(1981) 03 KAR CK 0043

In the Karnataka High Court

Case No : WP 4918/80

Siddappa H. APPELLANT

Vs

Asst. Commr. Shimoga and Another RESPONDENT

Date of Decision : 27-03-1981

Acts Referred:

Karnataka Irrigation (Levy of Betterment Contribution and Water Rate) Act, 1957 — Section 3

Citation : (1981) 2 KarLJ 201

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

1. This petition coming up for preliminary hearing after notice to the respondents, is disposed of by the following order after hearing the counsel for the parties. 2. The Petitioner is the owner of the land bearing S. No. 69 of Mangote village. The extent of the land owned by him is 29 acres. He has alleged that out of this 29 acres of land, 10 acres are lying fallow. He has also stated that the entire land is not irrigated by any water stored in irrigation work constructed and maintained by the State. Earlier, betterment levy was levied on the petitioner in terms of S. 3 of the Karnataka Irrigation (Levy of Betterment Contribution and Water Rate) Act, 1957. When the betterment levy was demanded, the petitioner challenged the same in W.P. No. 569 of 1970. While that petition was pending, he filed another W.P. No. 1520 of 1974 challenging the demand made again. In the latter petition, Venkataramiah, J., (as he then was) quashed the impugned demand therein with certain directions to the respondents. It is useful to extract para 3 of that order made in WP No. 1520 of 1974 on 7-8-75.

"The demand made by the Tahsildar which is impugned in this writ petition shall not be enforced against the petitioner for a period of 30 days from to-day. If the petitioner files objection under sub Rule (3) of rule-4 of the Karnataka Irrigation (Levy and water rates) Rules, 1965 before the Assistant Commissioner, Shimoga, the Assistant Commissioner shall after condoning the delay in preferring the objection, proceed to hold an enquiry into the liability of the petitioner to pay the water rate. During the said enquiry, the Assistant Commissioner shall give all reasonable opportunities to the petitioner to adduce evidence in support of his case. The Assistant Commissioner shall also inspect the land in question if it becomes necessary to do so. The liability of the petitioner to pay the water rate shall be governed by the decision of the Assistant Commissioner."

2. After the disposal of that petition as above, the petitioner filed his objections within the prescribed time to the Assistant Commissioner now respondent-1 in this petition. The Assistant Commissioner in case No WRA 7/75-76 of the petitioner-appellant has passed the order on 26-5-77 pursuant to which respondent-2 Tahsildar has issued the notice dated 20-10-79 demanding a sum of Rs. 29,525-07 from the petitioner. The order of respondent-1 is at Annexure B and the demand notice is at Annexure-G.

3. It is the case of the petitioner that he is not liable to pay any water rate as he has not been supplied any water from the Government reservoir or any other water which belongs to the Government. It is his case that he is cultivating part of his land from water which flows out as waste from the neighbouring land owners. In para-5 of the petition, he has, however, stated that the Tahsildar demanded Rs. 29,525-07 by way of betterment tax. There is no such betterment tax under the Act. There is only betterment levy under S. 3 as already mentioned and the Tahsildar can recover water rate levied under S. 10 of the Act. However, in his prayer in the petition he has prayed for quashing of the order and the demand notice at Annexures B and C respectively on the ground that the order of respondent-1 is not in conformity with the rules of natural justice and the directions issued by this court in the earlier writ petition and that the order has been passed behind his back and without hearing him.

4. The learned Government pleader has made available the records of respondent-1 with reference to the appellate order at annexure-B. On perusing the records, I find that the first respondent Assistant Commissioner has conducted a spot inspection. There is no evidence in the record to indicate that the petitioner was given notice of the spot inspection. In the record I find that the respondent-1 has recorded his observations at the spot inspection. He was accompanied by the Tahsildar and the Revenue Inspector. There is no mahazar as such drawn ofthe spot inspection. The spot inspection was conducted on 26-3-77. The order has been passed on 26-5-77. Between these two dates, there is nothing in the records to indicate that the petitioner was issued or confronted with the findings recorded by the Assistant Commissioner. The portion of the order in the writ petition No. 1520 of 1974 extracted above clearly indicates that the Assistant Commissioner was required to give reasonable opportunity to the petitioner to adduce evidence in support of his case. He was also given liberty to inspect the land in question if it became necessary to do so. I find from the impugned order at Annexure B and the records produced before the court that no opportunity whatsoever has been given to the petitioner by respondent-1 after his objections were filed.

