

MADRAS RECORD OFFICE.

Government of Madras.

Indial DEPARTMENT.

G.O. No.	606	Press
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Dated	7-5	19-1918

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16.11.29

(1)

Fort St. George, Judicial Consultation, 11th May 1858.

No. 30. Read the following letter from C. PELLY, Esq., Magistrate of Bellary; to H. FORBES, Esq., Acting Secretary to Government, Judicial Department, Fort St. George, dated Ramandroog, 8th April 1858, No. 25.

SIR,

In the course of certain Magisterial investigations, two cases of encroachment on the property of Government have come under my notice, and in both instances, I issued instructions in my capacity of Magistrate, requiring the parties to vacate the public property they had taken illegal possession of. An appeal in each case from my decision was made to the Session Court. My ground for interference was two-fold, first, the general duty of the Magistrate to care for the Government property, and secondly, the special orders of Government contained in Extract Minutes of Consultation 5th July 1856, No. 685, Revenue Department. This order though passed through the Revenue Department, originated in an order to the Magistrate, (of Tinnevely); and in the order itself the Collector and *Magistrate*, and his subordinates, is called on to watch against acts of encroachment as the matters now in question both came before me in the first instance in my Magisterial capacity, I passed the orders appealed against, in my capacity of Magistrate.

2. One of these orders has been fully confirmed by the Session Judge, but the other has been set aside, not on the merits of the case, but simply on the ground of incompetency to pass the order in my Magisterial capacity.

3. I have the honor to request the instructions of Government as to what course I should now pursue for securing the property of Government against encroachment, for if the decision of the Sessions Court in the 2nd case, on the ground that I had no Magisterial power of interference is correct, it seems clear that my Magisterial order in the first case, though confirmed by the Session Court, cannot be carried into effect, and the party who has usurped the property be summarily ejected by Magisterial power.

4. I beg to send the English proceedings in both cases for the consideration of the Government.

1st Case at Moraggherry.
See enclosure No. 1.

5. There was a public village choultry at the village of Moraggherry; some of the village authorities, without permission, and in spite of the remonstrances of other villagers, pulled it down and gave the ground, the property of Government, to a merchant named Rachapah. This led to a disturbance. The Magistrate prohibited Rachapah from taking possession, which however he did; and the Magistrate ordered the removal of Rachapah's shop which had been built on the spot. This order was appealed against, and the Magistrate, supported his order before the Session Court, on the ground "that it was the imperative duty of the Magistrate, in accordance with the orders of Government of 5th July 1856, to protect the Government property against usurpation or encroachment of any person."

6. The order of the Magistrate was confirmed by the Session Judge, who distinctly said, "it is the duty of the Magistrate to prevent such encroachments on public property." (Proceedings Session Court of Bellary, under date 15th January 1858.)

7. In the 2nd case in the course of a Magisterial investigations into quarrels and affrays between two wealthy merchants at Humpasagur, it came to the Magistrate's notice that one Saroor Andanapah had lately taken possession of an old Sayer choultry, the property of Government, which the Magistrate after enquiry, directed him to vacate. An appeal was made to the Session Judge, the appeal being presented by an English Barrister, Mr. Salmon. The Magistrate supported his right to interfere and pass the order on the same grounds as he had done in the case immediately preceding. The Court refused to pass any orders on the merits of the case, but set aside the Magistrate's order, on the ground that the Magistrate had no jurisdiction. (Proceedings Session Court of Bellary under date 22nd March 1858.)

8. I have the honor to submit these apparently contradictory decisions of the Session Court, for the consideration of Government, in order that I may be instructed whether I should appeal against the second to the Court of Fouzadary Udalut, to determine the power of the Magistrate

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to interfere; or whether I should quash my proceedings as Magistrate in that case, and proceed as Collector to protect the right of Government, or whether I should pursue any other mode of procedure in the matter.

9. Should it be the opinion of Government that my Magisterial order in the 2nd (Humpasaugur) case must be set aside, it seems to me that my order must be also set aside in the first (or Moragerry) case, and that I cannot without incurring an action at law now enforce my order and compel the merchant Rachapah to remove his shop.

10. I would beg the instruction of the Government as to the course I should pursue in both cases, for protecting the property of Government, from the usurpation of parties who have no right to it.

11. If the house of a private individual is illegally taken possession of, and a lock put on to exclude the lawful owner from entering, the Magistrate has power I presume (especially when the parties are quarrelling and creating affrays) to require the usurping party to quit and to put the legal owner in possession, leaving the party to seek for possession in a civil suit, such a course has been pursued before by myself, and confirmed on appeal and fully approved by Government in a case called up specially by the Government.

Note.—Allusion is made to the Revd. Mr. Doyle's case. See Extract Minutes Consultation dated 23rd October 1854.

12. And on similar grounds the Magistrate, I imagine, has power at once to dispossess any body taking possession of Government property, on the fact being brought to his notice in any manner, and being proved to his satisfaction, and this appeared to be the Session Judge's, Mr. Irvine's opinion in January last, but he has evidently altered that opinion in his order of March last.

Decision of the Magistrate regarding the village choultry at Mooragherry in Hurponhully talook.

