b). There is no specific reference to the power to levy any fees in respect of any matter mentioned in Paragraph 3 similar to the corresponding provisions in the penultimate entry in List I and the last entry in the other two Lists in the Seventh Schedule to the Constitution. But D having regard to the nature of a fee, which is an amount levied as *quid pro quo* for services rendered, the power to levy fees in respect of any of the matters mentioned in Paragraph 3 should be necessarily implied. But such fee should not be disproportionately very high, i.e., a tax in disguise. Therefore, even though there is no express provision to levy such fees, the District Council can levy fees under Paragraph 3. But E that would not save the Notification since there is no material placed before the Court to uphold it on that ground. In the absence of any evidence showing the expenses incurred by the District Council towards the services rendered and the total amount of royalty realised by it levy cannot be upheld even as a fee. [585D-F]

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The Commissioner, Hindu Religious Endowments, Madras v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, [1954] S.C.R. 1005 and *Om Parkash Agarwal and Ors.* v. *Giri Raj Kishori and Ors.*, [1986] 1 S.C.C. 722, referred to.

G 7. The High Court rightly held that the forests in question were private forests. It has not been shown by the appellants that they belong to any other category of forests referred to in s. 3 of the Act. The Notification purports to levy royalty on timber brought from private forests. If there were no private forests at all the District Council would not have issued the notification levying royalty on timber got from H private forests. [585G-H]

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2069-70 of 1972

From the Judgment and Order dated 31.7.1972 of the Gauhati High Court in Civil Rule Nos. 477 and 483 of 1968.

D.N. Mukherjee and Rajan Mukherjee for the Appellants.

S.K. Nandy for the Respondents.

The Judgment of the Court was delivered by

VENKATARAMIAH, J. Civil Appeal Nos. 2069 of 1972 and 2070 of 1972 by special leave are filed against the common Judgment dated 31.7.1972 in Civil Rule Nos. 477 of 1968 and 483 of 1968 respectively on the file of the High Court of Assam, Nagaland, Meghalaya, Manipur & Tripura. Since common questions of law arise for consideration in these two cases, they are disposed of by this common judgment.

The respondents in these two appeals are forest contractors and they were operating in two forests called Lum Langkaraw and Lumkhliem Moriap alleged to be belonging to Joseph and Kailla Rymbai. These forests are situated within the jurisdiction of the District Council of the Jowai Autonomous District, Jowai (hereinafter referred to as 'the District Council')—Appellant No. 1 herein. On April 20, 1968 the Secretary of the Executive Committee of the District Council issued a notification levying royalty in exercise of its power under the United Khasi and Jaintia Hills Autonomous Districts (Management and Control of Forests) Act, 1958 (Act 1 of 1959) (hereinafter referred to as 'the Act') on red pine, white pine and log pine timber grown in the private forests situated within the jurisdiction of the District Council at the rates specified therein. The Notification reads thus:

> "No. JAD/FOR/68/26 Dated, Jowai, April 20, 1968.
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> In exercise of the power conferred under Section 8 of the U.K. and J. Hills Autonomous District (Management and Control of Forests) Act, 1958 as adopted under the Jowai Autonomous District (Administration) Act, 1967, the Executive Committee of the Jowai Autonomous District Council is pleased to fix a flat Rate of Royalty for both red pine and white pine @ 80 P. per cubit foot for all

A the squared log pine timber irrespective of the girth classes other than the pine timber that come from private forests, for the squared log pine timber from the private forests that are to go outside the Jowai Autonomous District for trade purposes, the rate of Royalty is fixed at half of the above B scheduled rate, i.e., 40 P. per cft. The above rates will take immediate effect and modify Rule 2 of the U.K. and J. Hills Autonomous Distt. (Management and Control of Forests Rates of Royalty) Rules, 1959 as far as its application to white pines and red pines is concerned. This supercedes all orders on the subject.

