

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 2 // 5

Dated 11th Oct 1895

INDEXED.



[Despatch Abstract.]

CIVIL SUITS TO WHICH GOVERNMENT WAS A PARTY.

Recording Proceedings, Board of Revenue (Land Revenue) submitting to Government, with remark, letter from the Collector of Kistna explaining why a large number of----was decided against it during the year 1894-95.

BACK PAPERS.

FURTHER PAPERS.

Kistna Collectorate
Dated 18th August 1895.

From,

J. N. Atkinson Esquire,

Collector,

Kishna District.

To.

The Secretary to Government,

Revenue Department,

Madras.

Through,

The Board of Revenue

Land Revenue.

Sir,

Sir,
 With reference to para 2 of L.O. no 1046 dated 17-5-95
 embodied in B.P. no 3050 dated 18.6.95
 I have the honour to report that out of 84 suits
 decided against Government, 76 cases were insti-
 -tuted by certain ryots of Repalli Taluk Contesting
 the right of Government to charge water tax on
 irrigation by what is called involuntary flow.

2 The Board is aware of the fact that the High Court of Madras decided in one case that the charge made for involuntary flow of irrigation in Zupudi village, Repalle Taluk, was improper, vide Indian Law Report, Madras Vol III pages 407 to 411. On the recommendation of the then Collector in this office No $\frac{220}{20.8.89}$ that action should be taken to set aside this decision, the Board said that as the crop in that suit had totally failed, no action need be taken but directed that if when a case occurs where the water coming by percolation has really been used to get increased profits

the imposition of water cess, is contested, the case should be taken into the Courts." vide B.P. Nos.

672 and $\frac{2713}{4.11.89}$ Mis. This proposal was approved of by Government in G.O. $\frac{932}{18.11.89}$ Rev.

3. In obedience to these orders water tax is imposed when dry lands have been cultivated with wet crops with the aid of ancient water coming either by percolation or by overflow from field to field and when the crop has yielded a remunerative outturn. The charge is regulated with reference to the quantity of produce on the following scale - when the yield is 5 toons and upwards per acre, Rs 4 an acre is charged; and when it is less than 5 toons and above $2\frac{1}{2}$ toons per acre, Rs 2 only, is charged; no charge is made when the outturn falls below the minimum of two toons and a half per acre.

4. The ryots filed these suits for the recovery of the cess thus charged and the original courts have consistently held that no charge should be made in such cases unless the ryots take water from regular channels. As the decisions of the lower court, i.e. Guntur Munsiff's court, in 32 similar suits were, on appeal, reversed by the District Judge, appeals have been filed in all these cases except two, vide B.P. Nos. $\frac{3585}{18.7.75}$ Mis. and $\frac{3781}{30.7.75}$ Mis. $\frac{1191}{8.3.95}$ Mis. + $\frac{2681}{18.5.95}$ Mis.

5. Of the remaining 8 suits, the following are the particulars.

of under the darkest rules in the Gudivada Taluq. The District Munsiff has held that the Revenue department cannot use the discretion allowed them by para 9 of Board's Standing Order No 30 in the disposal of applications for waste lands but must dispose of darkhasts strictly in accordance with the rules laid down in para 8 of the same Standing Order. vide this official R.C. no $\frac{2090}{18}$ of 95 disposed of by the Board - No 3344 Mis. $\frac{5.7.75}$

(b) Three suits relate to the penal water tax imposed under rule 5 of the water-tax rules for water taken from unauthorized sources of irrigation. In deciding these suits in favour of Government, the Munsiff awarded no costs. Nor has he assigned valid reasons for this direction. Appeals have been filed - vide B.P. No. $\frac{2228}{3.5.95}$ Mis.

(c) Suit no 362 of 93 on the file of the District Munsiff Court, Gudivada. This suit relates to the penal water tax imposed under rule 5 of the water tax rules. The plaintiff and some one else put in applications for water after the expiry of the time notified in the District Gazette under the orders of the Board. vide B.P. No. $\frac{272}{6.4.92}$ Mis. These applications were rejected as being out of time. Nevertheless they irrigated their fields and double water tax was charged. Both of them filed suits against Government for its recovery. In December 1894 one suit was decided in favour of Government vide B.P. $\frac{29}{10.1.95}$ Mis. But the same Munsiff decreed the other against Government.

