

Orissa Betterment Charges Act, 1955

CONTENTS

1. Short Title, Extent And Commencement
2. Definitions
3. Betterment Charge Leviable
4. Schedule Of Irrigable Lands Under Command And Betterment Charges
5. Publication Of Scheme And Notice To Owners And Persons Interested
6. Enquiry And Award
7. Instalments Of Betterment Charges-Betterment Charges To Be Charged On Land Next To Land Revenue
8. Betterment Charges On Newly Reclaimed Land
9. Remission And Suspension
10. Any Other Charges Not To Be Affected
11. Persons Liable To Pay Betterment Charges
12. Application For Transfer Of Liability
13. Protection Of Land Against Sale For Arrears Of Betterment Charges
14. Appeals
15. Revision By The Board Of Revenue
16. Finality Of Orders
17. Bar To Jurisdiction Of Civil Courts
18. Indemnity From Loss
19. Indemnity From Legal Proceedings
20. Powers Of Revenue And Canal Officer To Summon Persons, Etc
21. Power To Make Rules
22. Power To Remove Difficulties

Orissa Betterment Charges Act, 1955

An Act to provide for the levy of Betterment Charges on certain lands in the State of Orissa Whereas it is expedient to impose a betterment levy on the lands to be benefited by the proposed canals under the Hirakud Dam Project; It is hereby enacted by the legislature of the State of Orissa in the Sixth Year of the Republic of India as follows: Statement of Objects and Reasons-- As compared to the Irrigation Projects taken up in the past, the new Irrigation Projects constructed in recent years or under construction at present, are much more expensive partly on account of the highest price level and partly on account of more difficult and multipurpose

nature of some of these Projects requiring costly machinery, equipment and other supplies. Cost of maintenance and operation of the irrigation works has also increased in recent years due once again to the high price level. It is, therefore difficult for many of the new projects more especially the major projects, to produce satisfactory financial results soon after they are completed. These new schemes cost crores of rupees and cannot, therefore, naturally be expected to be productive immediately or even soon after their completion. Interest charges on the capital outlay have to be borne by the State Government from the very start though the Schemes are likely to be productive only some years after they are completed. The land owners benefited by these projects, apart from deriving increased annual profits, will in due course also get substantial increases in the value of their lands. This will naturally be at the expense of the general tax-payer and it is only in the fitness of things that these beneficiaries should bear at least a reasonable proportion of the cost of providing the benefits to them. They should not be allowed to fully appropriate the unearned increment in the land values by the irrigation works executed through the efforts of the community at large. When the State provides some facilities for a section of the population, the beneficiaries should, according to the canon of the population, and on sound financial principle, contribute to reduce the capital cost involved in the provision of these facilities. Levy of betterment charges for these reasons has been regarded as a sound measure of public finance and also recommended by the Planning Commission. Another ground on which such a capital levy is justified is the effect it has of eliminating speculative profits. A levy of betterment charges would keep down land values within reasonable limits in irrigable areas. This is necessary for stability in rural areas so essential for full development. The levy also represents the State's share in the increased land values on account of execution of costly projects for the benefit of people in a particular area. Betterment levy is imposed not over the whole cultivable land but only on the area under irrigable command of a project. All lands under irrigable command of a project have a reasonable chance of getting canal water and are thus liable to betterment levy irrespective of whether water is actually taken or not. Canals are under construction in the districts of Sambalpur and Bolangir-Patna for utilization of water from the reservoir that will be created by the Hirakud Dam for the purpose of irrigation. The progress of construction has been rapid in the past few years and

