
(1975) 03 P&H CK 0023

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No's. 87, 125, 155, 161, 191, 194, 225, 247, 251, 282, 303, 304, 307, 312, 327, 357, 408, 424, 471, 488 and 646 of 1975

Chandi Ram and Others

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 23-03-1975

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Punjab Betterment Charges and Acreage Rates Act, 1952 — Section 5A
Punjab Betterment Charges and Acreage Rates Rules, 1955 — Rule 4

Citation : AIR 1975 P&H 343

Hon'ble Judges : Pritam Singh Pattar, J; Bal Raj Tuli, J

Bench : Division Bench

Advocate : R.S. Mital and M.L. Bansal, for the Appellant; J.N. Kaushal, Advocate-General and C.D. Dewah, Add. Advocate-General, for the Respondent

Judgement

Tuli, J.—This order will dispose of 21 writ petitions (Nos. 87, 125, 155, 161, 191, 194, 225, 247, 251, 282, 303, 304, 307, 312, 327, 357, 408, 424, 471, 488 and 646 of 1975), as they challenge the validity and constitutionality of certain provisions of the Punjab Betterment Charges and Acreage Rates Act, 1952. (hereinafter referred to as the Act) and the Rules framed thereunder, as are applicable to the State of Haryana. The Act received the assent of the Governor of Punjab on January 5, 1953, and was published in the Punjab Government Gazette (Extraordinary) dated January 21, 1953, and came into force in the territories comprised in the then State of Punjab on that date. The Patiala and East Punjab States Union also enacted the Pepsu Betterment Charges and Acreage Rates Act, 1954. which was in force in the territories of that State when the merger of the two States of Punjab and Pepsu took place with effect from November 1, 1956. Thereafter, it was considered desirable that in the new Punjab State there should be one Act governing the levy of Betterment Charges and Acreage Rates. Consequently, Sub-section (2) of Section 1 was substituted

as under by Section 2 of Punjab Act No. 12 of 1958:--

"1 (2). It shall extend to the territories which, immediately before the 1st November, 1956, were comprised in the State of Punjab and Patiala and East Punjab States Union."

This Amending Act received the assent of the Governor of Punjab on April 21, 1958, and was brought into force on November 15, 1958. by Punjab Government notification of that date. From that date the Act became applicable to the entire State of Punjab, as was constituted on November 1, 1956, and as a result of the reorganisation of that State, with effect from November 1, 1966, the Act was continued to apply to the State of Haryana.

2. The object of this enactment was to make a levy from the landowners who irrigated their lands from the various irrigation schemes including Bhakra-Nangal Project undertaken by the State, as contribution towards meeting the expenditure of those projects. The Statement of Objects and Reasons, as published in the Punjab Government Gazette (Extraordinary) dated October 28, 1952, reads as under: --

"Statements of Objects and Reasons-

With a view to rehabilitating the agricultural economy of the State, the Government of Punjab have undertaken the construction of a number of irrigation schemes, including the Bhakra-Nangal Project. This has entailed enormous expenditure and large loans have been taken and heavy investments made. It is, therefore, necessary and proper that a levy should be made from the landowners benefited thereby as a contribution towards meeting the said expenditure.

2. The betterment charges leviable in respect of lands in an irrigation scheme may amount to not more than one-half of the difference between the value of the lands before any work in connection with the scheme was undertaken and their estimated value after the coming into operation of the scheme. An elaborate procedure has been prescribed for ensuring that the charges are equitable.

3. The acreage rates are intended to cover the expenditure incurred by the Government in undertaking sub-division of the lands included in an irrigation scheme into one acre fields or in undertaking level, topographical or soil surveys or in constructing water courses or village roads therein."

In these petitions, we are not concerned with the acreage rates.

3. The Act was further amended by Punjab Act No. 7 of 1959, and the relevant sections of the Act are as under:--

"Section 2 (b) "betterment charges" means the charges levied u/s 4 on lands included in an irrigation scheme;

(c) "canal" includes-

(i) all parts of a river, stream, lake or a natural collection of water or natural drainage channel to which the provisions of Part II of the Northern India Canal and Drainage Act, 1873 (VIII of 1873) apply;

(ii) all canals, channels, reservoirs, wells, tubewells and lift irrigation arrangements constructed, maintained or controlled by the Government for the supply or storage of water;

(iii) all works, embankments, structures, supply and escape channels connected with such canals, channels, reservoirs, wells, tubewells or lift irrigation arrangements;

(iv) all watercourses, that is to say, all channels which are supplied with water from a canal but which are not maintained at the cost of the Government, and all subsidiary works belonging to any such channels;

(d) "cost of an irrigation scheme" means that total financial liability accruing from the loan contracted or the investment made, the interest thereon, the cost of maintenance and operation of the scheme or of an extension thereof or of an extension as a result thereof, with reference to the period during which the said liability has to be discharged;

