

(1981) 04 KAR CK 0014
In the Karnataka High Court
Case No : WP 57531/76

Lingappaiah and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 09-04-1981

Acts Referred:

Karnataka Irrigation (Levy of Betterment Contribution and Water Rate) Act, 1957 —
Section 4(1)

Citation : (1981) 2 KarLJ 162

Hon'ble Judges : M. K. Srinivasa Iyengar, J

Judgement

1. The petitioners who are agriculturists of Sunkathanur village in Pandavapura taluk have challenged the order of the Assistant Commissioner and Betterment Levy Officer, Pandavapura Sub-Division in Case No. BCR 3/72-73 dated 30-7-75 a copy of which has been marked as Exhibit "C".

2. The Assistant Commissioner and Betterment Levy Officer (Shri Y. Chandrashekhar) in the aforesaid case made an order on 22-4-75 in respect of lands belonging to these petitioners and others that Rs. 400 per acre should be levied as betterment contribution in respect of all lands benefited by the construction of the Ane near Bolenahalli village across the river Lakapavani. It has to be mentioned that the Assistant Commissioner in terms of Section 4(1) of the Karnataka Irrigation (Levy of Betterment Contribution and Water Rate) Act, 1957 (hereinafter referred to as the Act) determined the value of the lands before the date of commencement of the irrigation work at Rs. 702-50 per acre and the value after the date of completion of the irrigation work at Rs. 1239-00 per acre and accordingly arrived at the difference between the market value at Rs. 536-50 P. According to Section 4(1) of the Act, the betterment contribution payable, was to be an amount equal to one half of this difference. On such computation, the betterment contribution should have been only half of Rs. 536-50. However, the Assistant Commissioner determined the betterment contribution at Rs. 400 per acre and it appears that the petitioners did not challenge it.

3. The first proviso to S. 4(1) was amended by the Karnataka Act No. 29 of 1974 which came into force with effect from 22-6-74. The proviso as substituted by Act No. 16 of 1968 was as follows prior to the amendment by Karnataka Act No. 29 of 1974:

"Provided that the amount of betterment contribution payable in respect of any land shall not be more than five hundred rupees per acre."

By virtue of the amendment by Act No. 29 of 1974, the words "one thousand and five hundred rupees" were substituted for the words "five hundred rupees". Section 4 of the Amending Act provided that where an order under sub-section (5) of Section 4 of the Principal Act had been made before the commencement of the Amending Act and the betterment contribution was limited by reason of the first proviso to sub-section (1) of the said section to Rs. 500, the Betterment Levy Officer shall after giving reasonable opportunity of being heard to the landholders concerned, revise the earlier order and specify the amount of betterment contribution payable in accordance with the Principal Act as amended by the Amending Act.

4. Apparently in view of this provision, the successor Assistant Commissioner, Pandavapura initiated further proceedings. It transpires that the notices had been sent to be served on the landholders through the Tahsildar, Nagamangala and none of the petitioners appeared before him and accordingly, he made the order dated 30-7-75 which is now challenged. By that order, the Assistant Commissioner directed that the betterment contribution should be levied at Rs. 1500 per acre.

5. It is contended by the learned Advocate for the petitioners that this order had been made without due notice to the petitioners and at all events it is unwarranted in law. It is urged that the petitioners are all residents of Pandavapura Taluk and no notices had been served upon them. No Counter-affidavit has been filed on behalf of the respondents and the averment in this behalf by the petitioners is un rebutted. 6. It appears to me that the Assistant Commissioner has misunderstood the scope of the amendment introduced by the Karnataka Act No. 29 of 1974. It is seen from the impugned order Ex-C that the difference between the market value of the lands before the date of commencement of the construction of the irrigation work and the market value after the date of completion was Rs. 536-50 which was the figure arrived at by the Assistant Commissioner earlier. The Assistant Commissioner proceeded to state-

"It is thus seen from the above data that the difference between the market value of the land before the date of commencement and after the date of completion of the Irrigation work as stipulated in S. 4(1) of the said Act is more than Rs. 536-50 p.a. But proviso to the said section stipulated that amount of betterment contribution payable in respect of any land shall not be more than Rs. 500 p.a. As per the Government Circular No. RD 94 EWR 74 dated 19-8-74 the

Betterment contribution, may be enhanced maximum upto Rs. 1500 instead of Rs. 500 p.a."

On the above reasoning, he determined the betterment contribution at Rs. 1500. It is obvious that the Assistant Commissioner overlooked the provisions in S. 4(1) that the betterment contribution should be the difference between the two market values. Therefore this was a case in which the betterment contribution did not exceed Rs. 500 and was not restricted by virtue of the proviso to S. 4(1) of the Act (before the amendment by Act No. 29 of 1974) to Rs. 500. Therefore, no revision at all was permissible. It is also clear that the proviso only spoke of the maximum betterment contribution that could be levied and by the amendment also what was prescribed was the maximum limit and not that in every case the betterment contribution should be Rs. 1,500 per acre. The view taken by the Assistant Commissioner is clearly untenable.

7. The order Ex. C and the betterment contribution determined thereunder is clearly not warranted by the provisions of the Act. Accordingly it is quashed and the demands if any pursuant to such order shall not be enforced. Parties shall however bear their own costs.