there is reasonable prospect of completion of canal work by 1956. These canals have a culturable commanded area of 420,000 acres in the two districts barring the areas which were proposed to be served by lift canals which for the present have been excluded from the scheme. There is considerable scope for improvement and extension of the existing dalfi irrigation and in order to effect such improvement and extension, elaborate investigations have been recently completed. When the construction of Hirakud Dam is completed, there will be a regulated discharge of 8,000 to 12,000 causecs (cube feet per second) in the Mahanadi River from November to June, as against the present minimum of only 300 causecs. To utilise this water in extending irrigation in the delta, it has been proposed to extend the command of the existing canals from 406,000 to 541,000 acres and to provide new canals in Cuttack and Puri districts to command a new area of 536,000 acres. The existing canals cannot get adequate winter supplies on account of lack of water. The regulated discharge from the Hirakud reservoir will give an assured timely supply for the delta area and will enable the conversion of the existing canal system from non-perennial to perennial. The new canals will irrigate the lands in the three doabs, viz, Kathjori-Kushabhadra, Kushabhadra-Bhargabi and Bhargabi-Daya. The capacities of the existing canals are proposed to be increased in order to enable them to carry extra depth of water and the existing weirs will be remodelled to provide extra head. The distributaries and sub-distributaries will be improved and water courses done according to modern methods. It is also proposed to provide adequate drainage facilities in the irrigated area both new and old to rapidly drain off surplus water, These schemes both in the Sambalpur Zone and in the delta area will cost crores of rupees. It will, therefore, be necessary and desirable to impose betterment levy in these area in order to recover from the beneficiaries at least a part of the capital cost and interest charges. This Bill, therefore, seeks to give power to the State Government to levy betterment charges in the area which will be benefited by the construction of the Hirakud Dam Project including the Delta Irrigation Scheme. The Bill provides the following important features: (1) the betterment charges will be levied at flat rates based primarily on the increased yield that the lands will give under irrigated conditions; (2) the persons liable to pay the betterment charges will have the option to pay these charges either at one time or in a maximum of 16 installments with the interest at 4¼% per annum; (3) the betterment charges will be levied in Sambalpur Zone on different

scales in accordance with the classification of different categories of lands and in the Delta Zone on considerations of the extent to which new or increased irrigation facilities are provided; (4) provision has also been made in the Bill for suspension of the levy of betterment charges under certain contingencies. Published vide Orissa Gazette Ext. No. 168 of 1954-Orissa Act 2 of 1956.

1. Short Title, Extent And Commencement :-

- (1) This Act may be called the Orissa Betterment Charges Act, 1955.
- (2) It extends to the districts of Sambalpur, Bolangir, Puri and Cuttack.
- (3) It shall come into force at once.

2. Definitions :-

In this Act, unless the context otherwise requires -

- (a) "Betterment charges" means the charges levied under Section 3 on lands under irrigable command of the irrigation scheme of the Hirakud Dam Project;
- (b) "Canal Officer" means an officer not below the rank of an Executive Engineer appointed as Canal Officer by the State Government, for the purpose of this Act;
- (c) "Collector of Betterment Charges" means an officer not below the rank of a Collector appointed as such by the State Government under the Provisions of this Act;
- (d) "Irrigation scheme of the Hirakud Dam Project" (hereinafter referred to as the "Scheme") means all canals, branch canals, distributaries, minors water courses, embankments, structures, lift irrigation arrangements and similar other works and all other works incidental thereto under Hirakud Dam Project designed to ensure supply of water to irrigate lands and includes improvements to an extension of the existing canal system in the district of Cuttack;
- (e) "Land" means any land that is fit for agricultural purposes or that may be capable of being rendered fit for such purposes on the completion of the scheme;
- (f) "Lands under irrigable command" means such lands as are irrigated or capable of being irrigated under the scheme;
- (g) "Prescribed" means prescribed by rules made under this Act;
- (h) "Revenue Officer" means an officer of the State Administrative Service appointed as a Revenue Officer for purposes of this Act;
- (i) "Sambalpur Zone" and the "Delta Zone" respectively mean the

areas comprised within the districts of Sambalpur and Bolangir and the districts of Cuttack and Puri as at present constituted;

(j) the expressions "landlord", "tenant" "occupancy tenants" and "service tenants" in relation to any land shall have the same meaning as those expressions have in the law relating to land tenures in force immediately before the commencement of this Act in the area in which such land is situated.