(f) "irrigation scheme" means any such scheme as is referred to in Section 3;

(h) "prescribed" means prescribed by rules made under this Act;

(j) the expressions "Canal Officer" and "Divisional Canal Officer" have the meanings respectively assigned to them in the Northern India Canal and Drainage Act, 1873 (VIII of 1873);

(j) "matured area" means such area of land included in the irrigation scheme, which is subject to payment of occupiers rate u/s 36 of the Northern India Canal and Drainage Act, 1873 (Act No. VIII of 1873) during any harvest;

3. Irrigation schemes and notification of proposal to levy betterment charges:--

Where any scheme has come or comes into operation after the 15th day of August, 1947, for any one or more of the following purposes," namely:--

(i) the irrigation of lands from any existing or projected canal;

(ii) the extension of irrigation of land situate within the approved irrigation boundary of an existing canal;

(iii) the improvement of irrigation supply or capacity factors or water allowances to lands already irrigated;

(iv) the provision for or the improvement of drainage or any reservoir, dam or embankment constructed, maintained or controlled by the Government for the supply or storage of water, the Government may proceed to levy betterment

charges in respect of the lands which are included or are likely to be included in the irrigation scheme by notifying in Official Gazette a copy of which shall be posted at a conspicuous place in the village affected and in such other manner as may be prescribed its intention so to do, and shall specify in such notification such particulars respecting the proposed levy as it may think necessary including particulars respecting the type and extent of irrigation proposed:

Provided that no betterment charges shall be levied in relation to an irrigation scheme where the charges ordinarily leviable under other laws for the time being in force are sufficient to cover the cost of the scheme:

Provided further that the amount of the betterment charges recoverable from any scheme will be limited to the difference between the investment on the scheme and such part of it as may make it productive.

Explanation I. "Capacity factor" means the ratio of the mean supply to the authorised full supply discharge of a channel, and "mean supply" for a period connotes the sum of the daily supply in cusecs divided by the number of days during that period.

Explanation II. "Water allowance" means the designed number of cusecs of outlet or distributary capacity per thousand acres of land included in an irrigation scheme.

Explanation III. "Cusecs" is unit of discharge, and means the rate of flow of one cubic foot of water per second.

4. Procedure for levy of betterment charges:--

(1) At any time after the expiry of one month from the date of the publication of the notification referred to in Section 3. the Government may cause a schedule of betterment charges to be prepared for all lands or class of lands included in an irrigation scheme showing the rates at which the charges shall be leviable on the lands and payable by the landowners and occupancy tenures there-of and the proportions in which the charges shall be so payable.

(2) In preparing a schedule under Sub-section (1) for the levy of betterment charges in respect of any irrigation scheme regard shall be had to the following, namely: --

(a) the type of irrigation:

(b) the improvement in irrigation;

(c) the extent of betterment accruing of the lands.

(3) A draft of the schedule prepared under Sub-section (1) shall be published in the official Gazette, a copy of which shall be posted at some conspicuous place in the area affected and in such other manner as may be prescribed.

(4) Any land owner or occupancy tenant who may be affected by the proposed

betterment charges may, within sixty days from the date of the publication of the schedule in the official Gazette, or from the date of its publication in the village, whichever is later, present a petition in writing to the Government stating his objections, if any, to the levy of the betterment charges or the rate thereof.

(5) After considering the objections and after making such further inquiry into the matter as the Government may think fit, the Government shall determine the final schedule of betterment charges and cause the same to be published in the official Gazette, and in such other manner as may be prescribed.

5. Amount of betterment charges:--

(1) The amount of the betterment charges leviable in respect of any lands included in an irrigation scheme shall not exceed one-half of the difference between the value of the lands with reference to such date prior to commencement of any work in connection with the irrigation scheme as the Government may, by notification in official Gazette, fix in this behalf and their estimated value with reference to such other date after such commencement as the Government may similarly fix, and such valuations shall be made in the prescribed manner

(2) Where in an irrigation scheme only lift irrigation arrangements are maintained and operated by the landowners or occupancy tenants, the betterment charges leviable shall not exceed one-half of the charges which would otherwise have been payable for gravity flow irrigation:

Provided that whenever such lift irrigation arrangements are converted into gravity flow irrigation the land-owners or occupancy tenants, as the case may be, shall be liable to pay the full betterment charges in respect of lands.

5-A. Power to levy advance payment of betterment charges, realisation thereof, etc.-

(1) Notwithstanding anything to the contrary contained in this Act and subject to the provisions of Sub-section (2), every person liable to pay betterment charges under this Act shall, with effect from the Kharif harvest of the agricultural year 1958-59, be liable to pay to the Government advance payment of betterment charges in respect of his matured area at each harvest at such rate not exceeding twenty-five rupees per acre of such area as the Government may by notification direct:

Provided that the Government may fix different rates for different matured areas.