C Sd/—D. Passah
Secretary, Executive Committee
District Council
Jowai Autonomous District Jowai"

D As the respondents became liable to pay the royalty, as specified in the Notification, they instituted the writ petitions in the High Court, out of which these appeals arise, questioning the competence of the District Council and its Executive Committee and officers to levy the royalty in accordance with the Notification on the timber that came from private forests within its jurisdiction. The respondents, among E other pleas contended that the royalty, in question, which was in the nature of tax was not leviable by the District Council since it had no authority under the Constitution and the laws made thereunder to impose the said levy. On behalf of the District Council it was contended that since the private forests were also under the management and control of the District Council under the provisions of the law in F force in that area, to which a detailed reference would be made hereafter, it was open to it to levy the royalty even though it may be in the nature of a tax. It was next contended on behalf of the District Council that even though a tax cannot be levied on the trees grown in private forests, since the District Council had the competence to levy tax on lands and buildings and the trees in the private forests were grown on G the land the tax in question could be treated as tax on land which it was, therefore, entitled to levy. It was text contended that even if it could not levy a tax, such amount can be realised by way of fee in order to meet the expenses incurred by the District Council in connection with the management and control of the private forests. Lastly it was contended that the forests in question were not private forests and so H the respondents could not maintain the petition at all. After hearing

the learned counsel for the parties, the High Court found that the forests in question were private forests and further held that the District Council had no constitutional authority to impose either royalty or tax or fee on private forests and that the Notification dated 20th April, 1968 issued under section 8 of the Act was *ultra vires* and not sanctioned by the Sixth Schedule of the Constitution. As a consequence of the above finding, the High Court issued a writ of mandamus to the appellants (respondents in the writ petitions) restraining them from realising royalty from the respondents in respect of timber extracted by them from the two forests, referred to above.

Aggrieved by the judgments/orders passed by the High Court in the said writ petitions, the District Council and others who were respondents in the writ petitions, have preferred these appeals to this Court by special leave.

The Autonomous District of Jowai was previously a sub-division of the United Khasi Jaintia Autonomous District and took the present shape of an autonomous district with effect from December 1, 1964 pursuant to a notification issued by the Governor of Assam on November 23, 1964. The District Council came into being on March 23, 1967 and in that very year it passed the Jowai Autonomous District (Administration) Act, 1967. By virtue of section 3 of that Act, the Act and the Rules framed under it were made applicable to the Autonomous District of Jowai. Subsequently, on April 20, 1968 the Executive Committee of the District Council issued the impugned notification which is set out above in exercise of its powers conferred by section 8 of the Act, fixing the rates of royalty chargeable on the different types of timber mentioned therein at the rates specified in it.

In these appeals we are concerned with the constitutional validity of the abovesaid notification. The area which lies within the jurisidction of the District Council is a tribal area, which originally formed part of the State of Assam. Part X of the Constitution provides for the administration of the Scheduled and Tribal Areas. Clause (2) of Article 244 of the Constitution, as it was originally enacted, reads thus:

> "244 (2). The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the State of Assam."

By the Assam Reorganisation (Meghalaya) Act, 1969 (Act 55 of

A 1969) the autonomous State of Meghalaya was formed within the State of Assam comprising the territories which formed part of the Autonomous District of United Khasi-Jaintia Hills including Jowai Autonomous District and the Garo Hills. Certain provisions of the Sixth Schedule to the Constitution were amended by the said Act and the B same were brought into force from April 2, 1970. By the North-Eastern Areas (Reorganisation) Act, 1971 the new State of Meghalaya was created comprising the territories of the autonomous State of Meghalaya and the cantonment and municipality areas of Shillong town. The said State was inaugurated on January 21, 1972.

Article 244(2) of the Constitution, with effect from January 21, C 1972, reads thus:

> "244 (2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the States of Assam, Meghalaya and the Union Territory of Mizoram."

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The Sixth Schedule of the Constitutions, as it now stands, is entitled 'Provisions as to the Administration of Tribal Areas in the States of Assam and Meghalaya and in the Union Territory of Mizoram'. The provisions of that Schedule with which we are concerned have not undergone any material change although there have E been several amendments in that Schedule since the commencement of the Constitution. They are applicable to the tribal areas within the jurisdiction of the District Council of Jowai—Appellant No. 1 in these appeals.