Explanation-For the purposes of this Act a Ruler of Indian State or any of his relations shall be deemed to be an occupancy tenant with respect to lands of which such Ruler or his relation, as the case may be, is the owner and which is in his possession either by himself or through his temporary lessee: and the expression Ruler of an Indian State shall have the same meaning as has been assigned to it in the Constitution.

(k) all references to the districts of Cuttack, Puri, Sambalpur and Bolangir shall be read and construed respectively as references to the areas known by the said names immediately before the date of commencement of this Act.

3. Betterment Charge Leviable :-

(1) The State Government shall be entitled to levy a betterment charge on every land under the irrigable command in accordance with the provisions of this Act.

The lands under irrigable command shall be divided into suitable classes by the Government and the annual increase in the gross produce of each class of lands shall be estimated:

Provided that all lands which according to the principle of classification adopted in settlements, are of the same class and which judged by their communicability are so situated as to derive the same amount of benefit from the scheme shall be placed in the same class:

Provided further that the estimate shall be made with reference to the average of the prices prevailing the three agricultural years immediately preceding the agricultural year in which water is first supplied for irrigation in a block under estimation.

(2) Ten times the annual increase in the gross produce estimated, under Sub-section (1) shall be deemed to be the increase in the capital value of each class of lands and the betterment charges payable in respect of such class of lands shall be one half of the difference between the said -increase in the capital value and the cost estimated in the prescribed manner of making the lands fit for

advantageous irrigation under the scheme:

Provided that in the case of lands which were originally under dry cultivation and which with a view to derive benefit from the scheme were brought under wet cultivation a sum representing the difference between the cost of wet cultivation and the cost of dry cultivation as determined in the prescribed manner shall be deducted from the increase in gross produce for the purpose of calculating the increase in capital value of those lands.

Explanation-For the purpose of this Act cost of wet cultivation shall be deemed to include the water rate.

(3) As and when any block in the irrigable command is brought under irrigation, the State Government shall direct the Collector of Betterment Charges to determine the betterment charges in respect of each class of lands in the block.

(4) The Collector of Betterment Charges after due enquiry in the prescribed manner shall; publish his proposals in regard to the betterment charges proposed for the various classes of lands in the prescribed manner and shall consider in the manner prescribed the suggestions and objections received within the time allowed, and finally his award on the rate to betterment charges leviable on each class of lands in the block of lands under irrigable command in the prescribed manner. The Collector shall while proceeding under this Sub-section be assisted by an Agricultural expert to be nominated by the State Government.

(5) An appeal shall lie to the prescribed authority in the prescribed manner and within a prescribed time from the award of the Collector of Betterment Charges under Sub-Section(4). The decision in such appeal shall be notified in the prescribed manner.

(6) The award with respect to betterment charges notified under Sub -section (4) shall, subject to the right of appeal provided in Sub-section (5) be final and binding on all persons having interest in the lands and shall not be liable to be questioned in a Court of law.

4. Schedule Of Irrigable Lands Under Command And Betterment Charges :-

The State Government shall, after the notification declaring the class of land under Sub-section (1) of Section 3 and after any village in the irrigable command is brought under irrigation, direct one or more Revenue Officers appointed for the purpose to prepare a schedule for such villages in consultation with a Canal Officer

showing the lands under the irrigable command of the scheme and the class of lands for betterment charges under which each plot of land classified and the persons from whom the charges are recoverable:

Provided that the State Government may define the jurisdiction, powers and duties of each such Revenue Officer or Canal Officer, as the case may be, for the purposes of this Act.

5. Publication Of Scheme And Notice To Owners And Persons Interested :-

(1) The schedule prepared under Section 4 shall be published in the official Gazette and in such other manner as may be prescribed.

(2) The Revenue Officer concerned shall give notice to the persons known or believed to be owners of or interested in the lands under irrigable command of the scheme requiring them to appear before him either personally or by agent at a time and place therein mentioned to file their objections, if any, (a) to the inclusion of the lands in the schedule as the lands under irrigable command, or (b) to the classification of any plot of land for the levy of the betterment charges; or (c) to the imposition and recovery of the betterment charges proposed on such lands from such persons; or (d) to any other entry contained in such schedule.