(2) The liability to make advance payment of betterment charges shall cease from the date on which the Schedule of Betterment charges has been published in the Official Gazette under subsection (5) of Section 4.

(3) The amount of betterment charges which any person is liable to pay under this Act shall be realised from him after deducting therefrom the amount of advance payment of betterment charges paid by him.

(4) If the amount of advance payment of betterment charges is found to be in excess of the amount of betterment charges, the excess shall be refunded by the Government to the person from whom it was realised.

(5) The amount of advance payment of betterment charges shall be realised, and deduction or refund thereof as referred to in Sub-sections (3) and (4) shall be made, in such manner as may be prescribed.

9. Mode of Recovery of betterment charges and acreage rates.

(1) The betterment charges and the acreage rates may be paid in one or more instalments as may be prescribed:

Provided that where the betterment charges or acreage rates are paid in instalments, interest shall be payable in respect of such instalments at such rates as may be prescribed and such interest shall be recovered in the same manner as the betterment charges or the acreage rates.

(2) Notwithstanding anything contained in this section, the Government may, subject to such conditions as may be prescribed, allow a landowner to relinquish any part of Ms land in favour of the Government in satisfaction of the betterment charges payable in respect thereof.

9-A (1) Notwithstanding anything to the contrary contained in this Act, pending the publication of final schedules u/s 4, any landowner may, if he so chooses, make an advance payment in lumpsum of betterment charges leviable under the Act. at such rate as the Government may by notification direct, and where a landowner exercises his choice to do so, he shall not be liable to pay advance payment of betterment charges, u/s 5-A, and if he has already paid any amount u/s 5-A, the advance payment payable under this section shall be reduced to that extent.

(2) The provisions of sub-sections (3), (4) and (5) of Section 5-A shall, as far as may be, apply to the payment made under Sub-section (1)."

4. The Punjab Betterment Charges and Acreage Rates Rules, 1955 (hereinafter referred to as the Rules), were framed with a view to make provisions for the determination of the betterment charges and acreage rates and for the recovery thereof from the landowners and occupiers. Rule 4 of the Rules, as amended in 1957, read as under:--

"4. Method of appraisalment of enhancement in value of land:--

(1) The entire area included in an irrigation scheme shall be divided by the Board into blocks or assessment circles so as to have more or less uniform physical characteristics of soil in each block or circle as per classification in the last settlement, taking note of any changes which may have affected the productivity of the soil or the area concerned.

(2) The board shall work out for each class of land in an assessment circle an

estimate of net assets in cash as defined in Clause (18) of Section 3 of the Punjab Land Revenue Act. 1887 (Act XVII of 1887):--

(a) for the date prior to the commencement of the scheme as fixed by the Government by notification u/s 5 of the Act; and

(b) for the date after such commencement as the Government shall fix by notification, u/s 5 of the Act subject to the following:--

(i) the rates to be adopted for various commodities of produce of land, of labour and any other expense, shall be those prevalent in the year of that date;

(ii) for the purposes of calculating the net assets both for pre-scheme and Post-scheme dates, the share that would be retainable by a tenant if the lands were let to non-occupancy tenant paying rent, whether in kind or cash, shall be two-third of the produce;

(iii) the yield to be assumed for calculating the net assets on both pre-scheme and post-scheme dates shall be as fixed in the last Settlement Report for soils of similar classification. Where the yield for any particular kind of irrigation or class of soil is not available in the last Settlement Report for the assessment circle concerned in the Irrigation Scheme, the yield may be taken as fixed in the last Settlement Report for the assessment circle situated in similar climatic region and receiving similar quantum of irrigation supplies, corrected, where necessary, by general observations regarding the quality of soil and local enquiry:

(3) Value of the land of landowner or any occupancy tenant will be taken as 30 times his net assets.

(4) The Betterment Charges shall be calculated with reference to classes of lands recorded in the last settlement and as modified in the latest Revenue Record available and also with reference to different types of irrigation facilities provided for any particular types of land."

That rule was found to be not workable and by notification dated January 18, 1973, the Haryana Government substituted that rule by the following:--

"4. Calculation of value of land.

(1) The value of the land for-

(a) the date prior to the commencement of the scheme as fixed by the Government by notification u/s 5 of the Act: and

(b) the date after each commencement as the Government shall fix by notification u/s 5 of the Act, shall be determined taking tahsil or assessment circle or a village as unit. The value of the land shall be worked out on the basis of the average sale price of the land in the unit for a period of three years prior to the two dates mentioned under sub-paras (a) and (b) above.

(2) The betterment charges shall be levied at rates, keeping in view the type and

extent of irrigation provided or proposed to be provided."