5. Undoubtedly, as evidenced by the records, spot inspection has been made behind the back of the petitioner. The result of the spot inspection has been to order imposition of water rate on the petitioner resulting in civil consequences. It is well settled principle of law that such civil consequences cannot be imposed on a citizen unless the citizen has been given a proper opportunity of being heard. Apart from this, the conduct of respondent-1 is quite contrary to the express directions given by this court in the earlier W.P. No. 1520 of 1974. Therefore, the impugned order at Annexure B is liable to be quashed. on both the grounds mentioned by me and it is accordingly quashed.

6. Normally, if the order pursuant to which the notice was issued is quashed, the notice must necessarily be quashed. But I wish to go further and point out that the notice suffers from inherent defects which are required to be pointed out before it is quashed. It is issued in the Taluk Office, Bhadravathi. It mentions the name of the village and shows the petitioner as the cultivator of S. No. 68. There is no mention of any demand in respect of either levy of betterment contribution under sec. 3 in the specified amount per acre or reference to a levy of water rate under S. 10 of the Act. But it speaks of land revenue to the State for the year 1979-80 not being received and there is apprehension that the State may not get its revenue and in accordance with S. 147 of the Land Revenue Code, standing crops have been prohibited from being cut. It further states in case the prohibition is defied, the petitioner will be subjected to levy of fine in accordance with S. 148 of the said Code. There is further indication in the impugned notice at Annexure C that in order to escape penal consequences indicated, the petitioner should pay in accordance with S. 153 of the said Land Revenue Code, all arrears due to the Government. At the end of the notice, survey number is mentioned and computation totalling to Rs. 29,525-07 is indicated. There is no indication how that amount is arrived and computed in respect of which levy. It is significant to note that the Land Revenue Code which was applicable in that area was repealed by Karnataka Land Revenue Act, 1964. Reference to those sections has no meaning whatsoever to a person who receives the notice. It is only an assumption of the petitioner that the amounts indicated are towards levy of betterment contribution. Betterment levy is entirely governed by the provisions contained in the Act in Ss. 3 to 9. A person aggrieved by the levy of betterment contribution has a right of appeal to the court of the Civil Judge under sub-section (6) of S. 4 of the Act and not to the Assistant Commissioner. Therefore, the assumption of the petitioner appears to be incorrect, in so far as it relates to Annexure C. If it is water rate relatable to the Act then the notice does not indicate on what basis the sum of Rs. 29,525-07 is arrived at. There is evidence in the file of respondent-1 that there was standing paddy crop in the land which he visited. For the relevant year 1979-80, the extent was 29 acres of land. Assuming that the whole of it was under paddy cultivation, it cannot attract such high levy of water rate. If it is relatable to the land revenue then it is much worse, for land revenue does not exceed Rs. 20 per acre assuming that it is irrigated. Having pointed out these additional reasons, Annexure-C also is

quashed as being without the authority of law, without jurisdiction and so vague that no reasonable person can act upon such demand notice.

7. Rule will accordingly issue. A copy of this order will be forwarded to the Deputy Commissioner, Shimoga, for needful action against the Tahsildar who has issued the notice at Annexure-C, in the interest of better administration and to ensure the rights of cultivators. However, Respondent-1 is given the liberty to reopen the appeal of the petitioner giving him an opportunity to adduce evidence to prove the stand taken by him that his lands are not irrigated by water from Government reservoir, tank, canal etc. The opportunity should be real and if necessary with the assistance of a counsel. If the spot inspection is made, an appropriate mahazar shall be drawn up attested by independent witnesses in the presence of the petitioner. This would be pursuant to the direction given in the earlier petition. If ultimately water rate is to be levied, attention of the respondents is drawn to the provisions of the Act and the rules made thereunder as to the competent authority to determine the water rate, the mode and manner of levy and collection.

8. The petition is allowed with the above observations. Rule is made absolute and the impugned orders are quashed.

9. There will be no order as to costs.