It clearly appears from the evidence that the choultry in question is a village choultry, and as such Government village property. It was in existence more than half a century ago, and was used as a public choultry; about 20 years ago it fell out of repair. But the site still remained Government village property; about 8 years ago the village authorities (aided there can be no doubt by contributions from the villagers) re-built the choultry, and about 2 or 3 months ago without obtaining the permission of the Circar, the village authorities in office pulled it down, and gave the site to the merchant Rachapah to erect a shop on, and most probably as asserted by the complainants received a present from the merchant for the same. The complainants, some of whom are village Meerassidars, strongly objected to the removal of this public choultry, and complained to the Tahsildar, and subsequently to the Magistrate. Orders were given by the Tahsildar prohibiting the removal of the choultry and the erection of the shop, which were disobeyed. It is idle for the defendants to assert they did not know of this order. Those defendants who are the Reddies and Curnums in office were bound to preserve this choultry, and are very much to be blamed for giving it, as they admit, to the merchant. But the fact is, no doubt, they combined with the merchant to put him in possession, and by disregarding the remonstrances of the complainants, and the orders of the Tahsildar, they not only removed the old building but allowed the merchant to build the new shop.

The Potails and Curnums are therefore removed from office and they will be held responsible for restoring the choultry on its former site.

The merchant is also ordered to remove the shop he has built on the site within one month from this date, otherwise the Tahsildar will be directed to do so. If he has any claim to compensation, he must look to the Reddies and Curnums who gave him permission to occupy the site of the old choultry, and which he and they well knew they had no authority to give; as the site had been for many years, and was then, occupied by the village public choultry, and the removal of the choultry was strongly objected to by the ryots of the village.

The orders of Government under date the 5th July 1856, which have been published throughout the district, enjoin on the Collector and Magistrate the duty of preserving the Government land and property, and in conformity with this order of Government, instructions will be sent to the Tahsildar of Hurponhully to require that the shop now built without authority on the Government property, be removed as above directed, and the choultry be re-built by the Potails

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and Curnums who had it pulled down. If any party is dissatisfied with this order, he can appeal to the Session Court within the time allowed for the removal of the shop.

Copy of the order of the Tahsildar is to be given to the village authorities and the merchant, and to be publicly read in the village by the Tahsildar.

(Signed) C. PELLY,
Magistrate.

24th November 1857.

(True Copy.)

(Signed) C. PELLY,
Magistrate.

L. S.

To the Magistrate of Bellary.

Sessions Court, Bellary.

Herewith you will receive an extract from the proceedings of the Court of this date, to the orders contained in which you are required to conform, returning this Precept so executed or good and sufficient reason why it has not been executed, and what you may have done in pursuance hereof within five days from and after its receipt.

Given under my hand, and the Seal of the Court, this 22nd day of December 1857.

(Signed) P. IRVINE,
Session Judge.

In obedience to the exigence of the foregoing Precept, forwarding extract from the proceedings of the Session Court, under date the 22nd Instant, held on M. P. No. 21 of 1857, presented by one Rovada Ratchapah, appealing from an order passed by the Magistrate, requiring him to remove a Mulghee shop built by him, and directing the Additional Joint Magistrate to forward to the Court the record of the proceedings held in the matter; the Magistrate who passed the order appealed against, has the honor to forward the record of the case with his order. The facts of the case are shortly as follows:—There was a public village choultry at the village of Moragherry. This without permission some of the village authorities in spite of the remonstrances of other villagers, pulled down and gave the ground, the property of the Government, to a person who had no right to it, no doubt receiving a bribe for the same. This led to a disturbance, orders were issued prohibiting the petitioner from building his shop on the ground, which were disregarded. After full enquiry, the Magistrate ordered the shop to be removed within one month and punished the village authorities by dismissal from office for their misconduct. The petitioner appeals against this order. The Magistrate considers it to be his imperative duty in accordance with the orders of Government under date 5th July 1856, to protect the Government property against the usurpation or encroachment of any person. The petitioner says the Magistrate should allow him to keep possession (which he had taken against positive orders not to do so, aided by the village authorities whose duty it was to prevent his doing so;) and to let any person aggrieved sue him in the Civil Courts. On the same principle might a person take possession of the Judge's or Magistrate's room, build up a wall, and refer the Magistrate to the Civil Court.

Given under my hand and the seal of the office, this 24th December 1857.

(Signed) C. PELLY,
Magistrate.

(True Copy.)

(Signed) C. PELLY,
Magistrate.

Fort St. George, Judicial Consultation, 11th May 1858.

Extract from the proceedings of the Sessions Court of Bellary, under date the 15th January 1858.

Read again Miscellaneous Petition, No. 21 of 1857, presented and filed on the 22nd Ultimo, by me Rovada Ratchapah, appealing from an order passed by the Magistrate; requiring him to remove a certain Malegee shop built by him.

Read also Return from the Magistrate to this Court's Precept, dated the 22nd Instant, together with the record of proceedings held in the said case.

1. It is clear that there had been a village choultry on the ground in question for many years; that the village authorities without having received any instructions to that effect, pulled it down, and gave the ground to the Appellant. A complaint was made to the Tahsildar, who, after enquiry, prohibited any building being erected on the spot in question without his sanction; that the village authorities, and Appellant being obviously preparing to build in defiance of this order, a complaint was made to the Magistrate, and whilst he was investigating it, the Appellant built the shop, now in dispute. The Magistrate ordered it to be pulled down.