Rule 11A, inserted by notification dated January 5, 1959. prescribes the procedure for realising advance payment of betterment charges and reads as under:--

11A. (1). When the rate of advance payment of betterment charges is notified by the State Government under Subsection (1) of Section 5-A of the Act, the Canal Officer shall prepare a demand statement in respect thereof in the form prescribed for the charging of occupier's rate containing full particulars of the amount of advance payment of betterment charges which every person is liable to pay under the Act and cause a notice to be served upon him.

(2) As soon as the demand statement referred to in Sub-rule (1) is completed in respect of a village, the provisions of Rules 12, 13, 14 (a), 14 (c), 15, 23, 24, 25, 27, 28, 29, 30, 33 (b) and 34 shall, as far as may be, apply to the realisation of the advance payment of betterment charges in the same manner as they apply to the realisation of betterment charges under the Act

(3) Receipts shall invariably be given by the Lambardar or other persons making the collection to each assessee, for making advance payment of betterment charges.

(4) An account of each landowner shall be maintained in the Divisional Canal Office, showing the recoveries of advance payment of betterment charges."

5. After the enactment of Section 5-A the State Government began to realise the advance betterment charges with effect from Khariff 1958 and did not prepare the schedules u/s 4 of the Act determining the amount of betterment charges recoverable from the landowners with the result that some of the landowners filed writ petitions in this Court for restraining the State of Haryana from recovering advance betterment charges u/s 5-A from them. One such writ petition (Baru Singh Malik v. State of Haryana 1973 PLJ 285) was decided by M. R. Sharma, J., on 27-10-1972, and the learned Judge held that-

"the provisions of Section 5-A cannot be interpreted to mean that the State Government would be allowed to ignore the other provisions of the Act and continue making the levy on ad hoc rates. It is urged before me by the learned counsel for the petitioners that his clients were asked to pay charges at the rate of Rs. 5/- per acre from Kharif 1954 up to Kharif 1971, whereafter they are being asked to pay these charges at the rate of Rs. 10/- per acre. The levy was originally imposed in Kharif 1954. In other words, the State Government has been charging the betterment levy for the last 18 years without its proper determination under the substantive provisions of the Act. In the written statement filed on behalf of the State Government it has not been indicated that the scheme would be finalised in the near future. It would, thus, be seen that the levy which was originally intended to be a fee in respect of services rendered is now being charged as a tax. It is no doubt true that u/s 5-A of the Act the State

Government is duty bound to adjust this levy when a scheme is finally made, but the poor peasants and the land-holders cannot be expected to draw hope from promises of this type which are not expected to be fulfilled in the near future. The executive Government did not approach the legislative wing with a request to give it a mandate for the imposition of a tax and for this reason alone it cannot be allowed to realise anything as a tax even though the statute only authorises it to levy fees at a concessional rate."

In view of the special circumstances of that case the learned Judge directed that-

"the State Government shall refrain from making a levy of the betterment charges upon the petitioners till the finalization of schedule envisaged by Section 4 of the Act. If as a result of such a finalisation, the petitioners are found to be liable to pay any amount, it shall be open to the State Government to recover the same from the petitioners as arrears of land revenue."

An appeal under Clause 10 of the Letters Patent against that judgment was dismissed in limine and that spurred the State Government to take steps for the preparation and finalisation of the Schedules. First of all, Rule 4 of the Rules was amended, as has been stated above. The landowners continued to file writ petitions in this Court and three such petitions were disposed of by Hon'ble the Chief Justice and P. C. Jain, J, on 19-9-1974. The judgment was written in Sheo Kumar v. State of Haryana, (C. W. No. 2446 of 1974). In those cases, it was found that the demand for advance betterment charges was made for Rabi 1973-74 without the publication of the requisite notification under Rule 11-A of the Rules and on that ground the impugned demands of advance betterment charges were quashed. It was, however, observed that the decision would not debar the State from following the procedure laid down by law for creating afresh the demands for Rabi 1973-74 and for future crops, and for enforcing the same after hearing the objections, if any, that may be filed by the petitioners. Similarly, the petitioners of those cases were given the right to approach this Court afresh on the other points raised in the petitions on which the counsel had not been heard. Another batch of civil writs was decided by M. R. Sharma, J., on August 8, 1974, on the basis of his own earlier judgment in Baru Singh Malik's case (supra). The State filed 18 appeals under Clause 10 of the Letters Patent which were referred for decision to a Full Bench presumably on the ground that an appeal under Clause 10 of the Letters Patent against the judgment of the learned Single Judge in Baru Singh Malik's case (supra) had already been dismissed by a Division Bench. Those appeals came up for hearing before a Full Bench on 31-1-1975 (reported in The State of Haryana and Others Vs. Polu Ram Bhura Ram and Others,) (FB) and were disposed of on the agreement of the counsel for the parties as under:--