Paragraph 1 of the Sixth Schedule to the Constitution provides F that subject to the provisions of that paragraph, the tribal areas in each item of Parts I, II and III of the table appended to paragraph 20 of that Schedule shall be an autonomous District. If there are different Scheduled Tribes in an autonomous district, the Governor may, by public notification divide the area or areas inhabited by them into autonomous regions. The Governor has been given power to alter the G boundaries of the autonomous districts and the procedure for doing reorganisation of the autonomous district is given in sub-paragraph (3) of Paragraph 1 of the Sixth Schedule to the Constitution. Paragraph 2 of that Schedule provides that there shall be a District Council for each autonomous district consisting of not more than thirty members, of whom not more than four persons shall be nominated by the Governor and the

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rest shall be elected on the basis of adult suffrage. There shall be a separate Regional Council for each area constituted an autonomous region under sub-paragraph (2) of Paragraph 1 of that Schedule. Each District Council and each Regional Council shall be a body corporate by the name respectively of "the District Council of (name of district)" and "the Regional Council of (name of region)", shall have perpetual succession and a common seal and shall by the said name sue and be sued. Subject to the provisions of that Schedule, the administration of an autonomous district shall, insofar as it is not vested under that Schedule in any Regional Council within such district, be vested in the District Council for such district and the administration of an autonomous region shall be vested in the Regional Council for such region. In an autonomous district with Regional Councils, the District Council shall have only such powers with respect to the areas under the authority of the Regional Council as may be delegated to it by the Regional Council in addition to the powers conferred on it by that Schedule with respect to such areas. The District Council of Jowai Autonomous District—Appellant No. 1 is one such District Council. But as mentioned earlier it was a part of the United Khasi—Jaintia Hills Autonomous district prior to December, 1, 1964.

Paragraphs 3 and 8 of the Sixth Schedule to the Constitution read thus:

> "3. *Powers of the District Councils and Regional Councils to make laws.*—(1) The Regional Council for an autonomous region in respect of all areas within such region and the District Council for an autonomous district in respect of all areas within the district except those which are under the authority of Regional Councils, if any, within the district shall have power to make laws with respect to—
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> (a) the allotment, occupation or use, or the setting apart, of land, other than any land which is a reserved forest, for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town:
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> Provided that nothing in such laws shall prevent the compulsory acquisition of any land, whether occupied or unoccupied, for public purposes (by the Government of the

A State concerned) in accordance with the law for the time being in force authorising such acquisition;

(b) the management of any forest not being a reserved forest;

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(c) the use of any canal or water-course for the purpose of agriculture;

(d) the regulation of the practice of *jhum* or other forms of shifting cultivation;

C

(e) the establishment of village or town committees or councils and their powers;

(f) any other matter relating to village or town administration, including village or town police and public health and sanitation;

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(g) the appointment or succession of Chiefs or Headmen;

(h) the inheritance of property;

E

(i) marriage and divorce;

(j) social customs.

(2). In this paragraph, a 'reserved forest' means any area which is a reserved forest under the Assam Forest Regulation, 1891, or under any other law for the time being in force in the area in question.

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(3) All laws made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect."

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"8. *Powers to assess and collect land revenue and to impose taxes.*—(1) The Regional Council for an autonomous region in respect of all lands within such region and the District Council for an autonomous district in respect of all lands within the district except those which are in the areas

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under the authority of Regional Councils, if any, within the district, shall have the power to assess and collect revenue in respect of such lands in accordance with the principles for the time being followed by the Government of the State in assessing lands for the purpose of land revenue in the State generally.

(2) The Regional Council for an autonomous region in respect to areas within such region and the District Council for an autonomous district in respect of all areas in the district except those which are under the authority of Regional Councils, if any, within the district, shall have power to levy and collect taxes on lands and buildings, and tolls on persons resident within such areas.

