

Local & Munl. (1895) Department.

MISCELLANEOUS.

G.O., No. 1923 L.

DATED 16th Oct 1895.

[Despatch Abstract.]

Petition.

Informing the Agent and Attorney of Numbal Jaghirdarani that the question regarding the possession of avenue trees standing on the southern trunk road within jaghir limits does not appear to be one upon which the Government should decide.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Miscellaneous.

LOCAL AND MUNICIPAL DEPT.

G.O., DATED 16-10-95

No. 19252

INDEXED.

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[Despatch Abstract.]

Petition

Informing the Agent and
 that of Numbal jashidastan
 at the question, regarding the
 loss of avenue trees standing
 on the Southern Trunk road
 within paper limits, does not
 appear to be one upon which the
 we should decide.

READ AGAIN ORDER OF GOVERNMENT, DATED
1895, No. MISCELLANEOUS.

BACK PAPER, No.

OF 119

FURTHER PAPER, No.

OF 159

ENCLOSURES.

CURRENT No.

STATEMENT WITH DITTO.

ORDER OF GOVERNMENT

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BEING MEANT FOR DISPATCH
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Examined by

No. 442

2

CHINGLEPUT DISTRICT BOARD'S OFFICE,

SAIDAPET, 33 July - 1895.

1 8 1895

Local & Municipal Dept

From

C. H. Mounsey Esquire

President of the District Board,

Chingleput.

To the Secretary to Government,

Local and Municipal Department

SIR,

I have the honour to report upon the
three allegations made in the petition of
8th March 1895 presented to the Board of
Revenue by the Agent and attorney of the
Humbal Jaghirdarani and forwarded to me
with Government order of 11th June 1895,
No. 9982. His.

1. "That the land set apart for the western
Trunk road in the village of Humbal belonged
to the Jaghirdarani" (The Jaghirdarani is
since dead and has been succeeded by
her nephew Mr. Sam.)

2. In regard to this, it is a fact that the
road in question between the 10th mile 5th furlong
and 11th mile 4th furlong of the Great Western
Trunk road runs within the Jaghir limits. I
must presume that it belonged originally to the
Jaghir. In a conversation I had with Mr. Sam,
he

- Stated that the jaghir had been in his family for 200 years. He refers any how in his petition to a Government order of 13th February 1884 dealing with it. How old the trunk road is, I do not know; but I should think that Mr. Sam's ancestors probably had the jaghir before the road was made and therefore there is a presumption that the land set apart for the road belonged to the jaghir.

ii " That it (the land for the road) was made over by her without any compensation on the understanding that she was to enjoy the produce of the trees which were planted on the sides of the road and appropriate to her own use such of them as died or were blown down."

3. No record in support of this allegation is forthcoming in my office or in the Collector's. On the other hand it is probable that some such agreement was entered into. I gather this because up to 1894 there was no interference with the trees on the part of the District Board. In that year the trees were ordered to be sold by the President of the District Board. The jagirdarani objected and inquiry followed. The inquiry showed that the jaghir had always had possession and enjoyment of the trees and used to sell the usufruct keeping accounts. On this, the Deputy

Purna Mallick by J. S. S. S.
10/11/2012-4-94.

Collector and President in October 1894 passed orders that the avenue trees in the rule all referred to should be sold in accordance with the opinion of government given in Government order dated 14th June 1889 No 1335 d. As a special contract is set up this government order does not affect the question.

4. The above gives an answer to the third allegation.

iii " That the jagirdarani has been exercising these rights ever since."

This seems to be a fact. The for "ch" circumstances, it is doubtful if the "a" by the District Board to sell the "a" of these avenue trees planted at expense can be maintained.

6. I submit the records as per list attached together with the 3 enclosures received with the Government order under reply.

I have the honor to be,

Sir

Your most obedient servant

President

at 10!

stated that the Sachin had been in his

Local & Municipal Dept.
CURRENT No. 2169

1895

FROM
THE PRESIDENT OF THE
DISTRICT BOARD,
CHINGLEPUT.

To
THE Chief Secretary to
Government, Local
& Municipal Dept.

Deep? 1. August 1895.
- 3 AUG. 95
ENCLOSURE. 16. 21
No. 442 of 95
SUBJECT.

Reporting on the appeal
petition of the agent and
attorney of Numbal Jaghir-
-daran regarding the
possession of avenue trees
standing on the Southern
Tank road within Jaghir
limits

X But it is not a matter
of fact I am sure, for disposal
of fact
2/9/95

see the pet. & the President's last
letter. The rest of the correspondence has
not required for orders

Submitted that the President
may be directed to lay the papers
before the District Board for disposal.
The Board will most probably be
disposed to admit the petitioners
claim; but if it should decide
against him, his only remedy
will be to establish it by a civil
suit.

If Gov. decides the
matter now it will be
liable to be sued by the
party adversely affected by the
order it passes.

This is a question which is
arising in many districts.