"The learned Advocate-General for the State of Haryana and counsel for the writ petitioner-respondents, who are present before us, agree that the direction issued by the learned Single Judge to the State Government to refrain from making a levy of the betterment charges upon the writ-petitioners (now

respondents) till the finalisation of the schedule envisaged by Section 4 of the Punjab Betterment Charges and Acreage Act, 1952, may be set aside, and for it may be substituted the direction which was given by a Division Bench of this Court in Civil Writ No. 2446 of 1974 -- Sheo Kumar v. State of Haryana, decided on 19-9-1974 (Punj & Har). Even otherwise, we are of the considered view that on the allegations appearing in the respective writ petitions from which these appeals have arisen, the only order that can and should be issued to the State is the one that was given in the case of Sheo Kumar (supra). We dispose of all these appeals accordingly, that is, by substituting for the direction issued by the learned Single Judge in the writ petitions in question the direction to the State to refrain from demanding any advance betterment charges from the writ-petitioner-respondents u/s 5-A of the Act without issuing the requisite notification u/s 5-A (1) and without following the procedure prescribed in Rule 11-A of the Punjab Betterment Charges and Acreage Rates Rules, 1955 (as amended in 1959). The demand of advance payment of betterment charges which was impugned in the writ petitions, that is for 1973-74. is also quashed on the same ground. In the circumstances of the case we make no order as to costs in any of these appeals."

The judgment is reported as State of Haryana v. Polu Ram 1975 p&h 78 - AIR 1975 P&H 2131 (FB).

6. The State of Haryana issued notification No. S.O.135/P.A.2/55/S.5/74 dated August 23, 1974, reading as under:--

"In exercise of the powers conferred by Sub-section (1) of Section 5 of the Punjab Betterment Charges and Acreage Rates Act, 1952, the Governor of Haryana hereby fixes the 16th June, 1948. as the date prior to the commencement of the work, and 16th June, 1967, as the date after the commencement of the work, for the determination of the sale price of the lands included or likely to be included in the Bhakra Nangal Project Canal System."

It has been stated in the returns filed in some of these writ petitions by Shri Hargolal, Under-Secretary to Government, Haryana, Irrigation and Power Departments, that the compliance of the judgment of this Court in C. W. No. 2446 of 1974 (Punj) (Sheo Kumar case) has been made by the State Government and subsequent to that judgment, all legal and administrative steps required under the Betterment Act are being followed by the State Government as per directions in that decision.

7. The first point that has been vehemently argued by Shri R. S. Mittal, on behalf of some of the petitioners, is that Section 5-A of the Act is ultra vires Article 14 of the Constitution as it confers arbitrary power without any guidelines and without providing any procedure for the determination of the advance betterment charges. It has to be borne in mind that Section 5-A only makes an interim arrangement for the recovery of the betterment charges for the period during which the schedule u/s 4 is not finally prepared. Naturally, it has not to make any elaborate provision for the procedure to be followed because of the provision

being transitory in character. Even then Rule 11-A has made an adequate provision for the procedure to be followed for determining the amount of advance betterment charges to be recovered from the landowners or occupiers for each crop. Under that rule the rate of advance payment of betterment charges is to be notified by the State Government under Sub-section (1) of Section 5-A of the Act and thereafter the Canal Officer has to prepare a demand statement in respect thereof in the form prescribed for the charging of occupier's rate containing full particulars of the amount of advance payment of betterment charges which every person is liable to pay under the Act and cause a notice to be served upon him. Thereafter, the provisions of certain rules mentioned therein become applicable. The demand slips are distributed under Rule 12 and an assessee is entitled to present his objections against the demand to the Divisional Canal Officer or the Deputy Collector concerned within thirty days of the date of service of the demand slip or where the demand slip is not duly served, when he has knowledge of the demand slip. Those objections have to be disposed of by the officer to whom they are presented and thereafter no objection to the demand at the time of collection of betterment charges is to be entertained nor is the collection to be suspended. It is true that the provision of appeal made in Rule 14 (b) has not been made applicable to such objections but a statutory provision does not become bad merely because a right of appeal is not granted against a particular order. The objections have to be disposed of either by the Deputy Collector or the Divisional Canal Officer who are fairly high officers of the Department and in the interest of expeditious recovery of the amount, the right of appeal has not been conferred on the assessee. It does not mean that the power to be exercised by the Deputy Collector or the Divisional Canal Officer in deciding the objections is arbitrary. He will have to decide the objections raised by the assessee in accordance with the principles of natural justice, though in a summary manner. It is, therefore, not a case in which the provision for raising objections to the demand and their disposal is not made in the Act or the Rules. Reliance has been placed on the Supreme Court judgment in Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another, , which is clearly distinguishable on facts. In that case, Travancore-Cochin Land Tax Act imposed a tax called "land tax" at a flat rate of Rs. 2/-per acre which was held to be ultra vires Article 14 of the Constitution. Certain other provisions of the Act were also struck down as ultra vires. Section 5-A of that Act provided for provisional assessment of basic tax in the case of un-surveyed lands reading as under:--

"5-A (1). It shall be competent for the Government to make a provisional assessment of the basic tax payable by a person in respect of the lands held by him and which have not been surveyed by the Government and upon such assessment such person shall be liable to pay the amount covered in the provisional assessment.