(3) The District Council for an autonomous district shall have the power to levy and collect all or any of the following taxes within such district, that is to say—

(a) taxes on professions, trades, callings and employments;

(b) taxes on animals, vehicles and boats;

(c) taxes on the entry of goods into a market for sale therein, and tolls on passengers and goods carried in ferries; and

(d) taxes for the maintenance of schools, dispensaries of roads.

(4) A Regional Council or District Council, as the case may be, may make regulations to provide for the levy and collection of any of the taxes specified in sub-paragraphs (2) and (3) of this paragraph and every such regulation shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect."

It is seen from Paragraph 3 and Paragraph 8 of the Sixth Schedule to the Constitution set out above that the District Councils and Regional Councils in addition to specified executive functions conferred on them by the other Paragraphs in that Schedule have been

given legislative powers in respect of certain topics mentioned in Paragraph 3 and the power to levy the taxes specified in Paragraph 8 of that Schedule. The powers enjoyed by these District Councils cannot be equated with the plenary powers enjoyed by a legislature. Their powers to make laws are limited by the provisions of the Sixth Schedule. The Courts cannot constructively enlarge their powers to make laws. (Vide *District Council of United Khasi & Jaintia Hills & Ors. Etc.* v. *Miss Sitimon Sawian Etc.)* [1972] 1 S.C.R. 398 at page 407. Paragraphs 3 and 8 of the Sixth Schedule to the Constitution follow almost the same pattern in which the subjects in List I and List II of the Seventh Schedule to the Constitution have been enumerated. While the subjects relating to taxation are dealt with separately in Paragraph 8, Paragraph 3 does not contain any subject which authorises the District and Regional Councils to levy taxes. Paragraph 3 confers powers on the said Councils to make laws only to regulate matters specified therein. Paragraph 3(1)(b) empowers the District Council to make laws with respect to the management of any forest not being a reserved forest. Paragraph 3(2) defines a 'reserved forest' as any area which is a reserved forest under the Assam Forest Regulation, 1891 or under any other law for the time being in force, in the area in question. It may also be noted that there is no specific reference to the power to levy any fees in respect of any matter mentioned in Paragraph 3 in the Sixth Schedule to the Constitution similar to the corresponding provisions in the penultimate entry in List I and the last entry in the other two Lists in the Seventh Schedule to the Constitution. But having regard to the nature of a fee, which is an amount levied as *quid pro quo* for services rendered, the power to levy fees in respect of any of the matters mentioned in Paragraph 3 should be necessarily implied. But such fee should not be disproportionately very high, i.e., a tax in disguise. The Act was enacted for the purpose of making provisions regarding the management and the control of forests (which are not reserved forests) in the area within the jurisdiction of the District Council in exercise of the powers conferred by Paragraph 3(1)(b) of the Sixth Schedule to the Constitution.

Section 3 of the Act refers to six different kinds of forests. That section reads thus:

> "3. Classification of Forests—The forests to which this Act applies are classified under the following categories:
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> (i) (a) Private Forests—These are forests belonging to an

individual or clan or joint clans which are grown or inherited by him or them in recognised Private lands (Ri Kynti);

(b) Law-Ri-Summar—These are forests belonging to an individual clan or joint clans (which are) grown (or inherited) by him or them in a village or common raj land.

(ii) Law Lyng-doh, Law Kyntang, Law Niam: These are forests set apart for religious purposes and hitherto managed or controlled by the Lyngdoh or other person or persons to whom the religious ceremonies for the particular locality or village or villagers are entrusted.

Explanation: Lyngdoh in this particular respect is a religious head and not the administrative head mentioned in section 2(r).

(iii) Law-adong and Law-shnong: These are village forests hitherto reserved by the villagers themselves for conserving water, etc. for the use of the villages and managed by the Sirdar or headmen with the help of the Village Durbar.

(iv) Protected Forests: These are areas already declared protected for the growth of trees for the benefit of the local inhabitants and also forests that may be so declared by rules under this Act.