2. The Appellant was not justified in building on the spot in question even with the consent of the village authorities, especially when, as he well knew, the Tahsildar had prohibited his doing so. It is the duty of the Magistrate to prevent such encroachments on public property, and the Appellant's assertion that any party aggrieved should institute proceedings against him, but that the Magistrate should not interfere is absurd.

3. The Magistrate's order is confirmed, and this appeal dismissed.

Ordered that extract from these proceedings be sent to the Magistrate of Bellary for his information.

(True Extract.)

(Signed) P. IRVINE,
Session Judge.

(True Copy.)

(Signed) C. PELLY,
Magistrate.

To the Magistrate of Bellary.

In the village of Humpasagur, are the families of two wealthy Sowcars called the Saroor and Martoor families, who are at much enmity with each other, and several petty disturbances have lately arisen from their feuds; among others, a petition was presented by Saroor Sowcar Gooropadapah, on the 14th September 1857, in his brother Anandapah's name, stating that the Martoor Sowcar Siva Sungapah, with many persons armed with weapons, in the night, came to a choultry sold by one Soonkum Nursapah to him, and erected a pial just in front of it, and praying for the removal of the pial.

This petition was referred to the head of Police, who reported, that the accusation against the Martoor Sowcar was false, as he was absent from the village at the time mentioned by the petitioner, and that there were some stones merely placed on the ground to prevent the rain water entering into a shop kept there for a long time, by a person belonging to the Martoor party. The head of Police also reported that the choultry referred to was Circar property and not the petitioner's, that there had been a great dispute between the Saroor and Martoor Sowcars, and that as a person belonging to the party of the latter intended to convert his shop tent, which had existed on the spot in question for a long time, and where petty articles only were sold, into a shroff shop, the Saroor Sowcars not liking the contemplated improvement of the shop, and with a view of getting the same removed from that place, locked the room in the choultry adjoining the tent shop, and set up a claim to the choultry as their own, and pretended that the Martoor

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party gave them annoyance by keeping a shop just in front of their own choultry. The head of Police believed it impossible to ascertain the truth in the matter by examining the witnesses that might be cited by both parties, as the two Sowcars being influential and wealthy, could produce any number of false witnesses in their behalf to prove their respective allegations, and he therefore did not take depositions from them, but came to the conclusion that the choultry was Government property on the following grounds.

The village authorities, the neighbouring shopkeepers, and a late Sayer Mootsuddy orally stated that the choultry had been from long time considered as a Circar choultry, that when it fell out of repairs, one Sooncum Nursapah got it repaired by means of small subscriptions from merchants belonging to both parties, and that since the dispute arose between the two Sowcars, the Saroor and Martoor parties, the former had locked up the room in it and endeavoured to establish a title to it. The village authorities also produced a list given by the Saroor Sowcars, at the time of the Khansoomary Azmaish in fusly 1260, in which they mentioned all the buildings in their possession, in order that they might be entered in the accounts in their names, but which list did not contain any entry of the choultry in question.

The choultry was also entered in Khansoomary accounts of several fuslies as sayer choultry, and not numbered like private buildings.

The Magistrate personally questioned Saroor Gooropadapah and some of his party as well as some people belonging to the Martoor party, but the former could not satisfy the Magistrate that they had any right to the choultry. He therefore issued an order that the choultry should remain as Circar choultry, and that the Saroor Sowcars should vacate the room they had lately locked up.

Upon this, Sevapah, a Goomastah of the Saroor Sowcars, presented petitions on behalf of his masters, requesting the Magistrate to hold a formal examination in the matter, and cited many witnesses on his behalf. All these witnesses with the exception of a very few who are dead or absent, were examined, as well as others, who could testify to the choultry being Circar property.

Sevapah also produced the 3 following documents. No. 1, said to be the sale bond executed by one Soonkum Nursapah in 1847, selling the choultry to Saroor Andanapah for Rupees 109 which he owed to him.

2. A document executed by one Lingapah and his son Basapah the 3rd witness, agreeing to keep the choultry in good order during the time they should carry on their trade in it, and to vacate it whenever required to do so.

3. Do. do. by one Basalingapah the 4th witness, stating that he was permitted by Saroor Aunadapah to use the choultry for teaching boys in, and agreeing to vacate it whenever required.

The 1st witness states that his brother Pompanah who farmed sayer revenue, newly built the choultry in fusly 1234 (A. D. 1824) and carried on the sayer business in it for 10 or 12 years, that since the sayer was taken under amany management, the Circar Mootsuddies took the hall in the choultry for their use, but in the room he kept his accounts, that about 10 years ago, when he was absent from the village, his relation Nursapah sold the choultry to Saroor Annadanapah.

2nd witness, son of the above mentioned Pompanah, states that about 10 years ago when he was at school, his relation Nursapah came to him and called him to write the sale bond of the choultry, that he was at the time a boy of only 10 years old and could not write small hand, that on his expressing his inability to write, Nursapah went to the house of Saroor Sowcars and on return said he had sold the choultry to them.

3rd witness acknowledges the document No. 2 to have been executed by him, and the 4th witness states that he executed the document No. 3.

The 5th, 6th and 7th witnesses depose to their having attested the document No. 1 which the abovementioned Nursapah said he had executed.

The witnesses 8th to 13th state that the choultry was newly built by Pompanah and Nursapah, about 30 years ago, to carry on the sayer business in, as the former rented the sayer revenue; the 8th, 11th and 13th witnesses also state that since the system of renting the sayer was abolished, the choultry was used by the Circar sayer Mootsuddies. The 14th witness states that he heard the choultry was built by Pompanah, by whom he was employed as his Goomastah, that he carried on the sayer business in the choultry for some years, and that afterwards it was

occupied by the Circar Mootsuddies which he heard was done by the consent of the 1st witness, the brother of Pompanah.