(2) The Government after conducting a survey of the lands referred to in Subsection (1) shall make a regular assessment of the basic tax payable in respect of such lands. After a regular assessment has been made, any amount

paid towards the provisional assessment made under Sub-section (1) shall be deemed to have been paid towards the regular assessment and when the amount paid towards the provisional assessment exceeds the amount payable under the regular assessment, the excess shall be refunded to the person assessed."

This section was held to be ultra vires Articles 14 and 19(1)(f) of the Constitution with the following observations:--

"Section 5-A declares that the Government is competent to make a provisional assessment of the basic tax payable by the holder of unsurveyed land. Ordinarily, a taxing statute lays down a regular machinery for making assessment of the tax proposed to be imposed by the statute. It lays down detailed procedure as to notice to the proposed assessee to make a return in respect of property proposed to be taxed, prescribes the authority and the procedure for hearing any objections to the liability for taxation or as to the extent of the tax proposed to be levied, and finally, as to the right to challenge the regularity of assessment made, by recourse to proceedings in a higher Civil Court. The Act merely declares the competence of the Government to make a provisional assessment, and by virtue of Section 3 of the Madras Revenue Recovery Act, 1864, the landholders may be liable to pay the tax. The Act being silent as to the machinery and procedure to be followed in making the assessment leaves it to the Executive to evolve the requisite machinery and procedure. The whole thing, from beginning to end, is treated as of a purely administrative character, completely ignoring the legal position that the assessment of a tax on person or property is at least of a quasi-judicial character. Again, the Act does not impose an obligation on the Government to undertake survey proceedings within any prescribed or ascertainable period, with the result that a land-holder may be subjected to repeated annual provisional assessments on more or less conjectural basis and liable to pay the tax thus assessed. Though the Act was passed about five years ago, we were informed at the Bar that survey proceedings had not even commenced. The Act thus proposes to impose a liability on land-holders to pay a tax which is not to be levied on a judicial basis, because (1) the procedure to be adopted does not require a notice to be given to the proposed assessee; (2) there is no procedure for rectification of mistakes committed by the Assessing Authority; (3) there is no procedure prescribed for obtaining the opinion of a superior Civil Court on questions of law, as is generally found in all taxing statutes, and (4) no duty is cast upon the Assessing Authority to act judicially in the matter of assessment proceedings. Nor is there any right of appeal provided to such assessees as may feel aggrieved by the order of assessment."

It may be observed that the betterment charges levied under the Act are not a tax but fall in the category of fees or reimbursement of capital expenditure incurred by the State Government for providing irrigation facilities to the landowners or occupiers. Ordinary provisions of a taxing statute, as has been

pointed out by their Lordships of the Supreme Court in the above judgment, therefore, do not apply. Section 5-A of the Act, however, has made a provision for issuing notices to the landowners and occupiers who are liable to pay the advance betterment charges and they have been given the right to file objections which have to be disposed of, as stated in Rule 11-A of the Rules noticed in detail above. Only a right of appeal has not been provided against that decision. It is not an invariable rule that a right of appeal must be provided in every case. It is for the Legislature to provide such a remedy or not. The ratio decidendi of the Supreme Court judgment, therefore, does not apply to the provisions of Section 5-A of the Act. On this differentiation, Section 5-A of the Act cannot be held to be ultra vires Articles 14 and 19(1)(f) of the Constitution.

It will not be out of place to mention that in the case before the Supreme Court, the main taxing provision of the statute was struck down and, therefore, all ancillary sections of the Act providing for the levy or collection of that tax could not survive and had to go with the main section. In the cases before us, no attack has been made to the levy of betterment charges from the petitioners under the Act. Only the recovery of advance betterment charges u/s 5-A has been assailed. As I have already pointed out, Section 5-A makes interim arrangement for the recovery of betterment charges pending the finalisation of the schedule u/s 4. By necessary implication, the procedure u/s 5-A has to be a summary one so that the collection of the betterment charges may not be hampered or delayed for an unduly long time. Being an interim measure it has to comply with the bare minima of the rules of natural justice, and the power having been vested in fairly high officers of the Department, the section cannot be held to be ultra vires on the ground that it gives arbitrary power without any guidelines. The maximum amount of advance betterment charges was fixed by the Legislature as Rs. 25/- per crop and within that limit the rate of advance betterment charges has to be fixed. It has been stated at the Bar by the learned Advocate-General that the highest rate ever fixed was Rs. 10/- per crop having perennial irrigation, which was by no means on the high side. It varied from Rs. 1.25 per acre to Rs. 10/- per acre per crop so that a judicious mind was applied while prescribing the amount of the advance betterment charges to be paid by the landowners. We have, therefore, no hesitation in repelling the attack on the constitutional validity of Section 5-A of the Act.