What in the world
does the Munsiff
mean?

Case in 74
Cases in Ref.

remarking that the collector has no power to publish the notification in question and that it is ultra vires. Appeal has however been filed in the District Court. vide B.P. No. $\frac{3261}{2.7.95}$ Mis.

(A) Suit no 609 of 1893 (Bezawada Munsiff's Court).

This suit relates to the dispute regarding the Maanul pallam in Agraaharam. In 1891, the Maanul pallam in this Agraaharam was localized under the supervision of M.R.R.

Rai Bahadar R. Guria Row Chaidu guru. But in the recent survey one of the share holders (plaintiff in the present suit) got ac. 11.50 cents

of his Bapat pallam (dry land converted to wet) classed as Maanul wet. The Munsiff holds that the classification of the survey Department should be adhered to. Appeal was filed but subsequently withdrawn under the orders of the Board. vide B.P. No. $\frac{2740}{30.5.95}$ Mis.

(C) C.No. 137 of 93 on the file of the District Munsiff's Court, Badivada.

This suit relates to the water tax collected from the Plaintiff on acres 18.50 cents which he leased out from the Agraaharamdars of Vadali. The Munsiff finds that he is liable to pay water cess on acres 11.50 cents. An appeal was filed owing to delay made by the Tahasildar in sending the copies of Decree and Judgment to this office. The case was reported to Board in B.P. this office Reference on C.No. $\frac{4972}{19.6.95}$ of 94 and disposed of in B.P. $\frac{3073}{19.6.95}$ Mis.

I have the honor to be, Sir, Your most obedient servant.

REVENUE DEPARTMENT
Enclosure No. 1
L. Curran No. 6787

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Proceedings of the Board of Revenue

(Land Revenue)

Dated 13th September 1895, No 4603. Mis

Read the following:

(1) Again B.P. dated $\frac{18.6.95}{30.5.95}$ forwarding to the collector of Kistna G.O. requesting him to explain the nature and cause of the large number of suits in which decisions were against Government.

(2) Memorandum from the Assistant Secretary to Government R.D. dated 15th August 1895 No 115 R and the following reference thereon dated 20-8-95:-

Forwarded to the Collector of Kistna with the request that he will submit the report called for at an early date.

(3) Letter from J. N. Atkinson Esquire, Collector of Kistna, to the Secretary to Government R.D. through the Secretary to the Commissioner of Land Revenue, Madras, dated 18th August 1895. No $\frac{3665}{18.8.95}$

Resolution.

Submitted to Government with reference to G.O. $\frac{13.6.95}{2378}$

2. The Board has recently instructed the Government Pleas with reference to some second appeals now pending in the High Court to bring to the notice of the Honble the Judges the very far reaching consequences which may follow a strict adherence to the interpretation of Act VII of 1865 laid down in Indian Law Report XII Madras 407.

(True copy and Extract)

(Signed) R. M. Wynne
Secretary.

To

The Secretary to Government, Revenue Department
with letter in original

(1895.)

REVENUE DEPARTMENT.

Current Number 6789

From

The Board of Revenue
Land Revenue

Transferred to the
Judicial Department

W. B. L. J.
Asst. Secretary to Govt.

Order in Council

26th September 1895

Rev. ———

Rev. 2-10-95

Encl. 1

CHIEF SECRETARY
GOVERNMENT OF MADRAS
-1. OCT. 1895

Dated 13-9-95

Received 7-9-95

Enclosures/

No. 4603

SUBJECT.

Submitting to Government with
remark letter from the collector
of Kistna explaining why a
large number of civil suits
to which Government was a
party was decided against it
during the year 1894-95

P. T. O

To
The Judicial Department
Copy to the Board of Revenue,
Land Revenue

Cs.

Order 811th dated 1895, No 2115.

Memo. Red

Recorded

10/10/95 9-10-95

Copy to the Revenue Dep^t (A.C.)
dated 17/10/95

10/10/95

Judicial Dept.

ABSTRACT.

Go 1045/46717-8-95
Endorsement No 1552 R

When given for copying
When copied
When examined
When signed

189

READ AGAIN G.O., No.
189

DATED

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH
IN ORIGINAL.

N.B.—

A = Copy in full.
B = Not to be copied.
P = Copy abstract only.
Q = Copy heading only.