The Magistrate can give no credit to the evidence adduced in support of the allegations of the petitioner. He believes it to be false and suborned, and the documents produced by the petitioner are no doubt all fabrications. The 1st witness states that the choultry was built by his brother in fusly 1234, (A. D. 1824) to carry on the sayer business in, as he rented the sayer revenue, and other witnesses who depose to that point also mention that there was no choultry before. This is proved to be false by the Khánashoomâry accounts prepared in fuslies 1223 and 1226 (A. D. 1813 and 1816) in which the building in question is mentioned as "sayer choultry." As the sayer was not rented before the fusly 1232 (A. D. 1822), it is clear that the choultry which existed in fuslies 1223 and 26 (A. D. 1813-1816) was not built by Pompanah, who must have rented the sayer subsequent to fusly 1232. In the Khánashoomâry accounts prepared in fuslies 1242-50-60 and 65, (A. D. 1832-40-50 and 55) the choultry is also entered as "sayer choultry." If Pompanah or Nursapah were the owners of the choultry, their names would no doubt have been entered in the accounts, especially in the census accounts of the two latter periods, fuslies 1260 and 1265 (1850-1855) when there was no sayer at all, as is always the case regarding private buildings; and a shop belonging to them is entered in the same accounts in their names as follows:—

Fusly.	No. of buildings.	Remarks.
1226	119	Pompanah keeps his shop.
42	177	Pompanah shop.
50	431	Sooncada Pompanah's shop, but one Pursapah lives in it.
60	534	Soonada Sakrapah, Pompanah's brother's shop, but one Ravadee Burmah lives in it.

If the document No. 1, the alleged sale bond of the choultry, and which is said to have been executed in fusly 1257 (A. D. 1847) was genuine, the choultry would certainly have been entered in the names of Saroor Sowcars in the Khánashoomâry accounts of subsequent fuslies, especially as, according to their assertions, they were at such pains to have the transfer sale duly attested by their witnesses; but on the contrary it is entered in those accounts of fuslies 1260 (1850) and 65 (1855) as sayer choultry; and no mention of the Saroor Sowcars is made in them. Further, in the Khánashoomâry accounts prepared since fusly 1242 (A. D. 1832), all the buildings of which there were owners are numbered, but the choultry in question has no number affixed to it. Moreover, the Curnums of the village state that the Saroor Sowcars gave them the list (No. 4,) mentioning all the buildings in their possession at the time of Khánashoomâry Azmaish, so late as fusly 1260 (A. D. 1850), with a view to those buildings being entered in the accounts in their names. This list is in the hand-writing of Saroor Veerabudrapah and written in October 1260 fusly (A. D. 1850), in which month the Khánashoomâry Azmaish was made. In this list a number of buildings are entered as having been in the possession of Saroor Annadanapah,

*Note.—It should be remarked that a reason lately given by petitioner for the sayer choultry not being entered in the list of the houses, &c., belonging to the Saroor family was that it was a pagoda; and yet here we have a Mutt, a religious building, entered in the list as their property. This reason for not entering the so called pagoda or choultry which they pretend they had purchased as part of their property is in itself foolish enough, but it is further refuted by the fact of a Mutt having been entered among the buildings belonging to them, for, if a Mutt is entered, why not the pretended pagoda also recently purchased.

whether occupied by the members of his family or by others, and whether his own or mortgaged to him by others, including even some huts and a Mutt*, but no mention is made of the choultry now in question in the list, which certainly would have been entered, had the choultry, which they now pretend they purchased only three years before that census, been in the possession of the Saroor Sowcars.

The 14th witness who was long in the employ of Pompanah Nursapah, and lived in Humpasagur, states that he never heard that the choultry was sold by Nursapah to the Saroor Sowcar and that it was not in their possession until 5 years ago when he left Humpasagur, whereas the petitioner alleges that it has been in their possession from the time it was sold, viz., 10 years ago.

It is not at all likely that there should have been the necessity for the 4th witness to execute a document to Saroor Sowcars for his teaching the boys of the village in the choultry, which was unoccupied, a verbal consent of the Saroor Sowcars, if they were in possession of the choultry, would have sufficed for such a purpose; and this document as well as Nos. 1 and 2 appear to have been lately fabricated to give strength to the attempt of the petitioner to usurp the rights of

Government, neither Saroor Gooropadapah, nor his people whom the Magistrate questioned on the subject in the month of October last, mentioned any thing about the document Nos. 2 and 3. The evidence of the 5th, 6th and 7th witnesses who attested the document No. 1 is also quite unworthy of credence; they state that the document was executed so far back as 10 years, and that they have never seen it again, yet they mention with great precision the exact time of the execution of the bond and the names of many persons who they say were then present. The statement of the 2nd witness who states that 10 years ago, though he was a boy of only 10 years old and unable to write small hand, Nursapah called him to write the bond No. 1, and afterwards informed him that the bond had been written, is ridiculously absurd. Moreover the document itself does not bear the appearance of so old a paper as 10 years standing. It is also to be observed that many of the witnesses brought forward by the petitioner appear to be in poor circumstances, and such as could easily be induced to give false evidence, and some of them have given statements which are proved to be false by the Khánashoomâry accounts of Fuslies 1223 and 26, as above stated.