8. The learned counsel for the petitioners have then argued that the dates June 16, 1948, as the date prior to the commencement of the work, and June, 16, 1967, as the date after the commencement of the work, for determination of the sale price of the lands in order to compute the amount of betterment charges payable by the landowners or occupiers, have been fixed arbitrarily in the notification dated August 23, 1974, and, therefore, the notification should be struck down. It has been explained by the learned Advocate-General that in the notification issued u/s 3 of the Act on May 4, 1956, it was mentioned that with regard to the Bhakra-Main-line Canal System, the value of the land shall be determined in the case of perennial scheme of irrigation when the extent of

irrigation provided is 62 per cent, for computing the betterment charges according to the increase in value of the lands benefited thereby. A copy of that notification has been filed along with the written statement in C. W. No 125 of 1975 (Punj & Har), Baloo v. State of Haryana. It is thus explained that June 16, 1967, is not an arbitrary date but that was the date on which the extent of irrigation provided reached 62 per cent. As regards the earlier date prior to the commencement of the work, although the work of Bhakra Nangal Project had been started even before partition, the Punjab Government prescribed June 16, 1948. as the date because of the coming into operation of the irrigation scheme after August 15, 1947. From that point of view that date also cannot be said to be arbitrary. The petitioners have not been able to rebut this assertion on behalf of the respondents and, therefore, that notification cannot be struck down on the ground that it has mentioned arbitrary dates.

9. The learned counsel for the petitioners have vehemently argued that they have already paid considerably large amount on account of advance betterment charges and no further amount should be recovered from them unless the final schedule is published u/s 4 of the Act. In reply, it has been stated by the learned Advocate-General that the betterment charges recoverable from the landowners of Haryana State receiving irrigation from the Bhakra Nangal Project have been estimated to be Rupees 36,33,50,000/- out of which about Rs. 15.89 crores have been recovered so far, so that about 60 per cent, of those charges have yet to be recovered. The recovery of betterment charges in 1971-72, 1972-73 and 1973-74 amounted to Rs. 125 lacs, Rs. 141 lacs and Rs. 138 lacs respectively, so that it will take a number of years to make the full realisation. It is thus submitted that the petitioners and other landowners have not made any excess payment so far and all these payments are liable to be adjusted when the final schedule is published. When the earlier writ petitions came up for hearing before M. R. Sharma, J., these facts could not be pleaded because of the non-availability of the record from the Punjab State which related to the period prior to November 1, 1966, and, therefore, that decision was modified by the Full Bench.

10. The learned counsel for the petitioners have also submitted that the amounts of occupier's rate and owner's rate recovered under Sections 36, 37 and 38 6f the Northern Indie Canal and Drainage Act, 1873, should have been counted towards the amount recoverable from the petitioners and other landowners on account of betterment charges. In reply, it has been explained by the learned Advocate-General that the occupier's rate and owner's rate as prescribed in those sections are taken towards the productive expenditure while the betterment charges are to recover the unproductive expenditure incurred on the Bhakra Nangal Project and the Bhakra Mainline Canal System. The provisos to Section 3 make this position abundantly clear and while finalising the schedule u/ s 4, the competent officers will pay due consideration to the provisions of Section 3 of the Act. The landowners will have the right to raise their objections when they receive notices for the amount fixed against them It is too premature to express any opinion on this aspect of the matter.

11. Shri Rajesh Chaudhry, the learned counsel for some of the petitioners, raised a novel point, that is, the levy of betterment charges could not be made by the State Government under any entry in List II or List III of the Seventh Schedule of the Constitution. His argument is that the levy is a tax and not a fee and no tax can be levied by the State Government in respect of the entries mentioned in List II; only fees can be levied. M. R. Sharma, J., held in *Baru Singh Malik's* case that the betterment charges were by way of fee for the services rendered. This levy is certainly not a tax because it is not levied on all the landowners but only on such landowners whose lands have benefited from irrigation received from the canals flowing from the Bhakra Nangal Project. As the statement of the objects and reasons indicates, the levy was made with a view to recoup the large expenditure that the State had to incur on the projects for providing irrigation facilities to the various land-owners. Therefore, this levy is in the form of contribution to the Government for having incurred heavy expenditure on those projects and, in our opinion, the legislation for that contribution could be made under Entry 17 of List II of Seventh Schedule of the Constitution, which reads as under: --

"17. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of Entry 56 of List I."