6. Enquiry And Award :-

On the dates fixed in the notice under Section 5 or on such other date to which the filing of objections may be adjourned, the officer concerned shall, after holding an enquiry in the prescribed manner and after hearing the objections, if any, filed by the persons in pursuance of such notice, make an award. The award shall be published in the manner prescribed and shall specify-

- (a) the lands under the irrigable command of the scheme;
- (b) the classification of any plot of land for the levy of betterment charges;
- (c) the amount of the betterment charges leviable on each of the said lands;
- (d) the person or persons from whom the betterment charge is recoverable; and
- (e) the date on which such betterment charges shall be leviable:

Provided that the Revenue Officer while making the award shall always have due regard to the provisions contained in Section 11.

7. Instalments Of Betterment Charges-Betterment Charges To Be Charged On Land Next To Land Revenue :-

(1) Betterment charges in any area on the lands under irrigable command shall be payable on the 15th day of April of the year next after the one following the Kharif season in which irrigation facilities are first provided for the area from the scheme or two months after the date of the award under Section 6 whichever is later. Persons liable to pay the charges shall pay the same in one lump sum or exercise in the prescribed manner their option of making payments in-installments.

(2) The number of such installments and the manner of payment thereof shall be as follows:

(a) The first two installments shall each be one-thirteenth of the charge the balance being payable in fourteen further charges each;

(b) The first installment shall fall due on the date on which the charges become first payable under Sub-section (4) and each subsequent installment shall become payable each year on the date one year after the due date of payment of the last preceding installment;

(c) No interest shall be chargeable on any arrears of installment but interest at the rate of $4\frac{1}{4}\%$ per cent per annum shall be payable on the due date of payment of any installment on the balance of the betterment charges remaining unpaid by the said date:

Provided that, any one or more of such installments may be in advance of the date on which the payment of such installment falls due together with interest at the rate of $4\frac{1}{4}\%$ per cent per annum on the balance of the charges remaining unpaid by the date of such payment.

(3) Any sums lawfully due under this Act by way of betterment charges shall take priority over all other charges payable in respect of the land except land revenue and shall be deemed to that extent to be a charge on the land and shall be recoverable as an arrear of land revenue.

(4) Notwithstanding anything contained in this section, the State Government may allow the owner of the land on which betterment charges may be payable to relinquish the whole or any part of the land or deliver in exchange in favour of the State Government on such conditions as may be prescribed by rules:

Provided that no such relinquishment or exchange shall be permitted unless the land is free from encumbrances.

8. Betterment Charges On Newly Reclaimed Land :-

If any waste land, belonging to or at the disposal of the State Government under irrigable command is newly leased out for cultivation, betterment charge shall be recoverable from the lessee in the prescribed manner at the rate prevalent in the zone anything in any of the other provisions of this Act to the contrary notwithstanding.

9. Remission And Suspension :-

If the State Government are satisfied--

(1) that the crops on any land under the irrigable command are seriously damaged on account of floods, tempest or any other irresistible force; or

(2) that the land being water, logged or salt affected has become uncultutable; or

(3) that the land has been removed from the irrigable command of the scheme on account of short supply of water or such other cause; or

(4) that the agricultural industry has received a set-back on account of price-fall,

the State Government may, subject to such conditions as it may think fit, suspend the recovery of or remit in full or in part the betterment charges of any installments thereof with respect to such land:

Provided that in cases coming under Clause (3) where land has been permanently for a considerable period removed from irrigable command the State Government shall deduct from the total amount of betterment charges payable by any person a sum representing his dues to the State Government on account of betterment charges in respect of such land.

10. Any Other Charges Not To Be Affected :-

The betterment charges payable under this Act shall not affect any other rates or charges leviable under any other law.