It will be a mistake to
give in on this point without
express proof of the resumption
of the trees. The road has been
dedicated to the public for
100 years. The trees belong
to the person or body in
whom the sohem of the
land is vested i.e. to
the public & the D. Bd. as
their trustee.

The Cbr. seems to be 2110

REVENUE DEPARTMENT.

No.

From

Dated

18

FOR ORDERS.

My view was that it was
not for fact, but for the
District Bd. to fight the
matter out. This is
a general proposition -

In the present case,
the Dist. Bd. does not
seem to me to have a
legit. stand on - It is ad-
mitted; apparently, that
the Zamindar enjoyed the
usufruct of the trees from
time immemorial until
recently. In the face of
this fact, it does not
seem necessary to enquire
as to the understanding on
which the land was acquired -
What was the original right
of the Zamindar, the heredi-
tary right by prescription -
If Mr. Forbes thinks the
Dist. Bd. has a good case
he has now the opportunity
of working it further, as he

It is.

The H. M. has noted that "the
Collector seems to admit the
"claim". But it is not
"admitted" so far as I can
"see, for disposal by Govt."

This question of avenue
trees on the sides of roads
running through Zamindari
& Jagirs is being raised in
many districts and if the
claim is admitted will affect
very seriously the control
over & the income from
avenues. Initially
the ~~possession~~ claim of the Etay-
puram Zamindar to the
avenues of the public roads
in his estate was being

pressed when I left.

In the B.P. of 19/2/89 no 125
the (see G.O. 14 June 89 no 13354)
it is said that a public road
includes a fair margin & that
a suit will not lie by the
proprietor of the land thro'
which a public road passes
for the removal of the trees
planted along such margin.

And under the L. B. Act
the public roads vest in
the Dist B. ~~Declaratory~~
~~order~~ Dec. 49.

But although the Act
vests the public roads of the
district in the Board, this does
not give the Board any power
to alienate the property so

vested. The Board only hold
in trust, & cannot dispose of
the trust property without the
sanction of Govt. If the avenues
are in law part of the road
passed with it, the B. have

no authority to admit the paper
claim. If they did not pass the
Board has no locus standi; but

* I have spent a good deal
of time hunting for this
authority but unsuccess-
fully. J.V.

will be back in the
Dist. in a few days.
I quite admit
the force of what he says,
but that I can't admit
is that his argument
has any application to
this particular case in
which that the claimant
has no case against the
Board is admitted.
Anyway, I don't see

how far it can interfere -
if Govt. does so it will
be going beyond its legal
powers & will certainly
be removed by the P. & C. if the P. & C. should
see.

M

12/10/95

the Board may be mistaken
and it is for Govt. then to
see whether they are or
not.

I have looked through
the law reports, but cannot
find anything very pertinent

In 20 Cal. ~~1884~~⁷³² (P.L.R.) it has
been held that ~~the~~ a public
road abandoned by a
Municipality reverts to the
original owner; but the
decision turns apparently
on the ^{express} wording of the
Bengal Act which it is
ruled does not include ^{in the}
~~road~~ the subsoil of the road. Their
Act runs: "All public high-
ways in any place to which this
Act shall be extended (not being
xx private property) & shall
vest in the". But our
Act contains no such
reservation: it says simply
"All public roads & street
in any district existing at the
time xxx shall vest."
Probably therefore it will be

held that the subsoil as well as the mere column of the road vests in the Local Board under our act. If so the trees must ~~be~~ be considered part of the road.

In Bombay the public roads are declared to vest in the Loc. & State.

In this particular case the trunk road from Madras has been a public highway for more than a century, I sh^d. imagine. Dedication to the public ~~must~~ ^{is} from this long user ~~be~~ amply proved: the alleged reservation or understanding as to the produce of the trees is not supported by any documentary evidence. The particularity with which it is set out, as being in lieu of compensation, is suspicious if it rests on mere oral tradition.

The trees appear from the plan to be, at any rate on one side, well within the

road margin.

There is no doubt evidence, or at any rate so the Deputy Tah. reported, that the fruit has hitherto been enjoyed without remonstrance; but it is not clear if that evidence has been carefully examined by any more responsible officer; or how far it is binding.

Seeing that so much depends on the precedent which may be set, perhaps the Jst may be asked to lay the case with the evidence before the Jst. Pleader for advice

J. P. 19/10/07

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} 189

READ AGAIN G.O., No.
189

DATE:

CURRENT No.

INCLOSURES TO C. No.

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Ken H. Blinn C. 2.8

geb. $\frac{637.2}{4.4.95}$ auf $\frac{998.2}{11.6.95}$

Current 2169.2.

Order No 1925 ⁹⁹ June 16-10-95

The matter does not appear to be
one upon which the Govt. should
decide.

Decide. *W. H. H. (from order)*
 W. H. H. 14.10.95

To the Pres. Dr. B. Chingelput. P.O.

S. or Ls. ^{the}~~the~~ design Owpd. 1870/95
JH

Inclos: returned with Ans. 17/6 4/12/95