(v) Green Blocks: These are forests belonging to an individual family or clan or joint clans and raj lands already declared as Green Block by Governments for aesthetic beauty and water supply of the town of Shillong and its suburbs and also forests that may be declared by rules under this Act.

(vi) Raid Forests: These are forests managed by the Raid and under the control of the local administrative head subject to rules to be prescribed by the District Council."

Section 4(a) of the Act provides that Private Forests and Law-Ri-Sumar which are mentioned in section 3(i)(a) and (b) of the Act shall

be managed by the owners thereof subject to the rules that may be framed by District Council from time to time in the general interest of the forestry of the district. Private Forests are forests belonging to an individual or clan or joint clans which are grown or inherited by him or them in recognised private land (Ri Kynti). In section 4 of the Act, as regards removal of forest produce it is provided thus:

> "Removal of Forest produce: No timber or forests produce shall be removed for the purpose of sale, trade or business from Protected Forests, Green Blocks, Raid Forests without the order in writing of the Forest Officer of the District Council which order may be given only on previous receipt of the royalty on such timber or forest produce at rates as may be prescribed by the District Council.
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> Provided:
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> (i) that the royalty on timbers of reserved trees from Raid Forests shall be half the full rates in respect of persons living in the neighbouring area of the Forest where the timber is needed for their own domestic use, i.e., for building purpose only;
>
> (ii) that no royalty shall be charged for the removal of timber from Green Blocks by the owners thereof, or for the removal of the timber or any forest produce from a Raid Forest by the members of the Raid for their own domestic use;
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> (iii) that all royalty realised shall be credited to the District Fund;
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> (iv) that the District Council shall quarterly give to the Siemships, Dolloiships and Sirdarships a share of the royalty at a percentage to be prescribed by it."

It may be noticed that the above part of section 4 of the Act refers to Protected Forests, Green Blocks and Raid Forests and if any person wants to remove timber for sale etc. he should pay royalty at the rates to be prescribed by the District Council. It does not refer to Private Forests. Section 8 of the Act under which the impugned notification is issued merely says that the Executive Committee may make

rules fixing the rates of royalty for each class of trees, timber or forest produce which shall be published in the Assam Gazette. Section 11 of the Act refers to royalty payable in respect of timber in Private Forests. It reads thus:

> "11. All timber or forest produce removed from Private Forests and Law-Ri-Sumar shall be liable to payment of half the full rates of royalty prescribed for such timber or forest produce under section 8 above, when exported beyond the District or when brought to Shillong in vehicles for purposes of trade;
>
> Provided that the Executive Committee may direct that any rule made under this Section shall not apply to any specified class of timber or other forest produce or to any specified local area."

Under section 13 of the Act, the Executive Committee of the District Council may regulate felling of trees etc. Section 13 of the Act reads thus:

> "13. Powers to regulate felling of trees; etc.—The Executive Committee shall have power to—
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> (a) regulate or prohibit the kindling of fires, and prescribe the precautions to be taken to prevent the spread of fires;
>
> (b) regulate or prohibit the felling, cutting, girdling, marking, lopping, tapping or injuring by fire or otherwise of any trees, the sawing conversion and removal and the collection and removal of other forest produce;
>
> (c) regulate or prohibit the boiling of catechu or the burning of lime or charcoal;
>
> (d) regulate or prohibit the cutting of grass and pasturing of cattle and regulate the payment, if any, to be made for such cutting or pasturing;
>
> (e) regulate the sale or free grant of forest produce; and
>
> (f) prescribe or authorise any forest officer to prescribe

A subject to the control of the Executive Committee, the fees, royalties for other payments for forest produce, and the manner in which such fees, royalties, or other payments are to be levied, in transit or partly in transit or otherwise."

B The question before us is whether the royalty levied by the impugned notification can be realised by the District Council in respect of trees in private forests. 'Royalty' according to Jowitts' Dictionary of English Law means 'a payment reserved by the grantor or patent, lease of a mine or similar right and payable proportionately to the use made of the right by the grantee'. In the true sense what is sought to be recovered under the Act is not royalty since the forest does not belong C to the District Council. The amount claimed by way of royalty under the Notification is a compulsory exaction of money by a public authority for public purposes enforceable by law and is not a payment for services rendered. It is truly, in the nature of a tax.