The petitioners, in a subsequent petition given in December last, gave, as a reason that the building now in question was not entered in the accounts, that it was a pagoda. This is also false. All the witnesses cited by him and even the brother and son of the person alleged to have constructed it, state that it was not a pagoda though a small idol was placed in it, which in the earliest account of 1223 (1813,) fusly may have given rise to the entry as follows. "In the Sayer Pett Cutta is a Ganeasa Davalum" but that it was a sayer choultry is clear, as every Circar account shews that it was a custom choultry, even in the two petitions addressed by the Saroor Sowcars themselves in the beginning of the dispute about it, the building is mentioned as a choultry, and it is also mentioned as such in the 3 documents produced by the petitioner. It was not until after the petitioner lately found that his allegations were proved to be false by the Khánashoomâry accounts, that he called it a pagoda; if it had been a pagoda in the proper sense of the word, it would not have been sold to him as he falsely alleges the choultry was, and moreover the pretended deed of sale calls the building not a pagoda but a sayer choultry.

The Curnum of the village also states that Saroor Annadanapah lately asked him to attest some papers written sometime before; independent of all the above considerations and evidence, there is the evidence of 12 witnesses, some of whom are village authorities, and some respectable merchants, to show that the choultry has been in existence for many years as Circar custom choultry, and is said to have been in existence before the time of the Company's Government; that Pompanah merely carried on his business in it when he rented the sayer revenue; that subsequent to the abolition of the renting of sayer which took place after his death, it was never in his heirs' possession, but was used by Circar Mootsuddies, that neither have the Saroor Sowcars any right to it, nor was it ever in their possession until a few months ago, when a dispute having arisen between them and Martoor party, they have locked the room in it.

The Magistrate having given the petitioner a full opportunity of establishing his right to take possession of the Government property, and it being clearly shown that he has utterly failed to establish any claim to the sayer choultry in question, though he has endeavoured to support his claim by the most disgraceful means of suborning false evidence, and fabricating documents, now confirms his former order and directs the petitioner to inform his masters that they must remove their lock from the premises and vacate them without delay.* An endorsement to this effect will be given to the petitioner.

*Note.—Full time will be allowed to the petitioner to appeal to the Session Court against this order being carried out, should he deem it proper to appeal.
(Signed) C. PELLY,
Magistrate.

(Signed) C. PELLY,
Magistrate.

Copy given to petitioner on the 13th January.

(Signed) C. PELLY,
Magistrate.

(True Copy.)

(Signed) C. PELLY,
Magistrate.

Fort St. George, Judicial Consultation, 11th May 1858.

Extract from the proceedings of the Session Court of Bellary under date the 8th February 1858.

Read M. P. No. 7 of 1858, presented and filed this day by Edward Salmon, Esq., Counsel for the Petitioner Saroor Setty Anandapah, appealing from an order passed by the Magistrate of Bellary on the 7th Ultimo, rejecting the petitioner's complaint of trespass preferred against Murtoor Seeva Sungapah and others.

Resolved that copy of the foregoing petition be sent to the Magistrate of Bellary and that officer be requested to transmit to this Court the record of the proceedings held in the case.

Ordered that extract from these proceedings be sent to the Magistrate of Bellary for his information and guidance, by Precept returnable within III days from and after its receipt.

(True Extract.)

(Signed) P. IRVINE,
Session Judge.

(True Copy.)

(Signed) C. PELLY,
Magistrate.

To the Magistrate of Bellary.

To P. IRVINE, Esq., Session Judge of Bellary.

The humble petition of Saroor Setty Anandapah, a resident of Humpasagur, in the talook of Hoovinhudgaly.

SHEWETH.

That by a petition dated the 14th of September 1857, your petitioner complained to the Magistrate of Bellary, that one Murtoor Seevasungapah with his Goomastahs and some others of his people, came with tools to the choultry, then in the occupation of your petitioner, and others who held under him, and commenced building a pial on the land appertaining to the choultry, and immediately in front of it, with a view to annoy your petitioner and excite a disturbance.

2. That thereupon your petitioner sent his servants to cause the trespassers to desist, but that his servants were beaten and driven away, and the erection of the pial proceeded with.

3. That the said Murtoor party had no right whatever to build on the land in question, and your petitioner therefore prayed that the case might be called up before the Magistrate and investigated, with a view to abate the nuisance.

4. That the Magistrate referred the matter for investigation to the head of Police, who reported that the complaint was without foundation, and that the choultry in question was a Government choultry to which your petitioner had no right.

5. That thereupon your petitioner's Goomastah Sevapah petitioned the Magistrate praying that he would himself examine into the matter, and prohibit the interference of the Murtoor party.

6. That finally the Magistrate passed the order now appealed against, under date the 7th of January, and filed herewith.

7. That your petitioner is aggrieved by the said order; 1st, because it is contrary to the evidence; and secondly, because as it is humbly submitted, the Magistrate had no jurisdiction to determine the question of title (your petitioner being in occupation of the choultry) and to eject him from possession, except in pursuance of a decree in a regular suit passed by a competent tribunal.

8. As to the first point, your petitioner craves to refer to the whole record when called up, as he submits that his right is fully proved by his documentary and oral evidence, if the Magistrate had any jurisdiction to enquire into it.