11. Persons Liable To Pay Betterment Charges :-

(1) Betterment charges shall be recoverable from the persons recorded as the occupancy tenants or service tenants of the land:

Provided that where such tenant pays produce rent to his

immediate landlord recorded as such a portion of the betterment charges equivalent to the fraction which the produce rent taken by the landlord bears to the total produce each year shall be recoverable from such landlord:

Provided further that a service tenant shall pay only 75 per cent of the betterment charges on the land, the other 25 per cent being payable by the person to whom the lands will revert on abolition of the service:

Provided also that a person in actual cultivation of the land on the date of the award under Section 6 as a tenant or sub-tenant under an occupancy tenant or service tenant on payment of produce rent and protected against eviction under any general or special law for the time being in force or any practice, custom or usage having the force of law, shall be liable to pay a part of the betterment charges in such proportion as the produce taken by such tenant or sub-tenant bears to the total produce of the land during the year last preceding the date of the award.

Explanation-(i) Recorded" in this section shall mean recorded on the land records of the Collector of the district on the date of the award under Section 6 or where an application for change of record is pending on that date in the proper Court the record as corrected in the final orders on the application.

(ii) For the purposes of this section persons who are recorded as tenants and whose rights are the same as those of occupancy tenants or service tenants shall be deemed to be occupancy tenants, as the case may be.

(2) Notwithstanding anything in Sub-section (1) and Subject to any contract to the contrary where a tenant holding any land on produce rent is evicted by his immediate landlord in pursuance of any law relating to land reforms or under any other law for the time being in force such landlord shall be liable, in addition to such other payment he may have to for such eviction, to pay to such tenant the portion of the betterment charges paid by him prior to the date of his eviction:

Provided that nothing in this Sub-section shall apply if the eviction of the tenant has taken place on account of any default on the part of the tenant in complying with the provisions of any such law as aforesaid.

12. Application For Transfer Of Liability :-

(1) Any person liable to pay the betterment charges under Section

11 may apply to the prescribed authority in the manner prescribed for a declaration that on the date the betterment charge was due or any part of the same was due on an installment fixed under Section 7, his right or interest in the land has passed on to some other person may be made liable for the dues. Such authority after hearing in the prescribed manner the persons concerned may, if he finds that there has been a valid transfer, declare that such other person or persons shall be liable for the betterment charge or the balance thereof due on the said date.

Explanation-For the purposes of this section-

(i) the rights and interest of a person shall be deemed to have passed on to his immediate landlord if such person ceases to hold or cultivate the land without there being transfer of such right or interest to any other person;

(ii) transfer shall include all transfers whether by act of parties or by operation of law or by virtue of any judgment, decree or order of any Court or otherwise howsoever.

(2) The said authority may if he finds that any person liable to pay the betterment charge under Section 11, is dead, hold an enquiry in the prescribed manner and determine the person or persons liable to discharge the liability as heirs and assigns of such persons; if after such enquiry the said authority finds that some other person should have been rightly recorded as the tenant or landlord as being liable to pay the betterment charges or part thereof, in the place of the deceased on the date the betterment charge or any part thereof, on an installment fixed under Section 7 had fallen due, the said authority shall after holding such further enquiry as may be prescribed and after giving the parties concerned an opportunity of being heard make a declaration accordingly.

(3) A declaration under Sub-section (1) or Sub-section (2), as the case may be, shall have the effect of passing on the liability for payment of the betterment charges or balance thereof under Section 11 to the person or persons so declared as being liable.

13. Protection Of Land Against Sale For Arrears Of Betterment Charges :-

(1) Any person interested in the land on which betterment charge is payable, may pay up the dues in arrears to protect the land from sale for arrears of betterment charge and he may then apply to the Revenue Officer authorised by the Government in that behalf to recover such amount for him from the persons liable to pay the

same according to the extent of their respective liabilities.

(2) The Revenue Officer shall deal with the application for recovery under Sub-section (1) in the same manner as a plaint filed in a suit for recovery of money instituted in accordance with the Code of Civil Procedure, 1908 (V of 1908) and the order passed on such application shall have the same force and effect as that of a decree for money passed by a Civil Court under the said Code.