D In the High Court various claims were put forward in support of the impugned levy. It was contended that the royalty in question came under clauses (a) and (c) of Paragraph 8(3) of the Sixth Schedule to the Constitution, namely, taxes on profession, trades, callings and employment, or taxes on the entry of goods into market for sale therein. It being neither of the two kinds of taxes, referred to above, the High E Court rightly rejected the above contention.

It was next urged before the High Court that the levy came within sub-paragraphs (1) and (2) of Paragraph 8 of the Sixth Schedule to the Constitution which authorised levy of tax on lands on the ground that the trees were growing on the land. The same contention is again F pressed before us. We find it difficult to agree with the above submission since if the levy is land revenue then it should have been fixed in accordance with the principles for the time being followed by the Government of the State in assessing lands for the purpose of land revenue in the State generally as required by sub-paragraph (1) of Paragraph 8 of the Sixth Schedule to the Constitution. It cannot be G sustained as any other kind of tax on land since the royalty payable has no reference to the extent of the land and the nature of the land and its potentialities. It is a tax only on the timber which is brought from private forests. The notification in unambiguous terms says that the royalty shall be on the squared log pines. It has no reference to the land on which those trees have grown. In pith and substance it is a tax H on forest produce grown on private lands. The District Council has no

power to levy such a tax on forest produce under Paragraph 8 of the Sixth Schedule to the Constitution. Reliance was, however, placed on the minority judgment of Justice Sarkar in *K.T. Moopil Nair* v. *The State of Kerala & Ors.*, [1961] 3 S.C.R. 77 in support of the plea that lands on which forests grew could be taxed under entry 'tax on lands and buildings'. The impugned levy being not a tax levied on land as we have pointed out above, the said observation in the above decision is not useful to the appellants. We may add that the very same learned Judge has observed at page 106 that no tax could be levied by a State Legislature on forests as such while tax may be levied on the land on which forests grew. But we are convinced that the levy in question is not a levy on land. This contention has, therefore, to fail.

The appellants have not been able to establish that the impugned royalty was leviable under any other provision. It was no doubt true that it was argued before the High Court that it was open to the District Council to levy fees as *quid pro quo* for the services rendered by it to the forest owners or contractors. The High Court erred in holding that even fees could not be levied under Paragraph 3 of the Sixth Schedule to the Constitution. We have already held that even though there is no express provision to levy such fees, the District Council can levy fees under Paragraph 3. But that would not save the Notification since there is no material placed before the Court to uphold the Notification on that ground. No evidence is placed before the Court showing the expenses incurred by the District Council towards the services rendered and the total amount of royalty realised by it. Unless the levy satisfied the true characteristics of fee as laid down by this Court in *The Commissioner, Hindu Religious Endowments, Madras* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, [1954] S.C.R. 1005 it cannot be upheld even as a fee (See also *Om Parkash Agarwal and Ors.* v. *Giri Raj Kishori and Ors.*, [1986] 1 S.C.C. 722.)

Insofar as the question whether the forests from which the respondents were bringing timber were private forests or not, we find that the High Court after considering all the relevant facts before it has recorded a finding that they are private forests. It is not also shown by the appellants that they belong to any other category of forests referred in section 3 of the Act. The plea of the appellants in the statement of objections before the High Court was that there were no private forests at all in Jowai District. This statement cannot be accepted as the Notification purports to levy royalty on timber brought from private forests. If there were no private forests at all the District Council

A would not have issued the Notification levying royalty on timber got from private forests. In any view of the matter, there is no sufficient ground to disturb the finding of the High Court on the above question.

In the result these appeals fail and they are dismissed but, we B however, set aside the finding of the High Court that no fees can be levied by the District Council in respect of matters enumerated in Paragraph 3 of the Sixth Schedule to the Constitution.

There is no order as to costs.

P.S.S. Appeals dismissed.