9. But as to the second point, your petitioner would urge that the Magistrate was only empowered to investigate the truth or otherwise of the complaint, to see the peace kept, and to furnish any one proved to be guilty of trespass or assault. In this case it was perfectly competent to him to dismiss the complaint as unfounded, but it is submitted that he had not jurisdiction to make that part of his order which adjudges the choultry to be Circar property, and order your petitioner to vacate the premises, and remove his locks. If the Circar have a better title, than

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your petitioner who is in possession, it is submitted that that should be proved by the claimant in a regular suit.

Therefore your petitioner prays that your honor will be pleased to call for the whole record, and that you will reverse the order of the Magistrate, and that your petitioner may be left in peaceable possession as he was when he first petitioned the Magistrate on the 14th September 1857, and that his Counsel, E. Salmon, Esq., may be heard orally in support of this petition.

(Signed) EDWARD SALMON,
Vakeel for the Petitioner.

February 1858.

(True Copy.)

(Signed) P. IRVINE,
Session Judge.

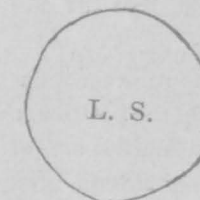
Filed in Court 8th February 1858.

(Signed) P. IRVINE,
Session Judge.

(True Copy.)

(Signed) C. PELLY,
Magistrate.

To the Magistrate of Bellary.



Sessions Court, Bellary.

Herewith you will receive an extract from the proceedings of the Court of this date, to the orders contained in which you are required to conform, returning this Precept so executed or good and sufficient reason why it has not been executed, and what you may have done in pursuance hereof, within III days from and after its receipt.

Given under my hand and the Seal of the Court, this 9th February 1858.

(Signed) P. IRVINE,
Session Judge.

Received 12th February 1858.

In obedience to the exigence of the foregoing Precept forwarding an extract from the proceedings of the Sessions Court, under date the 10th Instant, held on a petition presented by Saroor Setty Anandapah, appealing against the order passed by the Magistrate, under date 7th January last, and directing the Magistrate to transmit to the Court the record of proceedings held in the case in question. The Magistrate has accordingly the honor to forward the record called for. The petitioner appears to appeal against the order of the Magistrate directing him to vacate a Government building called a Sayer choultry, situated at the village of Humpasagur, the petitioner asserts, first, that it is contrary to the evidence, and secondly, that the Magistrate had no jurisdiction. The reasons of the Magistrate for his order are set forth at length in the order itself (dated 7th January 1858;) whether the evidence produced by the petitioner and called up and examined specially at his own request, personally by the Magistrate, is worthy of the least credit, the Magistrate will leave to the decision of the Session Judge. In the Magistrate's opinion it is false, the witnesses have been suborned; and the documents are fraudulent documents made for the occasion.

With respect to the jurisdiction of the Magistrate in the matter it will be observed, that the Magistrate did not determine any question of title to a property in dispute between private individuals. What the Magistrate did was to prevent the unauthorized possession of a Govern-

Fort St. George, Judicial Consultation, 11th May 1858.

ment building by a private individual, as it was his duty to do so by the express orders of Government (under date the 5th July 1856, copy of which is herewith sent) to protect Government property against any encroachment or usurpation by private individuals. The Magistrate was fully satisfied that the assertion of the petitioner that he had long possession of the choultry in question was false, and that he had only very shortly before, viz., about August last, taken possession of a room in the choultry as a pretence to obtain the removal of a shop tent situated in front of it, and belonging to another party, between whom and the petitioner there is a bitter enmity. This occupation of the room was without any lawful authority or right. This was reported to the Magistrate by the Police authorities, and the Magistrate directed the petitioner to vacate the room; but at the petitioner's special request, postponed his order until he should himself have heard all the further evidence the petitioner said he could bring.

The Magistrate was (as set forth in his decision) fully convinced of the falsehood of the evidence adduced in support of the petitioner's allegations, and accordingly gave notice to the petitioner to vacate the building, unless he chose to appeal against the order of the Magistrate; and the Magistrate considers he had full power to issue such order in conformity with his general powers, and specially with reference to the orders of Government quoted above, which order goes on to say "that encroachments made in contravention of the rule here laid down, even though permitted by the local officers, will not be recognized or admitted by Government." The petitioner alleges that if the Government have a better title than the petitioner who is in possession, that should be proved by the Government in a regular suit. The absurdity of such a plea was shewn very lately in a similar case, when the Sessions Court in its proceedings of the 15th January last, fully supported the Magistrate's view by declaring "that the Magistrate was competent to prevent any encroachments on public property, and that the plea, that any party aggrieved should institute proceedings was absurd."

The Magistrate thinks it as well to apprise the Court that the matter now appealed against took its rise out of several disputes between the petitioner's party, the Saroor Sowcars and another party, the Murtoor Sowcars. These two families are at bitter enmity, and during the last few months have caused several affrays and riots in the town, some of these cases were disposed of by the Magistrate and both parties punished, and two cases were forwarded for trial by the Police to the Court.

The two parties are wealthy and influential families, and the Magistrate regrets to say that, at least as regards the Saroor party (the petitioners), he has good reason to believe that their respectability in position does not prevent them from stooping to most disgraceful measures of falsehood and fraud to support their pretended claims, as the Magistrate has shewn in his orders now appealed against; and so unscrupulous have been the means used to obtain a victory over the other party, that even the death of one of the Murtoor party which lately occurred in the Belgaum talook, is generally suspected to have been circumvented by this party.