There is thus no merit in this submission which is repelled.

12. Having held that Section 5-A of the Act is intra vires and action can be taken in accordance therewith, it has to be decided whether the State Government has not taken too long to prepare and finalise the schedules u/s 4 of the Act and further resort to Section 5-A should or should not be permitted. Clearly, one of the following two courses can be adopted:--

"(i) to restrain the State Government from making any further recovery of advance betterment charges till the finalisation of the schedule u/s 4; or

(ii) to allow the Government to continue levying advance betterment charges u/s 5-A of the Act for a few more years during which period it should finalise the schedule u/s 4 of the Act in order to make further recoveries from the landowners or occupiers." After carefully weighing the pros and cons of these two alternatives, we are of the opinion that the alternative of allowing the State Government to continue recovery of the betterment charges u/s 5-A of the Act for another two or three years will be in the interest of the landowners and occupiers rather than to stop the recovery now in consequence of which they shall have to pay heavier amounts when the schedules u/s 4 of the Act are finalised. We accordingly direct that the State Government shall continue to recover the advance betterment charges from the landowners and occupiers u/s 5-A of the Act till Kharif crop 1977, that is, till September 30, 1977, and for the Rabi crop starting from October 1, 1977, the State Government will be entitled to recover the betterment charges only if by that time the schedules u/s 4 of the

Act are finalised. In case of the non-finalisation of the schedules by September 30, 1977, recovery of advance betterment charges u/s 5-A will not be made thereafter. We have mentioned the date September 30, 1977, because it was on 19-9-1974, when C W. No. 2446 of 1974 (Punj) Sheo Kumar v. State of Haryana was decided by the Division Bench, that the Advocate-General had given an assurance that the State Government would finalise the schedules within three years and he has stuck to that assurance before us. This date has, therefore, been fixed with his consent and agreement.

13. The learned Advocate-General, in the first place, tried to argue that if a statutory provision is held to be valid, the Court should not restrain the State Government from taking proceedings or action thereunder. This rule, however, cannot be said to apply in the case of a statutory provision making an interim arrangement. Such an arrangement is by its very nature of a short duration and if it is allowed to continue, as if it is a provision for permanent arrangement, it will amount to abuse of power under that provision. In the judgment of M. R. Sharma, J., in *Baru Singh Malik's case* (supra), there appears to be a factual mistake as to the crop from which the levy of advance betterment charges commenced. The learned Judge has mentioned Khariff 1954 whereas it should be Kharif 1958. Even from that date, more than sixteen years have already expired without the State Government having finalised the schedules. The learned Advocate-General frankly submitted that the delay had been caused by the inaction of the Punjab Government prior to November, 1966, and after the formation of the State of Haryana, no responsible officer realised that the schedules had to be finalised in order to determine the amount of betterment charges and recovery thereof u/s 4 of the Act. The interim arrangement provided for in Section 5-A of the Act, which had been acted upon by the State of Punjab prior to November 1, 1966, continued to be in vogue and the attention of the Haryana Government was drawn to this matter only after the decision of M. R. Sharma, J., in *Baru Singh Malik's case*. Letters patent appeal against which was dismissed by a Division Bench. We consider this explanation to be satisfactory and, therefore, have decided to allow the time of three years with effect from September 30, 1974, as was asked for by the learned Advocate-General.

14. The learned Advocate-General has also assured that till September 30, 1977, the rate of advance betterment charges recoverable for each crop will not be increased beyond the rates now in force.

15. It has been asserted by the learned counsel for the petitioners that the increase in the sale price of the land as on June 16, 1967, the date fixed in the notification dated August 23, 1974, as compared with the sale price on June 16, 1948, is not entirely due to the irrigation facilities having been provided by the State Government from the Bhakra Mainline Canal System flowing from the Bhakra Nangal Project but it is also due to certain other factors like inflation, improvement of the land made by the landowners and occupiers themselves by investing money in making it more fertile and while determining the sale price on

those two dates, the State Government should bear in mind these factors. We have no doubt that the officials who are entrusted with the work of determining the sale price of the land on those two dates will bear these factors in mind.

16. In the result, we issue the same direction which was issued by the Full Bench in *State of Haryana v. Polu Ram* (supra), that the Haryana State shall not demand any advance betterment charges from the landowners u/s 5-A of the Act without issuing the requisite notification u/s 5-A (1) and without following the procedure prescribed in Rule 11-A of the Rules, as amended in 1959. The advance betterment charges u/s 5-A shall be levied even without finalising the schedules u/s 4 of the Act only up to Kharif, 1977, that is, September 30, 1977. and thereafter, the betterment charges will be levied only if and when the schedules u/s 4 of the Act are finalised. The writ petitions are decided accordingly leaving the parties to bear their own costs.

Pattar, J.

17. I agree.