(1976) 03 AP CK 0009

In the Andhra Pradesh High Court

Case No : Writ Petition No. 9 of 1976

B. Satyanarayana Murthy and others — APPELLANT

Vs

The State of Andhra Pradesh and others — RESPONDENT

Date of Decision : 29-03-1976

Acts Referred:

Andhra Pradesh Land Revenue (Additional Wet Assessment) Act, 1975 — Section 2(c), 4(1), 4(2), 9(2)

Citation : AIR 1977 AP 19

Hon'ble Judges : Sambasiva Rao, J;Raghuvir, J

Bench : Division Bench

Advocate : K. Narasimham, for the Appellant;

Final Decision : Allowed

Judgement

Sambasiva Rao, J.—This writ petition should be allowed even on the basis of the averments in the counter-affidavit. Ryots belonging to as many as 8 villages, who draw irrigation water from a tank called "Thimmaraju Tank", have filed this Writ Petition challenging the levy of additional land revenue under the Andhra Pradesh Land Revenue (Additional Wet Assessment) Act, 1975, (hereinafter referred to as the Act).

2. It is said that this is a rain-fed tank and it draws further supplies of water from three forest streams which are also rain-fed. So by no means it is a Government source of irrigation within the meaning of Section 2(c) of the Act. An appeal has been preferred against the notification D/- 27th of June, 1975, published in the Dist. Gazette D/ - 8th of Aug. 1975 and the same is still pending. As we have already held, no levy can be imposed until the Govt. decides the appeal one way or the other, preferred by the petitioners u/s 9(2) of the Act.

3. However, there is a more fatal objection to the levy of additional land revenue. Section 4(2) of the Act requires that as soon as may be, on the commencement of the Act, the Tahsildar shall, subject to any general or special orders issued by

the Government in this regard, cause a list to be prepared and published in such form as may be laid down by the rules made in this behalf containing the names of the pattadars in every village within his jurisdiction and the extent of the wet lands held by them, the land revenue payable thereon and the additional land revenue assessment payable under the Act. Sub-section (3) required that the list prepared under sub-section (2) shall be published in the manner prescribed. And the same sub-section makes it clear that every pattadar who is liable to pay the additional land revenue assessment under the Act shall be deemed to have had notice of such assessment. Then sub-section (4) provides for preferring objections to the levy by any person interested in, or objecting to the additional land revenue assessment specified in the list published under sub-section (3). He may present these objections to the Tahsildar within 30 days from the date of publication of the list and the Tahsildar will have to adjudicate upon these objections. Now, reading sub-sections (3) and (4) together the importance of the publication of the list is very manifest. The publication of the list with the particulars contemplated by sub-section (2) is considered as notice to all the pattadars. The pattadars are also given the right to object to the list within 30 days from the date of such publication. In other words, the intention of the Act is that no levy of additional assessment could be made until the lists are published thereby giving sufficient notice to the affected pattadars. It is the categorical assertion of the petitioners that no such publication of the list has been made in this case. It is stated in the counter-affidavit as follows:

With regard to the other contents (obviously a mis-type for contention) that the lists have not been published u/s 4(1) of the Act, it is submitted that the Government have in their Memo No. 349/N2/76-3 Rev./N/Dt/- 20-2-1976 issued instructions that the levy and collection of Additional Wet Assessment without observing the statutory requirements is illegal.

A copy of the Memo issued by the Government is enclosed with the counter-affidavit and we have perused it. There, the Government has clearly mentioned that the levy and collection on additional wet assessment without observing the statutory requirements including that of Section 4(2) will be illegal. The view of the Government is quite right. The language of Section 4(2) makes it clear that without the publication of the lists containing all the particulars, thereby giving en adequate opportunity to the affected pattadars, there cannot be any levy and collection of the additional revenue.

4. In view of the clear admission made in the counter-affidavit, we hold that the levy of additional revenue on the petitioners is illegal. Such levy can be imposed only after the publication is made and that too, for the period subsequent to such publication. In so far as the appeal u/s 9(2) is concerned, the appellate authority will have to decide it on its merits.

5. For these reasons, we allow the writ petition and set aside the levy of additional land revenue imposed on the petitioners. The writ petitioners will have their costs in view of the fact that this levy has been caused by the grievous

mistake committed by the government authority. Advocate''s fee Rs. 75/-.