The Magistrate has not entered into these particulars with a view to influence the Court with respect to the propriety of the order of the Magistrate, but that the Court may not be left in ignorance of the views the Magistrate takes of the degree of credit to be given to a man who from his position in life should be deserving of credit.

The Magistrate observes that the petitioner requests that his Counsel, E. Salmon, Esq., may be heard in Court orally in support of the petition. The Magistrate would beg permission merely to question the right of the petitioner to be heard by Counsel, as it is quite unusual in appeal against the orders of Magistrates.

The Magistrate can however have no objection in the present instance to the course, should the Session Court deem it to be proper. But if Counsel may be heard orally in appeals against the Magistrate, it may be a question whether the Magistrate should not be allowed legal Counsel to meet any objection to his proceedings that may be raised by Counsel for appellants.

Given under my hand and the Seal of the Office, this 15th day of February 1858.

(Signed) C. PELLY,
Magistrate.

(True Copy.)

(Signed) C. PELLY,
Magistrate.

Fort St. George, Judicial Consultation, 11th May 1858.

Extract from the proceedings of the Sessions Court of Bellary, dated the 22nd March 1858.

Read again Miscellaneous Petition No. 7 of 1858, presented and filed by E. Salmon, Esq., Barrister at Law, on behalf of Saroor Setty Andanapah, appealing from an order passed by the Magistrate of Bellary, dated the 7th January 1858, declaring a certrin sayer choultry to belong to the Circar, and directing the petitioner to vacate the same.

Read also the record of the proceedings held in the said case as also the order appealed from, &c.

1. The Zilladar reported, on the 1st September, that Saroor Setty Andanapah had made a verbal complaint that one Martoor Seva Sungapah had illegally built a pial in front of his sayer choultry, and had requested that it might be removed. The Zilladar stated that he had sent the village authorities to examine the place, and they reported that there was no pial, but that a tent had been pitched and some stones put round it to keep out the rain water. Seva Sungapah was absent, but one of his family was sent for, and he stated that the tent was on Circar ground, and also that the sayer choultry was the property, not of complainant, but of Government. In conclusion, the Zilladar expressed his opinion that this statement was true, but suggested that the head of Police should personally dispose of the matter.

2. The head of Police accordingly commenced his enquiry, but Andanapah addressed an Urzee to the Magistrate reiterating his complaint.

3. The Urzee was referred to the head of Police.

4. The head of Police reported that he had not considered it necessary to examine witnesses, as there was a feud between the Saroor and the Murtoor people, and both being influential, any number of witnesses could be got up by either to support their views; and he assigned reasons for believing that the sayer choultry was Government property.

5. The Magistrate held a verbal enquiry, and ordered Andanapah to give up the choultry.

6. The head of Police reported that Andanapah refused to do.

7. Andanapah's Goomastah presented a petition to the Magistrate, dated 7th December, urging the right of his employer to the choultry; and witnesses cited by him to prove this were examined as also witnesses to prove that it was Government property; and the Magistrate passed the order now appealed against, declaring the sayer choultry to belong to the Circar, and ordering Andanapah to vacate it.

8. Andanapah founds his appeal against this order on two grounds; 1st, that it is contrary to evidence, and secondly, because the Magistrate had no jurisdiction to determine the question of title (appellant being in possession of the choultry) and to eject him from possession, except by obtaining a decree in a regular suit. He finally requested that his Counsel, E. Salmon, Esq., may be heard orally in support of his petition.

9. The Magistrate, in forwarding the record of the case, stated that he "did not determine any question of property in dispute between private individuals, what the Magistrate did was to prevent the unauthorized possession of a Government building by a private individual, as it was his duty to do by the express orders of Government, under date 5th July 1856, to protect Government property against any encroachment, or occupation by private individuals." He questioned, as quite unusual, the right of a petitioner appealing against an order of the Magistrate to be heard by Vakeel and suggested that if this was allowed, he too should be allowed legal Counsel to meet any objection that might be raised to his proceedings.

10. The Session Judge ruled that there was no objection to the appellant being heard by his Counsel, and that the Magistrate's Counsel would be heard in answer.

11. The Session Judge having heard the Vakeels for both parties, is of opinion that it is not necessary for him to go into the first objection raised by the appellant; the second affording quite sufficient reason for disposing of the case.

12. The Magistrate appears to the Session Judge to have erred in not distinguishing between his duties as a Magistrate and those incumbent on him as a Collector. The whole record shews this, and his referring, in vindication of his proceedings in the former capacity, to the Extract of Minutes of Consultation under date 5th January* 1856, and which were communicated to him as Collector through the Board of Revenue, supports this view.

Fort St. George, Judicial Consultation, 11th May 1858.

13. The only subject for enquiry by the Magistrate in investigating the complaint brought by S. Andanapah against M. Seva Sungapah, should have been the truth or otherwise of that complaint. If in the course of that enquiry, or if from information otherwise derived, he found reason to believe that the complainant had usurped possession of a Government building, he could then have as a Revenue Officer, adopted such measures, as he considered legal and proper to protect public property. He was not authorised in passing, during a Magisterial enquiry into a complaint, an order effecting the complainant founded on evidence not even adduced by the defendant, but called by himself, and irrelevant to the point then at issue.