14. Appeals :-

Any person aggrieved by the award under Section 6 or a declaration under Sub-section (1) or Sub-section (2) of Section 12 or an order under Section 13 may, within sixty days from the date of the award, declaration or order respectively, appeal to the Collector of Betterment Charges. The appeal shall be disposed of in the prescribed manner:

Provided that in an appeal from an award under Section 6 of the rate of betterment charge fixed on a particular class of land shall not be called into question and may not be charged in the appeal.

15. Revision By The Board Of Revenue :-

(1) The Board at Revenue may on its own motion or on application of an aggrieved person within the prescribed time call for and examine the record of any enquiry under Section 6, Sub-sections (1) and (2) of Section 12 and under Section 13 or of the proceedings in appeal under Section 14 for the purpose at satisfying itself as to the legality or regularity of such enquiry or proceedings and may confirm, modify or reverse the award, declaration of order or the decision of the Collector of Betterment Charges, as the case may be:

Provided that in relation to any enquiry under Section 6 the rate of betterment charges fixed on a particular class of land in pursuance of Section 3 shall not be modified or reversed or otherwise interfered with:

Provided further that the betterment charges ordered to be paid by the Collector shall not be altered to the prejudice of any party unless the parties concerned have been given an opportunity of being heard.

(2) Notwithstanding anything in Sub-section (1) the award, declaration, order or decision specified therein shall not be modified, reversed or otherwise interfered with after the expiry of a period of two years from the date of such award, declaration, order

or decision, as the case may be.

16. Finality Of Orders :-

An order passed by the Board of Revenue in revision under Section 15 and subject to such order the decision of the Collector of Betterment Charges or appeal under Section 14 and subject to the order of the Board of Revenue and the decision of the Collector of Betterment Charges, the award, declaration or order made under Section 6, or Subsections (1) and (2) of Section 12 and under Section 13, shall be final.

17. Bar To Jurisdiction Of Civil Courts :-

No Civil Courts have any jurisdiction in any matter relating to anything done or to be done under this Act.

18. Indemnity From Loss :-

Subject to Section 9 no claim shall be against the Government for compensation or for the refund of betterment charges on account of loss occasioned by any temporary failure or stoppage of water in a canal or by any cause beyond the control of the Government or by any repairs, alterations or additions made to the canal or by any measure taken for regulating the proper flow of water therein for maintaining the established course of irrigation in case where the Canal Officer considers such action to be necessary.

19. Indemnity From Legal Proceedings :-

No suit, prosecution or other legal proceeding shall lie against any person in respect of anything done or intended to be done in good faith under this Act or the rules made thereunder.

20. Powers Of Revenue And Canal Officer To Summon Persons, Etc :-

The Revenue Officer, Canal Officer or any other officer authorised by any of them or the authority prescribed in pursuance of Section 12 shall have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (V of 1908) when trying a suit in respect of the following matters, namely:

(a) enforcing the attendance of any person and examining him on oath or affirmation;

(b) compelling the production of documents, and any proceeding under this Act before the Revenue Officer, Canal Officer or any other officer authorised by them shall be deemed to be judicial proceeding within the meaning of Sections 193 and 228, and for the purpose of Section 196 of the Indian Penal Code, 1860 (XLV of 1860).

21. Power To Make Rules :-

(1) The State Government may by notification in the official Gazette make rules to carry out the purposes of the Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

- (a) the fixation of time for preparation of Schedule under Section 4;
- (b) the form in which the Schedule under Section 4 will be prepared;
- (c) the method of publication of the Schedule prepared under Section 4 and of the award made under Section 6;
- (d) the manner of service under Section 4;
- (e) the manner of holding enquiries under Sections 6 and 12, and the conduct of proceedings under Section 13;
- (f) the form of the award made under Section 6;
- (g) the procedure relating to appeals under Section 14 and the mode of disposal of such appeals;
- (h) the authority to conduct proceedings under Section 12; and
- (i) any other matter requiring to be or which may be prescribed under this Act.

22. Power To Remove Difficulties :-

If any difficulty arises in giving effect to the provisions of this Act, the State Government may, as occasion may require, by order, do anything, not inconsistent with this Act or the rules made thereunder, which appears to them necessary for the purpose of removing the difficulty.