14. For these reasons the Session Judge resolves, without giving any opinion as to the appellant's right of possession of the Sayer choultry, to cancel that part of the Magistrate's order which directed the appellant to remove the lock from the premises, and to vacate them without delay.

Ordered that extract from these proceedings be sent to the Magistrate of Bellary for his information.

(True Extract.)

(Signed) P. IRVINE,
Session Judge.

To the Magistrate of Bellary.

(True Copy.)

(Signed) C. PELLY,
Magistrate.

No. 31.

ORDER THEREON, No. 606; dated 7th May 1858.

The Right Honorable the Governor in Council is of opinion, that the Magistrate of Bellary should appeal to the Court of Foujdaree Udalt from the order of the Session Court, in the second of the cases reported in the above letter—using the arguments there employed, and giving a full history of both cases.

(Signed) T. PYCROFT,
Chief Secretary.

~~This is not a legal case~~ The complainant - I wish could legally do -

In the second case - there was no case used - without which a Magistrate has no right to interfere -

2nd case - I am inclined to think that the orders of the Sess. Judge are not

2nd case -

The order referred to of the 5 July - 56 - applies to encroachments in the act of being effected when possession has been obtained without the consent of the owner. It is difficult to see how possession can be obtained unless by a regular title -

The Magistrate can appeal to the Court if he considers the Sess. Judge's order illegal or

India Dept

No 696

From the Magistrate of Pithary
(Dated 8th April 1838)

In order

It is the only case in for the
Might be appealed to the S. H. M.

The two cases mentioned of the charges
are not similar -

In the first - a choultry had been
forcibly pulled down - & a shop built
upon the site - In this instance the
Magistrate directed the removal of
the shop & the restoration of the site to the
village

Exd. F. Cartledge.

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credit, the Magistrate will leave to the decision
of the session Judge. In the Magistrate's opinion
it is false, the witnesses have been suborned,
& the documents are fraudulent documents made
for the occasion -

With respect to the jurisdiction of the Magis-
trate, in the matter it will be observed that the
Magistrate did not determine any question of
title to a property in dispute between private
individuals. What the Magistrate did was
to prevent the unauthorized possession of a
Government building by a private individual,
as it was his duty to do by the express orders of
Government (under date the 5th July 1856 Copy
of which is herewith sent) to protect Government
property against any encroachment or usurpation
by private individuals. The Magistrate was
fully satisfied that the assertion of the
Petitioner that he has long possession of the
Choultry in question was false, & that he had
only very shortly before vizt. about August last,
taken possession of a room in the Choultry
as a pretence to obtain the removal of a shop
then situated in front of it, & belonging to another

who has been
possession of the
choultry

party between us here, and the Petitioner there is a bitter enmity - This occupation of the room was without any lawful authority or right - This was reported to the Magistrate by the Police authorities, & the Magistrate ordered the Petitioner to vacate the room; but at the Petitioner's special request postponed his order until he should himself have heard all the further evidence the Petitioner said he could bring.

The Magistrate was (as set forth in his decision) fully convinced of the falseness of the evidence adduced in support of the Petitioner's allegations, & accordingly gave notice to the Petitioner to vacate the building, unless he chose to appeal against the order of the Magistrate; & the Magistrate considers he had full power to issue such order in conformity with his general power, & specially with reference to the orders of Government

His order is
given here in
all cases
2nd

23
a
Government quoted above - which now goes on to say that encroachments made in contravention of the rule here laid down even as "though permitted by the Local Officers" will not be recognized or admitted by "Government". The Petitioner alleges that if the Government have a better title than the Petitioner who is in possession, that should be proved by the Government in a regular suit. The absurdity of such a plea was shown very lately in a similar case, when the Superior Court in its Proceedings of the 15th January last, fully supported the Magistrate's view by declaring "that the Magistrate was competent to prevent any encroachments on public property" and that the plea, that any party aggrieved "should institute Proceedings was absurd".

The Magistrate thinks it as well to apprise the Court that the matter now appealed against took its rise out of several disputes between the Petitioner parties

the Saron Sorens, and another party, the
Muntor Sorens. These two families are
at bitter enmity and during the last
few months have caused several affrays
& riots in the town. Some of these cases
were disposed of by the Magistrate &
both parties punished, and two cases were
forwarded for trial by the Police to the Court. ^{In 156 & 157 on}
^{the Criminal file}
^{Feb 1857.}

The two parties are wealthy
and influential families & the Magistrate
regrets to say that, at least as regards
the Saron party (the Petitioners), he has
good reason to believe that their respectability
in position does not prevent them from
stooping to most disgraceful measures
of falsehood & fraud to support their
pretended claims, as the Magistrate has
shown in his process now appealed against;
and so unscrupulous have been the means
used to obtain a victory over the other
party, that even the death of one of the
Muntor party, which lately occurred in
the Belgiam Calook, is generally suspected

8066 Judicial Department
Extracts Mems. of Cons. Dated 7 May 1858.
From Mag. of Bellary 8 April 58

St

of

Wm

The R H the Jnl is of
opinion that the Magis-
trate of Bellary should
appeal to H Court
of Bangalore. Adam.
-but from the order of
H Session Court, in
the second of the cases
reported in the above
letter - using the
expressions ^{there} ~~was~~
employed, and
giving a full
history of both

Letter.

Mapistate - 4/20/11.
Billings - 4/20/11.

JP

